

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT made and entered into this _____ day of 2014, by and between **THE TOWN OF BELLEAIR FLORIDA**, a Florida Municipal Corporation, hereinafter referred to as "TOWN" and **FLORIDA MUNICIPAL SERVICES, INC.**, a Florida corporation, hereinafter referred to as "CONTRACTOR."

WITNESSETH

WHEREAS, the TOWN is a Florida Municipal Corporation having a responsibility to provide certain services to benefit its citizens; and

WHEREAS, CONTRACTOR is in the business of providing certified professionals to perform Building Code Administration, Plans Examination and Code Compliance Inspections on an as-needed basis for the TOWN and elsewhere in the State of Florida; and

NOW THEREFORE in consideration of the premises, and in consideration of the mutual conditions, covenants and obligations hereafter expressed, it is agreed as follows:

1. **Recitals.** The foregoing recitals are true and correct and constitute a material inducement to the parties to enter into this Agreement.
2. **Specific Provisions.** The parties hereby agree to the following specific provisions:
 - a. **Description of Work.** The CONTRACTOR shall be responsible for providing the services described in the Scope of Services, which is attached hereto as Exhibit "A" and incorporated herein by reference. Unless specifically excluded, the CONTRACTOR shall provide all permits, labor, materials, equipment and supervision necessary for the completion of the work described herein. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in Exhibit "A" shall be resolved in favor of the body of this Agreement.
 - b. **Payment.** In consideration of the performance of this Agreement, the TOWN agrees to pay CONTRACTOR for its performance of its various services hereunder at the hourly rate described in Exhibit "A," which is attached hereto and incorporated herein by reference (CONTRACTOR shall invoice TOWN for services performed which invoices shall provide explanation of work performed and hours of service).
 - c. **Commencement and Completion.** The CONTRACTOR will be required to commence work under this Agreement _____, 2014, and to continue to provide services for the duration of this Agreement. This Agreement shall be for a term of two years (2) from the date hereof. TOWN shall have the option to renew this Agreement for two (2) additional one-year periods per the terms delineated in Exhibit A with all other terms and conditions to remain in effect.
 - d. **Termination.**
 - i. **Termination at Will:** This Agreement may be terminated by the TOWN or CONTRACTOR at any time without cause by giving written notice not less than 30 days by the TOWN and 60 days by the CONTRACTOR, prior to the date of termination; provided that this provision shall not relieve either party from its obligations under this Agreement through the date of the actual termination. The TOWN shall pay CONTRACTOR through the date of termination. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery.

e. **Project Management.** The Project Manager for the CONTRACTOR shall be: Walter F. Brown, FLORIDA MUNICIPAL SERVICES, INC., Building Official, (or his successor). The Project Manager for the TOWN shall be JP Murphy, Assistant Town Manager (or his successor). CONTRACTOR and TOWN will notify the other in advance of any change to their designated Project Manager.

f. **Notices.** All notices to the parties under this Agreement shall be in writing and sent certified mail to:

i. TOWN: The Town of Belleair
 Attn: JP Murphy
 Title: Asst. Town Manager
 901 Ponce de Leon Boulevard
 Belleair, FL 33756-1096

CONTRACTORS: Florida Municipal Services, Inc.
 Attn: Walter F. Brown
 6171 S. Royal Drive
 Homosassa, Florida 34448

g. **Insurance.**

i. The CONTRACTOR agrees to maintain such insurance as will fully protect both the CONTRACTOR and the TOWN from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by the CONTRACTOR, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.

ii. The insurance required by the terms of this Agreement shall in no event be less than:

(a) WORKERS' COMPENSATION:

Coverage is to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$1,000,000 each accident.

(b) COMMERCIAL GENERAL LIABILITY - OCCURRENCE FORM REQUIRED:

CONTRACTOR shall maintain commercial general liability (CGL) insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location/project in the amount of \$2,000,000. Products and completed operations aggregate shall be \$2,000,000. CGL insurance shall be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury and advertising injury.

(c) COMMERCIAL AUTOMOBILE LIABILITY INSURANCE:

CONTRACTOR shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos). The policy shall be endorsed to provide contractual liability coverage.

iii. EVIDENCE OF INSURANCE:

The CONTRACTOR shall furnish the TOWN with Certificates of Insurance. The Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The TOWN is to be specifically included as an additional insured on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30-days prior

to said expiration date. The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the TOWN before the commencement of any work activities.

3. **General Provisions.** THAT the parties hereby agree to the following general provisions:
- a. **Representations of the Contractor.** The CONTRACTOR represents that is has sufficient manpower and technical expertise to perform the services contemplated by this Agreement in a timely and professional manner consistent with the standards of the industry in which the CONTRACTOR operates, and that all technical personnel have State of Florida certification within their discipline(s).
 - b. **Representations of the TOWN.** The TOWN represents that it is duly organized and existing as a Municipal Corporation political subdivision of the State of Florida. Further, the TOWN has the full power and authority to enter into the transactions contemplated by this Agreement and has the ownership and/or control over the property which is the subject of this Agreement or which shall be serviced thereby.
 - c. **Personal nature of Agreement.** The CONTRACTOR hereby warrants that it has the necessary technical expertise and training to perform its duties as outlined in this Agreement. The parties acknowledge that the TOWN places great reliance and emphasis upon the knowledge, expertise and personal abilities of the CONTRACTOR. Accordingly, this Agreement is personal and the CONTRACTOR shall not assign or delegate any rights or duties hereunder without the specific written consent of the TOWN. In the event the CONTRACTOR requires the services of any subcontractor or professional associate in connection with the work to be performed under this Agreement, the CONTRACTOR shall obtain the written approval of the TOWN Project Manager prior to engaging such subcontractor or professional associate.
 - d. **Independent contractor.**
 - i. It is specifically agreed that the CONTRACTOR is deemed to be an independent contractor and not a servant, employee, joint adventurer or partner of the TOWN for the purposes set forth in this subsection and it is further agreed that no agent, employee, or servant of the CONTRACTOR shall be deemed to be the agent, employee, or servant of the TOWN. Accordingly, none of the benefits, if any, provided by the TOWN to its employees, including but not limited to compensation insurance and unemployment insurance are available from the TOWN to the employees, agents or servants of the CONTRACTOR. The CONTRACTOR will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and subcontractors during the performance of this Agreement; the CONTRACTOR shall not be deemed to be an agent of the TOWN pursuant to Florida Statute 468.619(5). Although the CONTRACTOR is an independent contractor, the work contemplated herein must meet the approval of the TOWN and shall be subject to the TOWN's general right of inspection to secure the satisfactory completion thereof. The CONTRACTOR agrees to comply with all Federal, State and municipal laws, rules and regulations that are now or may in the future become applicable to the CONTRACTOR, the CONTRACTOR's business, equipment or personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. The TOWN will not be held responsible for the collection of or the payment of taxes or contributions of any nature on behalf of the CONTRACTOR.
 - ii. The CONTRACTOR agrees that it shall bear the responsibility for verifying the employment status, under the Immigration Reform and Control Act of 1986, of all persons it employs in the performance of this Agreement.
 - e. **Acceptance of work product, payment and warranty.** Upon receipt of a periodic work product, together with an invoice sufficiently itemized to permit audit, the TOWN will diligently review same. Payment, found to be due the CONTRACTOR, will be paid to the CONTRACTOR within thirty (30) days after the date of receipt of the invoice. The CONTRACTOR warrants that the data utilized by the CONTRACTOR (other than as provided by the TOWN) is from a source, and collected using methodologies, which are generally

recognized in the CONTRACTOR's industry or profession to be a reliable basis and foundation for the CONTRACTOR's work product. The CONTRACTOR shall notify the TOWN in writing should it appear, in the CONTRACTOR's professional judgment that the data or information provided by the TOWN for use in the CONTRACTOR's work product is incomplete, defective or unreliable. The CONTRACTOR guarantees to amend, revise or correct to the satisfaction of the TOWN any error appearing in the work as a result of the CONTRACTOR's failure to comply with the warranties and representations contained herein. Neither inspection nor payment, including final payment by the TOWN shall relieve the CONTRACTOR from its obligations to do and complete the work product in accordance with this Agreement.

- f. **Public records.** All records prepared or maintained by the CONTRACTOR in accordance with the Scope of Services (Exhibit "A"), shall be deemed to be public records. The CONTRACTOR shall allow public access to such documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the CONTRACTOR assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CONTRACTOR. The TOWN reserves the right to unilaterally cancel this Agreement for refusal by the CONTRACTOR to allow public access to all such documents, subject to the Provisions of Chapter 119, Florida Statutes, and made or received by the CONTRACTOR in conjunction with this Agreement. All documents hereinabove referred to shall be maintained and kept for public inspection at the Belleair TOWN Hall.

4. **Miscellaneous Provisions.** the parties hereby agree to the following miscellaneous provisions:

- a. **Discrimination.** That the CONTRACTOR shall assure that no person shall be excluded, on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this Agreement. The CONTRACTOR shall take all measures necessary to effectuate these assurances.
- b. **Severability.** That, should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- c. **Entire Agreement.** That this Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations or agreements to the contrary. CONTRACTOR recognizes that any representations, statements or negotiations made by the TOWN staff do not suffice to legally bind the TOWN in a contractual relationship unless they have been reduced to writing, authorized and signed by the authorized TOWN representatives.
- d. **Construction.** Should any provision of this Agreement be subject to judicial interpretation, it is agreed that the court interpreting or considering such provision will not apply the presumption or rule of construction that the terms of this Agreement be more strictly construed against the party which itself or through its counsel or other agent prepared the same, as all parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel, if any, and/or the negotiation of specific language and therefore the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.
- e. **Attorney's Fees.** In the event of any litigation to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs which are directly attributed to such litigation both at the trial and appellate level.
- f. **Waiver.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of this Agreement, either at the time the breach or failure occurs or at any time throughout the term of this Agreement. The review of, approval of, or payment for any of CONTRACTOR's work product, services, or materials shall not be construed to operate as a waiver of any of the TOWN's rights under this Agreement, or of any cause of action the TOWN

may have arising out of the performance of this Agreement.

- g. **Force Majeure.** Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable if failure or delay in the performance of this Agreement arises from fires, floods, strikes, embargos, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. This provision shall not apply if the "Scope of Work" of this Agreement specifies that performance by the CONTRACTOR is specifically required during the occurrence of any of the events herein mentioned.
- h. **Headings.** All headings are for clarification only and are not to be used in any judicial construction of this Agreement or any paragraph.
- i. **Binding Nature of Agreement.** This Agreement shall be binding upon the successors and assigns of the parties hereto.
- j. **Law; Venue.** This Agreement is being executed in the **Town of Belleair**, Florida and shall be governed in accordance with the laws of the State of Florida. Marion County, Florida shall be the venue of any action thereon.
- k. **Indemnification.** The CONTRACTOR agrees to indemnify and hold harmless the TOWN from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorney's fees and costs, but only to the extent caused by, arising out of, or relating to the work of CONTRACTOR.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this agreement on the day and date first written above.

**THE TOWN OF BELLEAIR
TOWN COMMISSION**

By: _____
MAYOR

APPROVED AS TO FORM AND CONTENT FOR
THE RELIANCE OF THE TOWN OF BELLEAIR
ONLY:

By: _____
TOWN ATTORNEY

FLORIDA MUNICIPAL SERVICES, INC.

By: _____
PRESIDENT

ATTEST:

SEAL
Clerk
TOWN COMMISSION

WITNESS

EXHIBIT A

SCOPE OF SERVICES

Provide in accordance with the requirements set forth in Chapter§468 Florida Statutes certified Building Official, Plans Examiner(s), Inspector(s), and Floodplain Manager, to perform mandatory building code administration, plan reviews, and inspections associated with any of the general building, structural, mechanical, electrical and plumbing building components on behalf of the Town of Belleair as their agent so as to reasonably assure compliance with the Florida Building code, FEMA regulations, local administrative and technical amendments, in accordance with the following:

- 1) CONTRACTOR will provide the above services on an hourly basis at a rate of \$70.00 (Seventy Dollars) per hour during a mutually agreed upon weekly schedule, excluding travel time.
- 2) For days during the normal 5-day work week which are in addition to the mutually agreed upon weekly schedule, CONTRACTOR shall be paid \$70.00 (Seventy Dollars) per hour for actual hours worked, plus actual travel time, not to exceed 1.5 hours unless otherwise agreed upon.
- 3) Inspections, plan review and building official services required on weekends, holidays, and after hours will be billed at time and a half \$105.00 (One hundred five Dollars), per hour, plus travel time, not to exceed 1.5 hours.

CONTRACTOR will clearly indicate on all invoices the date and hours of any travel time billed to the TOWN.

CONTRACTOR may provide other services as required, which may include: review and investigation of violations of building codes, and assessment of damage after a natural disaster. The rate of compensation for those other services will be billed at an hourly rate of \$70 (Seventy Dollars) per hour.

Personnel will be provided as needed and during mutually agreed upon times to maintain office hours for the TOWN's Building Department. Additionally, CONTRACTOR's personnel will be available to the TOWN via cell phone during all normal business hours, at a minimum from 8 a.m. to 5 p.m., Monday through Friday.

Specifically included in CONTRACTOR's stipulated fees will be all wages, payroll burden, employee benefits, vehicles, fuel, and worker's compensation, liability and automobile insurance associated with the required technical personnel.

Specifically excluded and to be provided by the TOWN will be a permit technician, all office facilities and consumables, utilities, badges/ID's and office telephone, and copier/fax.