

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") is entered into this ____ day of _____, 2021 (the "Effective Date") by and between the Leon County Research and Development Authority, a public Authority created pursuant to Chapter 159, Part V, Florida Statutes, having its principal place of business in Tallahassee, Florida (the "Authority"), and _____, a State of Florida corporation having its principal place of business in _____ (the "Contractor").

WHEREAS, the Authority issued RFP Number 21-02 Asphalt Paving Services on June 4, 2021 ("RFP"), and;

WHEREAS, Contractor submitted a proposal in response to the RFP ("Proposal"), and;

WHEREAS, the Authority wishes to allow for the Contractor to provide asphalt paving services independent of the Authority, and the Contractor desires to provide such services;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Contractor hereby agree as follows:

1. SERVICES. The Authority hereby allows the Contractor to provide the services described in Exhibit "A" and is made a part hereof (the "Services"), upon the terms and subject to the conditions of this Agreement.
2. TERM. The Agreement shall become effective commencing August 3, 2021 and terminate upon acceptance of, and payment for the Services by the Authority, unless terminated in accordance with the provisions of paragraphs 8 or 9.
3. REPRESENTATIONS AND WARRANTIES. Contractor made certain representations and warranties in its Proposal which are incorporated and made a part hereof.
4. COMPENSATION. The amount of compensation payable by the Authority to Contractor shall be based on the rates and schedules described in Exhibit "B" attached hereto and made a part hereof. Unless otherwise specifically provided in Exhibit "B", payment shall be made within thirty (30) days after receipt of Contractor's invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail to allow a proper audit of expenditures should the Authority require one to be performed.
5. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS. Contractor shall, in its performance of this Agreement, comply fully with all federal, state, county and other municipal laws and regulations, as they may be amended from time to time.
6. INDEMNIFICATION. Contractor shall indemnify, defend and hold harmless the Authority, its partners, officers, directors, shareholders, employees and agents (collectively referred to as "Indemnities") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney's fees) or liabilities (collectively

referred to as “Liabilities”) by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from or in connection with (i) the performance or non-performance of the Services contemplated by this Agreement which is or is alleged to be directly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of Contractor or its employees, agents or subcontractors (collectively referred to as “Contractor”) or (ii) the failure of the Contractor to comply with any of the paragraphs herein or the failure of the Contractor to conform to statutes, ordinances or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. Contractor expressly agrees to indemnify and hold harmless the Indemnities, or any of them, from and against all liabilities which may be asserted by an employee or former employee of Contractor, or any of its subcontractors, as provided above, for which the Contractor’s liability to such employee or former employee would otherwise be limited to payments under state Workers’ Compensation or similar laws. The indemnity set forth herein shall be in addition to those indemnities otherwise provided by law.

7. INSURANCE. Contractor shall, at all times during the term hereof, maintain the insurance coverages as set forth in Exhibit “C” attached hereto and made a part hereof.

8. CANCELLATION OR DEFAULT. In the event the Contractor’s performance is deficient, the Authority shall notify the Contractor in writing of the deficiencies and the Contractor shall have ten (10) days to correct such deficiencies. Should the Contractor fail to take appropriate action (acceptable to the Authority in its sole discretion) to correct such deficiencies, the Authority, in addition to all remedies available to it by law, may immediately upon written notice to Contractor by U.S. Mail terminate this Agreement whereupon all payments, advances or other compensation paid by Authority to the Contractor while Contractor was in default shall be immediately returned to the Authority. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligation accruing prior to the effective date of termination.

9. AUTHORITY’S RIGHT TO TERMINATE. The Authority shall have the right to terminate this Agreement, in its sole discretion, at any time, by giving written notice to Contractor at least thirty (30) days prior to the effective date of such termination. In such event, the Authority shall pay to Contractor compensation for Services rendered and expenses incurred prior to the effective date of termination. In no event shall the Authority be liable to Contractor for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

10. TERMINATION OF PARTICULAR LOCATIONS. The Authority reserves the right to terminate at will, any particular location(s). Should it become necessary to add new locations to the Agreement, a new Agreement amount shall be negotiated to include such new location(s) and shall coincide with the existing Agreement terms. Should the Authority and Contractor fail to agree upon an amount to be charged for new location, the Authority reserves the right to award such location(s) as it deems necessary.

11. STRIKES OR LOCKOUTS. In the event the Contractor should become involved in a labor dispute, strike or lockout, it shall be required to make whatever arrangements that may be necessary to ensure that the conditions of the Contract are met in their entirety. Should the Contractor be unable to fulfill the Contract requirements, the Authority reserves the right to

make alternative arrangements to insure the satisfactory completion of work Contractor is unable to perform. Any costs, provided those costs would have been covered under this Agreement, incurred by the Authority as a result of such job action shall be the responsibility of the Contractor.

Under no circumstances, shall either party be liable for any loss, damage or delay due to any cause beyond either party's reasonable control, including but not limited to acts of government, strikes, lockouts, labor disputes, fires, explosion, theft, weather damage, flood, earthquake, riot, civil commotion, war, malicious mischief or act of God. However, in connection with any causes, if the Contractor has a duty to take certain actions, it shall be responsible for the losses caused by the Contractor's negligent acts or omissions.

Under no circumstances, shall either party be liable for special, indirect or consequential damages of any kind including, but not limited to, loss of profits, loss of good will, loss of business opportunity, additional financing costs or loss of use of any equipment or property, whether in contract, tort, warranty or otherwise, notwithstanding any indemnity provision to the contrary.

12. NOTICES. All notices or other communications required under this Agreement shall be in writing and shall be given by hand delivery, by U.S. Mail, or by recognized overnight courier at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered, or if by mail, on the fifth day after being posted or the date of actual delivery, whichever is earlier, or if by courier, on the date of receipt.

If to Contractor:

[NEED CONTRACTOR INFO]

If to Authority:

Leon County Research and Development Authority
c/o Talcor Commercial Real Estate Services Inc.
1018 Thomasville Rd, Suite 200A
Tallahassee, FL 32303
Attention: Stephanie Shoulet
stephanie@talcor.com

With copies to:

Leon County Research and Development Authority
2051 E. Paul Dirac Drive, Suite 100
Tallahassee, FL 32310
Attention: Ron Miller, Executive Director
Rmiller@inn-park.com

Nelson Mullins Broad and Cassell
Attention: Melissa VanSickle
215 South Monroe Street, Suite 400
Tallahassee, FL 32301
melissa.vansickle@nelsonmullins.com

13. MISCELLANEOUS

- a. This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue for all purposes shall be Leon County, Florida.
- b. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of the provisions of this Agreement.
- c. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
- d. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.
- e. The filing of any petitions in bankruptcy whether voluntary or involuntary on the part of Contractor, shall give Authority the right to terminate this Agreement.
- f. No amendment, change or modification of this Agreement shall be valid or binding upon the parties unless same shall be in writing and signed by the parties.
- g. This agreement, including all attachments and exhibits thereto, constitutes the full agreement of the parties and there are no further or other agreements, statements or warranties, whether written or oral, relied upon or in between them relating to the subject matter hereof, except as expressly herein stated. This Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.
- h. This Agreement shall not be assigned by Contractor, in whole or in part, without the prior written consent of the Authority, which may be withheld or conditioned, in the Authority's sole discretion, and any such purported assignment in breach of this Agreement shall be null and void. The Authority reserves the right to assign this Agreement without first obtaining the consent of Contractor.
- i. The prevailing party in any action or proceeding to enforce this Agreement or for damages or declaratory relief in connection herewith shall be entitled to recover

its reasonable costs and expenses, including attorney's fees, and costs through litigation, all appeals and any bankruptcy proceedings. Authority's liability to pay such costs and expenses shall be limited to the extent provided in Section 768.28 Florida Statutes, as may be amended from time to time. Nothing herein shall be construed to be a waiver of Authority's sovereign immunity.

- j. Contractor shall be an independent contractor and not an employee, partner or joint venture of Authority under this Agreement. Contractor shall be responsible for all income taxes, social security taxes, self-employment taxes and any other taxes to which Contractor or Authority may be subject to as a result of this Agreement or Contractor's performance hereunder.
- k. Contractor shall comply with all Authority rules and regulations, as they may be amended from time to time, governing access to and conduct on the property.
- l. The parties' obligations under the Indemnification section of this Agreement, in addition to any representations, and warranties of the parties contained in this Agreement or in any certificate delivered by them under this Agreement, shall survive the termination or expiration of this Agreement.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

THE CONTRACTOR

[NEED CONTRACTOR NAME]

a State of Florida corporation

By: _____

Name: _____

Title: _____

THE AUTHORITY

Leon County Research and Development Authority,
a public Authority created pursuant to Chapter 159, Part V, Florida Statutes

By: _____

Name:

Title: Chair

SAMPLE

**EXHIBIT A
SCOPE OF SERVICES**

The contract Scope of Services will be the same as the RFP scope of services.

SAMPLE

**EXHIBIT B
COMPENSATION**

PRICE SCHEDULE

The price schedule will be the same as the accepted proposal price schedule.

SAMPLE

EXHIBIT C INSURANCE

- a. **CONTRACTOR'S INSURANCE.** Contractor shall, at its sole cost, maintain limits no less than the following throughout the Term:
- i. **General Liability.** \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage with a \$2,000,000 annual aggregate. Contractor's insurance shall include Authority as an additional insured as provided herein below.
 - ii. **Automobile Liability:** \$1,000,000 combined single limit per accident for bodily injury and property damage for non-owned, hired automobile. Contractor's insurance shall include Authority as an additional insured as provided herein below. The requirements of this provision may be waived upon submission by Contractor of a written statement that no automobiles are used to conduct business.
 - iii. **Worker's Compensation and Employers Liability:** Insurance covering all employees meeting statutory requirements in compliance with the applicable state and federal laws. In lieu of naming Authority as an additional insured, Contractor shall provide to Authority a waiver of all rights of subrogation against Authority with respect to losses payable under such workers' compensation policy(ies).
- b. **AMENDED INSURANCE REQUIREMENTS.** Authority reserves the right to reasonably amend the insurance requirements to standards reasonable and customary for the size and type of business being conducted by Contractor by the issuance of a notice in writing to Contractor. The Contractor shall provide any other insurance or security reasonably required by Authority.
- c. **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** Any deductibles or self-insured retentions applicable to any of Contractor's policies required above shall be declared to and approved by Authority. Thereafter, at the request of Authority, Contractor shall cause its insurer to reduce or eliminate such deductibles or self-insured retentions as they may apply to Authority, its agents, officers, officials, employees and volunteers or, in lieu of such reductions or eliminations, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.
- d. **AUTHORITY AS ADDITIONAL INSURED.** Authority, its agents, officers, officials, employees, and volunteers are to be named and covered as additional insureds, with no limitations on the scope of protection afforded, in all of Contractor's insurance policies, other than workers' compensation policies, that include coverage for the following:
- i. liability arising from, or in connection with, activities performed by, or on behalf of, Contractor;
 - ii. products and completed operations of Contractor;
 - iii. premises owned, occupied, or used by Contractor; or
 - iv. automobiles owned, leased, hired, or borrowed by Contractor.

- e. **CONTRACTOR'S INSURANCE AS PRIMARY.** With regard to claims for injuries to persons or damages to property which may arise from, or in connection with, the performance by Contractor, its agents, representatives, employees, and/or subcontractors of the rights, duties and responsibilities pursuant to this Agreement, Contractor's insurance coverage shall be primary insurance with respect to Authority, its agents, officers, officials, employees, and volunteers. As such, any insurance or self-insurance maintained by Authority, its agents, officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it. In such instances when Contractor's insurance coverage is primary, Contractor hereby waives all rights of subrogation against Authority with respect to losses payable under such insurance coverage.
- f. **CERTIFICATES OF INSURANCE.** Contractor shall furnish Authority with certificates of insurance and with any original endorsements evidencing the coverages described above. Such certificates shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by Authority prior to the commencement of Contractor's services under this Agreement. Authority reserves the right to require complete, certified copies of all Contractor's required insurance policies at any time. Each of Contractor's required insurance policies shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Authority. All of Contractor's required insurance policies shall be placed with insurers with a Best's rating of no less than A:VII and which are licensed in the state of Florida.
- g. **OTHER ENDORSEMENTS REQUIREMENTS FOR CONTRACTOR'S INSURANCE.** Each of Contractor's required insurance policies shall contain endorsements for, or otherwise provide, the following:
- i. that any failure to comply with the reporting provisions of the policies shall not affect coverage provided to Authority, its agents, officers, officials, employees, or volunteers;
 - ii. that, to the extent of insurer's limits of liability, Contractor's insurance coverage shall apply separately to each insured against whom claims are made or suit is brought; and
 - iii. that the companies issuing the insurance policy(ies) shall have no recourse against Authority for payment of premiums or assessments for any deductibles which are the sole responsibility and risk of Contractor.