

**FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT  
FOR  
PROFESSIONAL ENGINEERING AND CONSULTING SERVICES**

THIS FIRST AMENDMENT to the Professional Services Agreement is made and entered into with an effective date of October 1, 2017, by and between the **GAINESVILLE COMMUNITY REDEVELOPMENT AGENCY ("CRA")**, a public body corporate and politic, created pursuant to part III of Chapter 163, Florida Statutes, the **CITY OF GAINESVILLE, FLORIDA**, a municipal corporation ("CITY"), the **CITY OF GAINESVILLE, d/b/a GAINESVILLE REGIONAL UTILITIES ("GRU")**, a Florida municipal corporation, 301 SE 4th Avenue, Gainesville, Florida 32601 (collectively "THE CITY") and **ENVIRONMENTAL CONSULTING & TECHNOLOGY, INC. ("CONSULTANT")**, a Delaware corporation, with offices at 3701 NW 98th Street, Gainesville, Florida 32606, collectively the "PARTIES".

**WHEREAS**, on September 18, 2015, the PARTIES entered into a Professional Services Agreement for professional engineering and consulting services ("Initial Agreement"); and

**WHEREAS**, the Initial Agreement provided for two one-year extensions of the Initial Agreement upon mutual agreement of the PARTIES; and

**WHEREAS**, of May 4, 2017, the City of Gainesville City Commission approved an extension of the Initial Agreement upon mutual agreement of the PARTIES; and

**WHEREAS**, the PARTIES have negotiated terms and rates satisfactory to both PARTIES to permit extending the Initial Agreement in order to continue the contractual relationship;

**NOW, THEREFORE**, in consideration of the mutual benefits, promises, and covenants contained herein, the PARTIES hereto mutually agree to amend the Initial Agreement as set forth below:

1. The PARTIES agree to exercise the first one-year renewal option and extend this Agreement through September 30, 2018.
2. The PARTIES agree to the labor classification rates in Attachment "A-1" effective October 1, 2017 and will continue throughout the remaining term of this Amendment unless modified by both PARTIES in a subsequent amendment.
3. Section 8.2 Public Records, and Section 14.1 Disputes and Dispute Resolution of the Initial Agreement are hereby amended by replacing Sections 8.2, and 14.1 of the Initial Agreement in their entirety with Sections 8.2, and 14.1 as set forth below:
  - 8.2 If Contractor is either a "contractor" as defined in Section 119.0701(1)(a), Florida Statutes, or an "agency" as defined in Section 119.011(2), Florida Statutes, Contractor shall:
    - a) Keep and maintain public records, as defined in Section 119.011(12) of the Florida Statutes, required by THE CITY to perform the service.
    - b) Upon request from THE CITY's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
    - c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to THE CITY.

- d) Upon completion of the contract, transfer, at no cost, to THE CITY all public records in possession of the contractor or keep and maintain public records required by THE CITY to perform the service. If the contractor transfers all public records to THE CITY upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to THE CITY, upon request from THE CITY's custodian of public records, in a format that is compatible with the information technology systems of THE CITY.
  
- e) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE GRU CUSTODIAN OF PUBLIC RECORDS AT (352) 393-1240, PURCHASING@GRU.COM, OR 301 SE 4TH AVENUE, GAINESVILLE FL 32601.

14.1 If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within 20 business days after giving of notice. If the dispute is not resolved within 30 business days after giving notice, or such later date as may be mutually agreed, the PARTIES will submit the dispute to a mediator. The PARTIES shall mutually agree to the mediator and the costs of the mediator will be born equally by both PARTIES. The venue for mediation and any subsequent litigation shall be in Alachua County, Florida.

4. Section 11.0 Indemnification of the Initial Agreement is hereby amended by replacing Section 11.0 of the Initial Agreement in its entirety with Section 11.0 as set forth below:

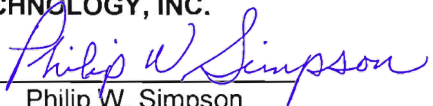
**11.0 INDEMNIFICATION.**

- 11.1 Pursuant to Section 725.08, Florida Statutes, this Agreement qualifies as a professional services contract and CONSULTANT qualifies as a design professional. Notwithstanding the provisions of Section 725.06, Florida Statutes, CONSULTANT agrees to indemnify and hold harmless THE CITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the design professional and other persons employed or utilized by the CONSULTANT in the performance of this Agreement.
- 11.2 CONSULTANT represents and warrants that CONSULTANT shall not infringe a trademark, copyright, patent, trade secret or any such intellectual property right in the performance of this Agreement. In the event of an infringement suit related to or resulting from this Agreement, CONSULTANT represents and warrants that THE CITY will not be liable for any damages or royalties if applicable.

5. Except as modified by this First Amendment, the provisions of the Initial Agreement remain unchanged and in full force and effect for the term of the Initial Agreement and any amendments thereto.

IN WITNESS WHEREOF, the PARTIES hereto have executed this First Amendment on the day first above written in two (2) counterparts, each of which shall without proof or accounting for the other counterparts be deemed an original.

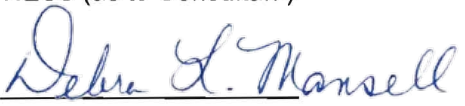
**ENVIRONMENTAL CONSULTING & TECHNOLOGY, INC.**

By:   
Philip W. Simpson  
Vice President

**CITY OF GAINESVILLE**

By:   
Anthony Lyons  
City Manager

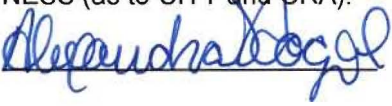
WITNESS (as to Consultant)

By:   
Print Name: Debra L. Mansell

**GAINESVILLE COMMUNITY REDEVELOPMENT AGENCY**

By:   
Anthony Lyons  
CRA Executive Director

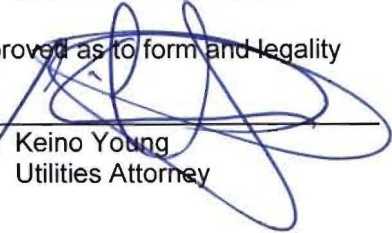
WITNESS (as to CITY and CRA):

BY: 

**CITY OF GAINESVILLE, d/b/a GAINESVILLE REGIONAL UTILITIES**

By:  9/26/17  
William J. Shepherd  
Chief Customer Officer

Approved as to form and legality

By:   
Keino Young  
Utilities Attorney

Purchasing Representative

By:   
Elizabeth Mattke, C.P.M., CPPO  
Senior Buyer

**ENVIRONMENTAL CONSULTING & TECHNOLOGY, INC. {PRIVATE }**  
**PROFESSIONAL SERVICES FEE SCHEDULE**  
(EFFECTIVE THROUGH SEPTEMBER 30, 2018)

<u>Labor Classification</u>	<u>Rate Per Hour</u>
Senior Principal Scientist/Engineer	\$ 253.68
Principal Scientist/Engineer; Certified Industrial Hygienist	213.09
Senior Scientist/Engineer III	192.79
Senior Scientist/Engineer II	182.65
Senior Scientist/Engineer I	167.43
Staff Scientist/Engineer III	157.28
Staff Scientist/Engineer II	147.13
Staff Scientist/Engineer I; Senior GIS Analyst	142.06
Senior Associate Scientist/Engineer III	131.91
Senior Associate Scientist/Engineer II	126.84
Senior Associate Scientist/Engineer I; Field Services Manager	121.76
Associate Scientist/Engineer III; GIS Analyst	116.69
Associate Scientist/Engineer II; Senior CAD Technician	106.54
Associate Scientist/Engineer I	96.40
Senior Project Coordinator	96.40
GIS Operator/Technician	91.32
Senior Technician; CAD Operator/Technician	86.25
Project Coordinator	86.25
Technician	65.96
Administrative Support	60.88

Rates for legal preparation, depositions, testimony and other expert witness work will be charged at one and one-half times the above rates, as will non-exempt employees working overtime.

The above rates include all direct and indirect costs except reimbursables. Indirect costs include such items as overhead, profit, and such statutory and customary fringe benefits as social security contributions, sick leave, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, annual leave, and holiday pay.

Reimbursable expenses shall mean the actual expense of transportation and subsistence of principals and employees, consultants' fees, subcontractors' fees, toll telephone calls, facsimile transmissions, reproduction of reports and other project-related materials, expendable supplies directly used on the project, computer charges, equipment use fees, and similar project-related items. A ten percent service charge will be applied to all reimbursable expenses.

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
PROFESSIONAL ENGINEERING AND CONSULTING SERVICES**

THIS AGREEMENT, entered into on the 18<sup>th</sup> day of SEPT, 2015, by and between the **GAINESVILLE COMMUNITY REDEVELOPMENT AGENCY** ("CRA"), a public body corporate and politic, created pursuant to part III of Chapter 163, Florida Statutes, the **CITY OF GAINESVILLE, FLORIDA**, a municipal corporation ("CITY"), the **CITY OF GAINESVILLE, d/b/a GAINESVILLE REGIONAL UTILITIES** ("GRU"), a Florida municipal corporation, 301 SE 4th Avenue, Gainesville, Florida 32601 (collectively "THE CITY") and **ENVIRONMENTAL CONSULTING & TECHNOLOGY, INC.** ("CONSULTANT"), a Delaware corporation, with offices at 3701 NW 98<sup>th</sup> Street, Gainesville, Florida 32606, collectively the "PARTIES".

**WHEREAS**, CRA is responsible for various redevelopment areas within the City of Gainesville which may include planning, designing, renovation, remodeling and/or construction; CITY is responsible for Public Works and Facilities Maintenance; and GRU owns and operates an electric system, natural gas system, water and wastewater system, a district energy system and telecommunication system combined as a single public community wide utility; and

**WHEREAS**, THE CITY requires multiple firms to provide professional engineering and consulting services on an as-needed basis and issued a Request for Statement of Qualifications for same; and

**WHEREAS**, CONSULTANT responded with a Statement of Qualifications which was selected and approved by the Community Redevelopment Board on October 20, 2014, and the Gainesville City Commission on November 6, 2014 for the beginning of negotiations; and

**WHEREAS**, the PARTIES, as defined above have successfully completed negotiations and THE CITY desires to enter into an agreement with CONSULTANT for performing professional engineering or consulting services on an as-needed basis.

**NOW, THEREFORE**, in consideration of the foregoing premises and the covenants contained herein, the PARTIES agree as follows:

**1.0 SCOPE OF SERVICES.**

- 1.1 Project Description: This Agreement provides for the administration, compensation and responsibilities of the PARTIES relating to performance of engineering or consulting work which is authorized by THE CITY. The specific scope of services to be provided by CONSULTANT will be mutually agreed to by the PARTIES in separate Purchase Orders and/or Task Assignments. All related Purchase Orders and Task Assignments will become a part of this Agreement. These Purchase Orders and Task Assignments may be amended as provided herein as changes in scope or required levels of work effort are identified. Compensation for services will be as described in Section 6.0 of this Agreement.
- 1.2 Services performed at THE CITY's request beyond those defined in the approved Purchase Order and/or Task Assignment shall constitute a Change-of-Scope, which will be documented by a Change Order to be approved in writing by both PARTIES before services are performed. Written approval shall be obtained prior to performance of the services.
- 1.3 Nothing in this Agreement shall be construed to prohibit THE CITY from awarding, authorizing, or directing its work to be performed, whether identified in this Agreement or otherwise, to firms other than CONSULTANT.
- 1.4 THE CITY may use the CONSULTANT as a Subject Matter Expert.

## **2.0 STANDARD OF CARE AND PERSONNEL.**

- 2.1 Standard of Care: CONSULTANT shall perform as an independent consultant and all services shall be performed with the skill and care which would be exercised by comparable qualified professional engineers and consultants performing similar services at the time and place such services are performed. If the failure to meet these standards results in deficiencies in the design, the CONSULTANT shall furnish, at its own cost and expense, the redesign necessary to correct such deficiencies, and shall be responsible for any and all consequential damages arising from these deficiencies. If the CONSULTANT refuses to correct the discrepancies to THE CITY's satisfaction, THE CITY may, at its discretion, either remove the CONSULTANT from the project, or terminate this Agreement.
- 2.2 Non-infringing: CONSULTANT warrants that any CONSULTANT generated Confidential Information, Work Product, or other material furnished to THE CITY shall not infringe on any third party rights in any US patent, copyright, trademark or trade secret.
- 2.3 Sub-consultants: The CONSULTANT will perform all of the services, and none of the work or services covered by this Agreement shall be subcontracted without prior written authorization by THE CITY. It is understood that sub-consultants presented as part of a team in a project proposal/work order/task assignment are considered approved.
- 2.4 Staff: CONSULTANT shall staff the project with qualified individuals and secure others at CONSULTANT's own expense as required to carry out and perform the Scope of Services of this Agreement. Such personnel shall not be employees of or have any personal fiscal relationship with any employees or officials of the City of Gainesville. CONSULTANT retains the authority to utilize specific qualified personnel on the project from time to time as required.
- 2.5 Removal/Replacement of Staff: THE CITY, for any reason, may request that the service of an individual or sub-consultant be removed from this Agreement or project work order or Task Assignment. Upon this request from THE CITY, the CONSULTANT shall replace the individual or sub-consultant with an equivalent level of staff or sub-consultant. Failure to do so shall be cause for termination of this Agreement or project work order or Task Assignment. Any changes in personnel require mutual written consent of the PARTIES.
- 2.6 Quality of Staff: Failure of CONSULTANT for any reason to staff THE CITY projects with qualified personnel to the extent necessary to perform the services required skillfully and promptly shall be cause for termination of this Agreement.
- 2.7 Independence: CONSULTANT is and shall perform this Agreement as an independent professional consultant. All persons engaged in any of the work performed pursuant to this Agreement shall at all times, and in all places, be subject to CONSULTANT's sole direction, supervision and control. Neither CONSULTANT, nor anyone employed by it, shall represent, act, or be deemed to be the agent or employee of THE CITY unless otherwise directed in writing by THE CITY.
- 2.8 Legal compliance: CONSULTANT shall secure all licenses or permits required by law or regulations, and shall comply with all ordinances, laws, orders, rules and regulations pertaining to its Work hereunder.

## **3.0 TERM AND TERMINATION.**

- 3.1 Term: The term of this Agreement shall commence upon the execution of this Agreement and shall expire on **September 30, 2017**, unless extended upon mutual agreement of the PARTIES. This Agreement supersedes GRU Contract #2008-100-Z-3.

- 3.2 Termination Without Cause: Either PARTY may terminate this Agreement on thirty (30) days prior written notice to the other PARTY. Upon receipt or giving of notice of termination, CONSULTANT shall cease work and shall promptly deliver all completed work or work in progress to THE CITY. Within thirty (30) days after delivery of completed work and an invoice therefore, THE CITY will pay CONSULTANT for all satisfactorily completed work pursuant to the terms hereof, plus any reasonable and unavoidable costs incurred due to such termination (such as canceling orders for equipment, material or services). Termination under this paragraph shall not give rise to any claim against THE CITY, its employees or agents, for damages or for compensation in addition to that provided hereunder.
- 3.3 Termination for Cause: If, through any cause, except for causes beyond the control of CONSULTANT, CONSULTANT shall fail to fulfill in a timely and proper manner the agreed obligations, fail to meet the project schedule, or if CONSULTANT shall violate any of the covenants, agreements, or stipulations of this Agreement, THE CITY shall thereupon have the right to terminate this Agreement by giving a ten (10) day written notice to CONSULTANT of the effective date of such termination. If CONSULTANT fails to cure or have in place a reasonable plan to cure such default within the ten (10) days to the satisfaction of THE CITY, this Agreement shall then terminate as stated. Upon such termination, CONSULTANT shall be entitled to payment of such amount, to be determined by the PARTIES, to fairly compensate CONSULTANT for the work satisfactorily performed to the termination date; provided, however, that (a) no allowance shall be included for termination expenses, and (b) THE CITY shall deduct from such termination expense amount from any amount due and payable to CONSULTANT to the termination date.

#### **4.0 TASK ASSIGNMENTS (Work Orders).**

- 4.1 Task Assignments: All services to be performed having an amount greater than \$25,000 shall be authorized and performed in accordance with a written and jointly executed Task Assignment for each project for which services are requested. A sample format for the Task Assignment is included as Attachment "B". Each Task Assignment shall consist of the scope of work to be performed by CONSULTANT, project schedule, deliverables, any specific provisions and the signatures of authorized representatives of THE CITY and CONSULTANT agreeing to the provisions of the Task Assignment. THE CITY shall assign projects based upon CONSULTANT's experience in a given area, ability to meet the time constraints of a given project and/or CONSULTANT's current workload.
- 4.2 Written Proposals: Upon request by THE CITY, CONSULTANT shall submit to THE CITY Project Manager a written proposal, which shall include as appropriate, completion dates, estimated fees and expenses, deliverables and the specific tasks necessary to accomplish the particular project objective. THE CITY shall then incorporate the proposal into a Task Assignment which, with a purchase order, constitutes the written acceptance. Work shall not begin until the acceptance is issued. The original proposal may be submitted to THE CITY in Task Assignment format.
- 4.3 Changes to Scope: THE CITY shall have the right to increase or reduce the scope of the services of CONSULTANT hereunder at any time and for any reason, upon written notice to CONSULTANT specifying the nature and extent of such reduction or increases. In the event of an addition to the scope of the services, CONSULTANT shall be fully compensated for additional work as agreed upon by THE CITY and CONSULTANT. In the event of a reduction to the scope of services, CONSULTANT shall be fully compensated for the work already performed, including payment of all necessary contract fee amounts due and payable hereunder prior to the receipt of written notification of such reduction in scope and shall be compensated for the work remaining to be done, as determined by THE CITY. The work of revising documents as a result of reduction in scope of the project shall be compensated for as a change as provided in this Agreement.
- 4.4 Timeliness: CONSULTANT shall complete all assigned projects in accordance with the time of performance specified in the Task Assignment or change thereto.

4.5 Projects under \$25,000: Services to be performed having an amount of less than or equal to \$25,000 will be authorized by THE CITY with a Purchase Order, which shall reference this Agreement number and the terms of this Agreement shall supersede any conflicting terms contained within said Purchase Order. The CONSULTANT will prepare a letter proposal that itemizes the major scope tasks and fee.

## 5.0 DELAY IN PERFORMANCE.

5.1 Delay: Neither Party shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, including without limitation, hurricanes; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either THE CITY or CONSULTANT under this Agreement (except for the CONSULTANT's license and authorizations to do business).

5.2 Notice of Delay: Should such circumstances occur the non-performing PARTY shall, within a reasonable time of being prevented from performing, give written notice to the other PARTY describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. In such event, the CONSULTANT's contract price and schedule shall be equitably adjusted, if impacted.

## 5.3 Force Majeure:

- a. No Party to this Contract will be liable for any default or delay in the performance of its obligations under this Contract due to an act of God or other event to the extent that: (a) the non-performing Party is without fault in causing such default or delay; and (b) such default or delay could not have been prevented by reasonable precautions. Such causes include, but are not limited to: acts of civil or military authority (including but not limited to courts of administrative agencies); acts of God; war; terrorist attacks; riot; insurrection; inability of THE CITY to secure approval; validation or sale of bonds; inability of THE CITY or CONSULTANT or Supplier or Contractor to obtain any required permits, licenses or zoning; blockades; embargoes; sabotage; epidemics; fires; hurricanes, tornados, floods; or strikes.
- b. In the event of any delay resulting from such causes, the time for performance of each of the Parties hereunder (including the payment of invoices if such event actually prevents payment) will be extended for a period of time reasonably necessary to overcome the effect of such delay. Any negotiated delivery dates established during or after a Force Majeure event will always be discussed and negotiated if additional delays are expected.
- c. In the event of any delay or nonperformance resulting from such cause, the Party affected will promptly notify the other Party in writing of the nature, cause, date of commencement, and the anticipated impact of such delay or nonperformance. Such written notice, including change orders, will indicate the extent, if any, to which is anticipated that any delivery or completion date will be affected.

## 6.0 COMPENSATION.

6.1 Fee and Expense Schedule: Compensation to CONSULTANT for services performed shall be based on the current fee and expense schedule, attached hereto as Attachment "A". The PARTIES, based upon the fee and expense schedule, may agree to payment for services on a "lump sum" and/or "not to exceed" basis.

6.2 CONSULTANT Compensation Increases: CONSULTANT shall obtain THE CITY's approval prior to performing any work which results in the work assignment exceeding the mutually agreed upon scope of services contained in the Task Assignments.



- a. Minor modifications, which mutually extend the product delivery dates and/or mutually agreeable project costs for less than 5%, may be approved by THE CITY with the documentation from CONSULTANT as specifically requested by THE CITY.
  - b. Major modifications which increase the project cost by more than 5% shall be documented by CONSULTANT with the following information:
    - (1) A description of the new work and/or new deliverables, that caused a major modification to the work.
    - (2) An explanation as to why the new work was not included in the original scope of work or project assignment or a detailed explanation of other reasons the modification is necessary.
    - (3) A summary of all prior modifications to the project assignment, and reasons why additional modifications will not be necessary or reasons why additional modifications will be necessary.
    - (4) A description of any proposed work, which is outside the original work scope or project assignment. These shall be treated as a new project.
  - c. Upon submittal of the above information, THE CITY and CONSULTANT shall mutually agree upon the price modification to complete the project or work assignment. Should agreement between the PARTIES not be reached, THE CITY's decision shall be binding unless CONSULTANT requests reconsideration through the Dispute Resolution process described in Section 14.0.
- 6.3 Invoices for payment, submitted by CONSULTANT to THE CITY, shall include the following information (if applicable): Contract number, Purchase Order number, Task Assignment number, item number, job number, description of supplies or services, quantities, unit prices, Work location, Project Representative, job start date, job completion date or other pertinent information which may include a detailed narrative of work completed during the invoicing period.
- 6.4 Payment Terms: Unless otherwise agreed upon in writing, THE CITY's payment terms are net thirty (30) days from receipt of correct invoice. CONSULTANT should not submit more than one invoice per thirty-day period. Any delay in receiving invoices, or error and omissions, will be considered just cause for delaying or withholding payment. Invoices for partially completed Work may be allowed with THE CITY's prior approval. All partial invoices must be clearly identified as such on the invoice. Any charges or fees will be governed by current Florida Statutes.
- 6.5 Withholding Payment: THE CITY may withhold payment of all or a portion of the invoiced amount due to failure of CONSULTANT to comply with project specifications. THE CITY shall set forth in writing to CONSULTANT the reasons for the withholding of payment within 10 days after receipt of CONSULTANT invoice. In the event CONSULTANT does not agree with THE CITY's determination, CONSULTANT may request reconsideration through the dispute resolution process described in Section 14.0. After CONSULTANT has complied with the project specifications THE CITY will make payment of any withheld amount to CONSULTANT within 30 days.
- 6.6 Rate Increase: CONSULTANT shall have one opportunity per calendar year, occurring during the Agreement anniversary month or in the month of January, to request a labor classification rate increase. The request should be made to Utilities Purchasing at least 30 days prior to the desired effective date and include a justification. The annual increase, if approved by THE CITY, shall be in the form of an amendment to this. Work begun under a specific labor classification rate shall be completed under that labor classification rate.

## **7.0 TAXES.**

CONSULTANT accepts exclusive liability for the payment of its (i) income, gross receipts, ad valorem, or value added taxes, arising out of Work rendered, now or hereafter imposed by any governmental authority, and (ii) payroll taxes or contributions for unemployment insurance, Medicare or Social Security for CONSULTANT'S employees.

## **8.0 CONFIDENTIALITY AND PUBLIC RECORDS.**

8.1 "Confidential Information" includes, to the extent such information is defined in Sections 119.07 and 812.081, *Florida Statutes*, as trade secrets or data processing software, or otherwise confidential or exempt from Florida's Public Records Law, Chapter 119, *Florida Statutes*. "Confidential Information" that is marked as "confidential" upon receipt, may include certain information about THE CITY's operations, specifications, formulas, codes, software, hardware, intellectual properties, and other confidential and proprietary information belonging to THE CITY, Work Product (as defined below) or technical documentation, prepared, developed, or obtained by THE CITY or CONSULTANT, or any of its agents, representatives, or employees.

8.2 Florida has a very broad public records law. By entering into an agreement with THE CITY, CONSULTANT acknowledges that it will comply with the Florida Public Records Act Chapter 119, *Florida Statutes*. Failure to comply with the Florida Public Records Act, including failure to provide a public record upon request, is a breach of this Agreement and THE CITY may pursue all remedies for breach. In complying with the Florida Public Records Act CONSULTANT shall:

- a) Keep and maintain records related to this project that ordinarily and necessarily would be required by THE CITY in order to perform the service;
- b) Coordinate with and provide THE CITY and any public requester of public records with access to public records on the same terms and conditions that THE CITY would provide the records and at a cost that does not exceed the cost provided by law;
- c) Coordinate with THE CITY regarding all public records that may be exempt from public records disclosure requirements;
- d) Meet all requirements for retaining public records and transfer, at no cost, to THE CITY all public records related to this project upon termination of project and destroy any duplicate records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to THE CITY in a format that is compatible with the information technology systems of THE CITY.

## **9.0 RIGHTS TO INTELLECTUAL WORK PRODUCT.**

9.1 Except as otherwise provided herein, sealed original drawings, specifications, final project specific calculations, and other engineering documents which CONSULTANT prepares and delivers to THE CITY pursuant to this Agreement shall become the property of THE CITY when CONSULTANT has been compensated for services rendered. With the exception of Work Product developed in whole or in part by THE CITY, nothing contained in this paragraph shall be construed as limiting or depriving CONSULTANT from its rights to use its basic knowledge and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this Agreement.

- 9.2 The CONSULTANT shall have the right to retain and use copies of drawings, documents, electronic files, or other data furnished or to be furnished by CONSULTANT and the information contained therein except for work developed or modified by THE CITY. THE CITY shall not use in a written prospectus or other investment memorandum any engineering report constituting or including CONSULTANT's professional opinion, except with CONSULTANT's prior written consent, nor shall CONSULTANT use THE CITY's name in any such manner, except with THE CITY's prior written consent and neither THE CITY or CONSULTANT shall unreasonably withhold such consent. THE CITY shall not acquire any rights to any of CONSULTANT's, CONSULTANT's subcontractors, or Vendor's proprietary computer software that may be used in connection with the services except as expressly provided in the scope of services or as may be separately agreed.
- 9.3 All documents, including drawings, specifications, electronic files, engineering reports and computer software prepared by CONSULTANT (except for those pertaining to work developed by THE CITY in whole or in part) pursuant to this Agreement are instruments of service in respect to the services. They are not intended or represented to be suitable for reuse by THE CITY or others. Any reuse without prior written verification or adaption by CONSULTANT for the specific purpose intended will be at THE CITY's sole risk and without liability or legal exposure to CONSULTANT.
- 9.4 CONSULTANT hereby grants to THE CITY an irrevocable, nonexclusive, royalty free license for use solely in connection with operation, maintenance, repair, or alternation of the designed facilities or processes, with respect to any invention first reduced to practice by CONSULTANT, its employees or agents, during the course of the services of this Agreement. THE CITY shall retain all rights to plans and procedures based wholly or in part on or derived from proprietary information received from THE CITY. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States, or in any other country, without the prior written approval of THE CITY.
- 9.5. Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. CONSULTANT makes no warranty as to the compatibility of these files with any other system or software. Because of potential degradation of electronic medium over time, in the event of a conflict between sealed original documents and electronic files, the sealed original documents will govern. The standard formats for files delivered in electronic medium will be specified by THE CITY project manager for the task assignment.

## **10.0 AUDIT OF RECORDS.**

CONSULTANT shall maintain records sufficient to document completion of the scope of services established by this Agreement. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by THE CITY. These records shall be kept for a minimum of three (3) years after termination of this Agreement. Records that relate to any litigation, appeals or settlements of claims arising from performance under this Agreement shall be made available until a final disposition has been made of such litigation, appeals, or claims.

## **11.0 INDEMNIFICATION.**

- 11.1 CONSULTANT is fully liable for the actions of its agents, employees, partners, or subcontractors and fully indemnifies, defends, and holds harmless THE CITY, its elected officials, officers, agents, and employees, from any such suits, actions, damages, and/or costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by CONSULTANT, its agents, employees, partners, or subcontractors, provided, however, that CONSULTANT will not indemnify for that portion of any loss or damages caused solely by the negligent acts or omissions of THE CITY.

- 11.2 Further, CONSULTANT will fully indemnify, defend, and hold harmless THE CITY from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation will not apply to THE CITY's misuse or modification or CONSULTANT's products or THE CITY's operation or use of CONSULTANT's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit or in CONSULTANT's opinion is likely to become the subject of such a suit, CONSULTANT may at its sole expense procure for THE CITY the right to continue using the product or to modify it to become non-infringing. If CONSULTANT is not reasonably able to modify or otherwise secure THE CITY the right to continue using the product, CONSULTANT will remove the product and refund THE CITY the amounts paid in excess of a reasonable rental for past use. THE CITY will not be liable for any royalties if applicable.
- 11.3 CONSULTANT's obligations under the preceding two paragraphs with respect to any legal action are contingent upon THE CITY giving CONSULTANT written notice of any action or threatened action, and CONSULTANT defending the action at CONSULTANT's sole expense. CONSULTANT will not be liable for any costs or expenses incurred or made by THE CITY in any legal action without CONSULTANT's prior written consent, which will not be unreasonably withheld.

## 12.0 LIMITATION OF LIABILITY.

Notwithstanding the terms of any other provision, neither CONSULTANT nor THE CITY shall in any event be liable for any anticipated profits, indirect, special, consequential, or punitive damages.

## 13.0 INSURANCE.

CONSULTANT shall maintain the following insurance, and shall provide THE CITY a current Insurance Certificate.

- 13.1 Certificate of Insurance: Said insurance shall be written by a company licensed to do business in the State of Florida and satisfactory to THE CITY. A Certificate of Insurance shall be furnished in a form acceptable to THE CITY for the insurance required. Such certificate or an endorsement provided must state that THE CITY will be given thirty (30) days written notice (or 10 days written notice for non-payment) prior to cancellation or material change in coverage. THE CITY must be listed as an additional insured on the policy.

Professional Liability Insurance: in the amount of \$1,000,000 combined single limit for bodily injury and property damage.

Commercial General Liability: in the amount of \$1,000,000 combined single limit for bodily injury and property damage.

Automobile Liability: in the amount of \$500,000 combined single limit for bodily injury and property damage.

### Worker's Compensation:

(a)	State	Statutory
(b)	Applicable Federal	Statutory
(c)	Employer's Liability	\$500,000 per Accident \$500,000 Disease, Policy Limit \$500,000 Disease, Each Employee

Excess Liability \$1,000,000

- 13.2 THE CITY reserves the right to require a limit increase or additional insurance (i.e. explosion, collapse and underground property damage; environmental impairment etc.) if the specific Task Assignment warrants.

**14.0 DISPUTES AND DISPUTE RESOLUTION.**

- 14.1 If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within 20 business days after giving of notice. If the dispute is not resolved within 30 business days after giving notice, or such later date as may be mutually agreed, the Parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association (“AAA”) under its Commercial Mediation Rules before resorting to arbitration, litigation, or some other dispute resolution procedure.

The location of the mediation will be in Alachua County, Florida or a mutually agreeable location.

- 14.2 Continue Work: During the dispute process, CONSULTANT shall continue work pursuant to this Agreement as instructed by THE CITY.

- 15.0 GOVERNING LAW and SOVEREIGN IMMUNITY.** Any resulting transaction hereunder shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to the principles of conflict of laws. Venue for all disputes shall be in Alachua County, Florida. Nothing in this Agreement shall be interpreted as a waiver of THE CITY’s sovereign immunity as granted pursuant to *Section 768.28 Florida Statutes*.

**16.0 MISCELLANEOUS.**

- 16.1 Statement of Non-inducement: CONSULTANT warrants that no company or person, other than a bona fide employee working solely for CONSULTANT has been employed or retained to solicit or secure this Agreement. CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. Notwithstanding any other provision of this Agreement for breach or violation of this paragraph, THE CITY shall have the right to terminate this Agreement without liability, and at its discretion, to deduct from any amount due to CONSULTANT hereunder, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
- 16.2 Non-Discrimination: No person shall, on the grounds of race, sex, age, handicap, creed, color, national origin or any other characteristic protected by applicable federal, state or local law, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this Agreement.
- 16.3 Truth-in-Negotiation: By execution of this Agreement, CONSULTANT certifies that the wage rates and other factual unit costs supporting compensation negotiated under project shall be accurate, complete and current at the time of execution of each such agreement. Each invoice shall be subject to adjustment to exclude any significant sums, by which THE CITY determines the original compensation was increased due to inaccurate, incomplete, or non-current wage rates and other adjustments shall be made within one (1) year following the end of the applicable agreement.
- 16.4 Severability: In the event that any provision of this Agreement is found to be unenforceable, the other provisions shall remain in full force and effect.
- 16.5 Assignability: Neither THE CITY nor CONSULTANT shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any

obligation under this Agreement. Nothing contained in this Section shall prevent CONSULTANT from employing independent consultants, associates, and subcontractors to assist in the performance of the services undertaken pursuant to this Agreement.

- 16.6 Third Party Rights: Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than THE CITY and CONSULTANT.
- 16.7 Entire Agreement: This Agreement and attachments hereto, THE CITY's RFSQ 2014-077, the CONSULTANT's response thereto, and any resulting Task Assignments/Work Orders/Purchase Orders constitute the entire agreement between the PARTIES hereto. Modifications of this Agreement shall be in writing, signed by both PARTIES, and incorporated as written amendments to this Agreement prior to becoming effective.
- 16.8 Notices: Notices to CONSULTANT should be deemed to have been properly sent when electronically or physically delivered to CONSULTANT. Notices to THE CITY are deemed to have been properly sent when delivered to GRU Utilities Purchasing, 301 SE 4th Avenue, Gainesville, Florida 32601 or e-mailed to [purchasing@gru.com](mailto:purchasing@gru.com) and GRU acknowledges receipt of the email.
- 16.9 Order of Precedence: In the event that there is any conflict between the terms and conditions, the order of precedence shall be as follows:
- a. Change Order to Task Assignment/Work Order/Purchase Order
  - b. Task Assignment/Work Order/Purchase Order
  - c. Modification to this Agreement
  - d. This Agreement
  - e. THE CITY's Request for Statement of Qualifications 2014-077
  - f. CONSULTANT's Statement of Qualifications

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement on the day first above written in two (2) counterparts, each of which shall without proof or accounting for the other counterparts be deemed an original.

**ENVIRONMENTAL CONSULTING & TECHNOLOGY, INC.**

By: Philip W. Simpson  
Philip W. Simpson,  
Vice President

**CITY OF GAINESVILLE**

By: Russ Blackburn  
Russ Blackburn  
City Manager

WITNESS (as to Consultant)

By: Keely B. George  
Print Name: Keely B. GEORGE

**GAINESVILLE COMMUNITY REDEVELOPMENT AGENCY**

By: Russ Blackburn  
Russ Blackburn  
CRA Executive Director

WITNESS (as to CITY and CRA):

BY: Helen Harris

**CITY OF GAINESVILLE, d/b/a GAINESVILLE REGIONAL UTILITIES**

By: William J. Shepherd 9/10/15  
William J. Shepherd  
Interim Chief Customer Officer

Approved as to form and legality

By: Shayla McNeill 9/8/15  
Shayla McNeill  
Utilities Attorney

Purchasing Representative

By: Elizabeth Mattke  
Elizabeth Mattke, C.P.M., CPPO  
Senior Buyer

Attachments:

- "A" – Fee and Expense Schedule
- "B" – Sample Task Assignment Template

On File:

- CONSULTANT'S Statement of Qualifications (in response to RFSQ 2014-077)
- CONSULTANT'S Certificate of Insurance (as required above)

**ATTACHMENT "A" – Fee and Expense Schedule**

**Environmental Consulting & Technology, Inc. - Professional Services Fee Schedule**

(Effective through December 31, 2015)

<b><u>Labor Classification</u></b>	<b><u>Rate Per Hour</u></b>
Senior Principal Scientist/Engineer	\$ 250.00
Principal Scientist/Engineer; Certified Industrial Hygienist	210.00
Senior Scientist/Engineer III	190.00
Senior Scientist/Engineer II	180.00
Senior Scientist/Engineer I	165.00
Staff Scientist/Engineer III	155.00
Staff Scientist/Engineer II	145.00
Staff Scientist/Engineer I; Senior GIS Analyst	140.00
Senior Associate Scientist/Engineer III	130.00
Senior Associate Scientist/Engineer II	125.00
Senior Associate Scientist/Engineer I; Field Services Manager	120.00
Associate Scientist/Engineer III; GIS Analyst	115.00
Associate Scientist/Engineer II; Senior CAD Technician	105.00
Associate Scientist/Engineer I	95.00
Senior Project Coordinator	95.00
GIS Operator/Technician	90.00
Senior Technician; CAD Operator/Technician	85.00
Project Coordinator	85.00
Technician	65.00
Administrative Support	60.00

**Rates for legal preparation, depositions, testimony and other expert witness work will be charged at one and one-half times the above rates, as will non-exempt employees working overtime.**

The above rates include all direct and indirect costs except reimbursables. Indirect costs include such items as overhead, profit, and such statutory and customary fringe benefits as social security contributions, sick leave, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, annual leave, and holiday pay.

Reimbursable expenses shall mean the actual expense of transportation and subsistence of principals and employees, consultants' fees, subcontractors' fees, toll telephone calls, facsimile transmissions, reproduction of reports and other project-related materials, expendable supplies directly used on the project, computer charges, equipment use fees, and similar project-related items. A ten percent service charge will be applied to all reimbursable expenses.

The rates for ECT personnel categories listed herein are valid through December 31, 2015 and are subject to revision thereafter.



**ATTACHMENT "B" Sample Task Assignment Template (GRU)**  
(CRA and CITY have slightly different forms and will assign their own numbers)

**TASK ASSIGNMENT NO.** \_\_\_\_\_ (Assigned by GRU Purchasing)

**CONTRACT NO. 2014-077** with \_\_\_\_\_ for  
**PROFESSIONAL ENGINEERING AND CONSULTING SERVICES**

**TITLE:** (an appropriate title to distinguish this Task Assignment)

**THIS TASK ASSIGNMENT** entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ describes services to be performed in accordance with the contract entered into between the parties dated \_\_\_\_\_, Agreement for Professional Engineering and Consulting Services, Contract 2014-077\_\_\_\_\_.

**ORDER OF PRECEDENCE:** In the event that there is any conflict between the terms and conditions contained in the Contract, the Request for Statement of Qualifications (RFSQ), and/or the Engineer's response to the RFSQ, the Engineer's proposal referenced in this Task Assignment or the Task Assignment itself, the order of precedence shall be the Contract, as amended or modified, interpreted as a whole, as applicable, and then as follows:

- a. Task Assignment
- b. Request for Statement of Qualifications
- c. Engineer's response to Request for Statement of Qualifications

**BACKGROUND:** (provide sufficient information to understand the current status)

**PURPOSE:** (explain what this TA will accomplish and how GRU will benefit)

- 1.0 **SCOPE OF PROJECT.**
- 2.0 **PROJECT SCHEDULE.**
- 3.0 **MEETINGS AND PROJECT MANAGEMENT**
- 4.0 **DELIVERABLES.**
- 5.0 **SPECIFIC GRU RESPONSIBILITIES.**
- 6.0 **BASIS OF COMPENSATION.** (must be auditable to the rates on Attachment "A")
- 7.0 **SPECIAL PROVISIONS.** The GRU Project Manager will be \_\_\_\_\_ (name & contact info.) and the \_\_\_\_\_ Project Manager will be \_\_\_\_\_ (name & contact info.)

(add any other special provisions)

**IN WITNESS WHEREOF,** the parties hereto have executed this Task Assignment on the day first above written in two (2) counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original.

\_\_\_\_\_

**CITY OF GAINESVILLE, d/b/a  
GAINESVILLE REGIONAL UTILITIES**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Printed name: \_\_\_\_\_

GRU Project Manager  
(name & title)

Title: \_\_\_\_\_

Purchasing Representative

By: \_\_\_\_\_  
(name)