



AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services (hereinafter referred to as "Agreement") is entered into this 25th day of February, 2022, between SAWGRASS CONSULTING, LLC (hereinafter referred to as "Sawgrass"), whose address is 30673 Sgt. E. I. "Boots" Thomas Drive, Spanish Fort, Alabama 36527, and Client, who is identified below, for the provision of certain professional services as more particularly set forth in Section 1 (A) below and in accordance with the terms and conditions set forth herein.

Client: City of Gulf Shores

Client Contact Person: Mr. Mark H. Acreman, P.E., City Engineer

Client Address: 1905 West First Street, Gulf Shores Al. 36542

Telephone Number: 251-968-1155 / 251-269-7350

Client Contact Email: macreman@gulfshoresal.gov

Project Name: Gulf Shores Fire Department Training Facility

Sawgrass and Client, for themselves, and their respective successors and assigns, agree as follows:

1. SCOPE OF SERVICES

A. Sawgrass shall provide the following services to Client (hereinafter referred to as the "Services"): _____

See Attachment "A"

B. Specifically excluded from this scope of services is the providing of future updates, reviews, or expert opinions or witness services. If Client subsequently requires additional services not listed above, Client and Sawgrass may negotiate a separate agreement detailing the same.

2. COMPENSATION. Client agrees to compensate Sawgrass for the Services as follows: _____

See Attachment "B"

ALL OTHER TERMS OF THIS AGREEMENT CONTINUE ON PAGES 2-4 AND ARE INCORPORATED BY THIS REFERENCE.

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

SAWGRASS CONSULTING, LLC

By: Stephen Delahoy (Sign)

Print Name: Stephen Delahoy

Its: Vice President

Client: City of Gulf Shores

By: _____ (Sign)

Print Name: _____

Its: _____

3. PAYMENT OF COMPENSATION.

A. Client agrees to reimburse Sawgrass, on a monthly basis, for all Reimbursable Costs and Reimbursable Expenses incurred by Sawgrass. "Reimbursable Costs" shall mean Sawgrass's reasonable out-of-pocket expenses incurred in performing the Services. "Reimbursable Fees" shall mean the actual fees charged by any professionals or other parties with whom Sawgrass may subcontract to perform any part or all of the Services, plus an administrative charge of ten percent (10%).

B. Sawgrass shall invoice Client for Services performed during each calendar month. For Services performed on a contract price basis, the amount of each invoice shall reflect the percentage of Services completed as of the date of the invoice, as determined by Sawgrass in its sole discretion. For Services performed on an hourly basis, each invoice shall list time charges. Monthly invoices shall also include all Reimbursable Costs and Reimbursable Fees for which Client is being charged.

C. Client hereby agrees to pay each invoice in full within fifteen (15) days of the date of the invoice. Payments should be mailed or delivered to Sawgrass at the address listed on the invoice or at such other address as Sawgrass may direct. In the event Client fails to pay an invoice in full within fifteen (15) days of the date thereof, such unpaid invoice shall accrue interest at a rate of the lesser of eighteen percent (18%) per annum or at the maximum legal rate. All payments shall be made without any deduction, setoff, or counterclaim of any kind whatsoever.

D. In the event Client fails to pay any Sawgrass invoice in full within thirty (30) days of the date of the invoice, Client shall be in default hereunder.

4. INDEPENDENT CONTRACTOR RELATIONSHIP. Nothing herein shall create, or be construed to create, between Sawgrass and Client an employer/employee or principal/agent relationship; rather, the relationship of Sawgrass and Client shall be that of an independent contractor. Client agrees that Sawgrass may engage one or more subcontractors to perform some or all of the Services.

5. TERMINATION. Sawgrass may terminate the performance of any further Services under this Agreement, with or without cause and for any or no reason, upon thirty (30) days written notice to Client. Upon the effective date of such termination, Sawgrass shall cease work on all Services. Within thirty (30) days of such termination, Client shall pay Sawgrass in full for all Services performed and all Reimbursable Costs and Reimbursable Fees incurred prior to such termination. Termination by Sawgrass shall not relieve Client of any obligation to pay Sawgrass for Services already performed as required hereunder.

6. DELAY. Neither party shall be deemed to be in default of this Agreement to the extent that any delay or failure in the performance of an obligation, other than the payment of money by Client to Sawgrass, results from any causes beyond its reasonable control and without its fault or negligence. For this purpose, such acts or events include, without limitation, storms, floods, acts of God, epidemics, protest demonstrations, war, terrorism or terrorist acts, riot, strikes, or other industrial disturbances or anticipated site conditions. In the event that such acts or events do occur, Client and Sawgrass shall attempt to overcome all difficulties arising and to resume as soon as reasonable possible the performance of their respective obligations hereunder.

7. COST ESTIMATES. Sawgrass may, upon the Client's request, prepare a good faith cost estimate for the Services prior to the commencement of their performance. However, Sawgrass does not, and Client acknowledges that Sawgrass does not, warrant that the actual costs of the Services incurred by Client will not deviate from any such cost estimate.

8. LIMITATION OF LIABILITY AND INDEMNIFICATION

A. Under no circumstances shall the total liability of Sawgrass, its employees, officers, managers, agents, and consultants, for all claims, causes of action, losses, damages, costs, and expenses, including attorneys' fees, exceed the aggregate amount actually paid to Sawgrass under this Agreement, regardless of the legal theory under which such liability is imposed. In no event shall Sawgrass be responsible or held liable for any indirect, incidental, special, consequential, or punitive damages whatsoever, including, without limitation, loss of use of property, loss of profits or other revenue, interest, loss of product, increased expenses or business interruption, however the same may be caused.

B. Client agrees to and does hereby indemnify and hold Sawgrass, its employees, officers, managers, agents, consultants, successors and assigns harmless from and against all claims, causes of action, liability, losses, damage, costs, and expenses, including reasonable attorneys' fees, arising out of or related to the negligent or intentional acts or omissions of Client, or Client's agents or employees.

C. Client acknowledges and agrees that Sawgrass is not and shall not be held responsible for or be deemed to have control over the means, methods, techniques, sequences, procedures, or safety precautions and programs utilized by any contractor or other party working on the Project. Client further acknowledges and agrees that Sawgrass shall not be responsible for any contractor's failure to comply with any construction contract or with any applicable federal or State laws, regulations, ordinances, or industry rules. Client hereby indemnifies and holds Sawgrass, its employees, officers, managers, agents, consultants, successors and assigns harmless from and against all claims, causes of action, liability, losses, damage, costs, and expenses, including reasonable attorneys' fees, arising out of or related to the negligent or intentional acts or omissions of any contractor or subcontractor of Client or of such contractor's or subcontractor's employees or agents.

D. Client assumes all risk and responsibility for all loss of, damage to, and/or destruction of the Project and all property owned by or in the custody of Client, including its affiliates, however such loss, damage, or destruction may occur and waives any right of recovery it may have against Sawgrass for any such loss, damage, or destruction and agrees to obtain a waiver of subrogation rights of its insurers against Sawgrass for any such loss, damage, or destruction.

9. **WARRANTIES AND REPRESENTATIONS OF CLIENT.** Client warrants and represents to Sawgrass that:

A. Client is a business entity, validly existing and in good standing under the laws of the state in which it is organized or incorporated and is qualified to do business in the state in which the Project is being constructed or is located.

B. Client has all requisite power and authority to enter into this Agreement.

C. Client is the owner of the real property upon which the Project is being constructed or otherwise carried out (hereinafter referred to as the "Project Property"), or Client is the Project Property owner's duly authorized representative, and Client hereby grants Sawgrass permission to enter the Project Property for the purpose of performing the Services;

D. Client shall promptly provide Sawgrass with any information or documents requested by Sawgrass related to the Project; and

E. Client shall obtain and pay all expenses involved in promptly obtaining the easements and rights of way necessary for Sawgrass to perform the Services identified herein.

10. **TITLE TO PLANS AND SPECIFICATIONS.**

A. All Final Documents, including but not limited to drawings, specifications, and surveys, prepared by Sawgrass pursuant to this Agreement which Sawgrass supplies to Client shall become the property of Client upon Client's payment in full for the Services. For purposes of this Agreement, "Final Documents" shall mean only those printed, non-electronic format documents, which are duly marked with the original seal of a Sawgrass engineer or surveyor. All other notes, work product, drafts, CADD files, electronic, or other data or documents prepared by Sawgrass shall remain Sawgrass's sole property at all times, and Client shall have no right to disclose, copy, rely on, or otherwise use the same.

B. Any Final Documents supplied to Client by Sawgrass in connection with the Project are intended for the sole and exclusive use of Client and its agents and employees for the Project. Client shall indemnify, defend, and hold Sawgrass harmless from and against all losses, expenses, claims, and damages which may result from any disclosure, use or reuse of any Final Documents other than in connection with completing construction, maintenance, and/or repair of the Project.

C. Client shall not use any Sawgrass professional's license seal or stamp in any form or manner as part of any reuse of documents developed under this Agreement.

11. **DEFAULT**

A. Either party's failure to perform or comply with any one or more of the terms of this Agreement shall constitute a default. Except for monetary defaults by Client, the non-defaulting party shall give the defaulting party notice of default, at which time the defaulting party shall have two (2) business days to begin taking steps to cure the default. In the event of monetary default by Sawgrass shall give Client written or electronic written notice of such default, and Client shall have one (1) business day to cure the default.

B. Determination of default made by Sawgrass in good faith under the belief that a default exists under the terms hereof shall be conclusive of the fact of such default and on Sawgrass's right to proceed as herein provided.

C. In the event of default by Client, Sawgrass may, in its sole discretion, suspend its performance hereunder. In no event shall Client be relieved of any obligation to pay Sawgrass for Services already performed as required hereunder.

D. In the event of default by either party, the parties shall pursue resolution of all disputes pursuant to Section 12 below.

12. DISPUTE RESOLUTION

A. The parties expressly agree to attempt in good faith to negotiate any controversy or claim of whatever nature arising out of or relating to this Agreement, or the breach thereof. Further, the parties agree to mediate in Mobile County, Alabama, any dispute that cannot be settled by negotiation. Either party may institute non-binding mediation which shall proceed under the American Arbitration Association Construction Industry Mediation Rules.

B. Any dispute remaining after completion of mediation between Sawgrass and Client (or after the mediator has declared an impasse) shall be resolved through binding arbitration, which may be initiated by either party and shall proceed under the American Arbitration Association Construction Industry Arbitration Rules in Mobile County, Alabama. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in a court of competent jurisdiction as set forth below.

C. Alabama state law shall apply to the resolution of all issues, and venue shall exclusively lie in a State or Federal Court of competent jurisdiction located in Mobile, Alabama.

13. NOTICES. All notices and communications required or permitted to be given to Client or Sawgrass hereunder shall be in writing and shall be deemed duly given on the earlier of (i) the date when delivered by hand; (ii) upon receipt when delivered by electronic mail, proof of which may be satisfied by delivery confirmation produced by the sender's electronic mail software; (iii) the next business day after delivery by a reputable overnight delivery service; or (iv) three (3) business days after being placed in the United States Mail. All notices shall be directed to the appropriate party at the addresses set forth on Page 1 of this Agreement. A party may change its respective contacts, telephone numbers, addresses, and email addresses set forth above upon written notice to the other party.

14. ENTIRE AGREEMENT. This Agreement constitutes the complete agreement between the parties and supersedes any and all prior understandings, conversations, and proposals. For the sake of convenience, the parties may, from time to time, issue purchase or work orders. However, the contractual terms and conditions of this Agreement may be supplemented, deleted, and/or modified only through written amendments signed by both parties, and not through purchase or work orders or any other such similar document. In the event of any conflict between this Agreement and any of the Attachments hereto, the terms of this Agreement shall control.

15. ASSIGNMENT. Neither party may assign this Agreement without the prior written consent of the other party.

16. APPLICABLE LAW AND INTERPRETATION. All rights and liabilities of the parties under the Agreement shall be interpreted and enforced under the laws of the State of Alabama. The language used in this Agreement shall be construed according to the fair and usual meaning of the language and will not be strictly construed for or against either party.

17. WAIVER. The failure of either party to invoke any provision hereof or assert any right given herein on any one occasion or on any series of occasions shall not amount to or be interpreted as a waiver or release of any such provision or right.

18. SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. If any provision of the Agreement is found unenforceable by any court or tribunal, Client and Sawgrass agree that such provision shall be modified to the minimum extent necessary to render it enforceable and that the remainder of the Subcontract shall not be otherwise affected.

19. TITLES. The titles given to the individual sections or paragraphs of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

Attachment A **Scope of Services**

Boundary and Topographic Survey

A boundary and topographic survey of the site will be performed to accomplish the design and plan development for the design of the proposed development. Boundary survey shall encompass the entire site, and topographic survey shall encompass between 5-10 acres of potential facility location. We will also gather topographic information on the site such as existing structures, roadway, utilities, wetland perimeter and drainage. In addition, we will collect data of existing drainage structures within the connected ROW and impacted utilities to help aid in the design if improvements on R/W are required. The survey will develop a topographic map of the site at 1-foot intervals. Some off-site survey may be necessary to route any utilities necessary to service the site.

Conceptual Site Layouts

The design for the final site layout has not yet been adopted. Sawgrass will coordinate with the City of Gulf Shores Fire Department and provide two to three options for concept. Upon comments, we will finalize a site layout that is suitable for the needs of the City and the Fire Department.

Site Grading, Drainage and Utility Plan

Sawgrass will provide you with a site grading and drainage plan, utility plan, paving layouts for parking, and erosion control plan for the proposed site. The site plan will be tied to the boundary and property corners. The site grading plan will indicate the finished grades of the proposed improvements, storm water detention area and access points. Construction plans, including pavement build-ups (typical sections), construction details, junction boxes, inlets, Low Impact Design Techniques (LID) and other necessary details required to sufficiently illustrate the design intent will be provided. We understand that water, gas, sanitary sewer and electrical will need to service the site. Sawgrass will coordinate and design any and all offsite utilities that will be necessary to service the function this development. If the entire project is cost prohibited, we will phase out the site a logical and/or priority facility areas.

In addition, Sawgrass will coordinate to establish best centerline and design profile of the entrance road (North/South corridor) that will access the site. It is our understanding that a future connector will be designed by the City of Gulf Shores between Waterway Blvd and the vicinity of Landward Drive. All work shall be in accordance with the Planning and Design Standards for the City of Gulf Shores, Alabama.

If the entire project is cost prohibited, we will prepare cost estimate and phase out the site for a logical and priority facility areas.

Drainage Calculations/Report

The drainage calculations, design and report will include any storm water management, detention pond design, conveyance calculations and outfall design for this site. All work shall be in accordance with the Stormwater Design Standards for the City of Gulf Shores, Alabama.

Wetland Survey/Environmental Permitting

Environmental Permitting – Wetland Sciences (Environmental Consultant) will provide field delineation and determinations of wetland areas throughout the described corridor, prepare permitting documents for Corp of Engineer Nation Wide Permits of roadway/site impacts and/or individual permits for best use and need of the site. They also will conduct Historical/Archaeological Investigation and Concurrence (if Required) to allow for the development of the site.

BMP/NPDES/NOI Permitting

The Alabama Department of Environmental Management (ADEM) requires that any site equal to or larger than one (1) acre disturbed for construction activity must submit an application to permit storm water discharge through an NPDES/NOI General Permit. This will place the site on file with the State agency as to the intent and purpose of the land disturbance. This site will require monitoring and reported by a Qualified Credentialed Inspector (QCI) or Qualified Credentialed Professional (QCP) monthly and/or after every rain event of ¼" measured total or better.

Geotechnical Testing/Report

Sawgrass will enlist the services of Geocon Engineering to test existing soil conditions and prepare a report assessing soil and groundwater conditions relative to the proposed construction. Geocon will perform deep bores (20'-30' deep) in the potential building / tower / prop areas and will perform five shallow borings (4' deep) in proposed pavement areas. Report shall provide recommendations regarding site grading, subgrade preparation, foundation design, and pavement build-up. Construction material testing will be provided under a separate agreement.

As-Built Drawings/Engineers Certification

At times, an Engineer's Certification that the installation was in accordance with the approved plans and specifications is required for the acceptance of the project by the City. Sawgrass will utilize the red-line markups recorded during construction inspection and physical survey of structures to prepare a digital "As-Built" drawing indicating the location of the facilities as well as the final elevations.

Construction Inspection and Reporting

Sawgrass personnel will provide Construction Engineering and Inspection (CE&I) services for the development of the site portion of this project. Recommended services include daily review of the Contractor's progress for compliance with the terms and conditions of the Contract Documents and Design and Construction Standards. We anticipate that the need for our presence on the site will be during the base and paving operations and stormwater construction. In addition to verifying the compliance with the plans and design standards, we will record the quantities of materials used, quality of construction practices and verify the Contractor's monthly invoices for payment match the services provided in accordance with the unit price contract. Typically, CE&I services are provided on an hourly basis and do not exceed 5% of the construction costs of the proposed infrastructure. Factors that affect these services are the site contractor, specific construction practices by contractor, weather, project complexity and owner/developer preference. When the site design begins to reach completion and a site contractor is selected, a more specific fee can be determined. The fee provided in Exhibit "B" of this agreement is an estimate only and will be reviewed at a date closer to awarding the construction contract.

Meetings/Comments/Revisions

Meetings, comments and revisions are a standard process in a site development project. In addition, the site plan is subject to review by the City of Gulf Shores Planning and Zoning and Staff which could generate comments for revisions. Required site preview meetings as well as representation at the planning commission meeting(s) are considered part of this task as well. All revisions will be addressed with the client prior to making any changes to existing plans so there is a full understanding of the request and the amount of time estimated to address the comments. The fee provided for this task is an estimate only based upon certain assumptions by Sawgrass.

Attachment B Compensation

Sawgrass will perform the scope of services described herein for the following fees:

Boundary/Topographic Survey	\$8,300.00 Lump Sum
Conceptual Site Layouts (3 max)	Hourly; estimated NTE \$2,800.00
Site Grading, Drainage and Utility Plan	\$25,800.00 Lump Sum
Drainage Report/Calculations	\$3,800.00 Lump Sum
Environmental Services	
Wetland Delineation	\$6,250.00 Lump Sum
Corp of Engineer Permit(s)	\$4,500.00 Hourly-NTE
Historical Concurrence	\$3,500.00 Lump Sum
BMP/NPDES/NOI Permitting	\$3,500.00 Lump Sum
*Geotechnical Testing/Report	\$9,435.00 Lump Sum
As-builts/Engineer's Certification (if required)	\$1,800.00 Lump Sum
*Construction Inspection and Reporting	Hourly; NTE 5% of Construction Cost
Meetings/Comments/Revisions	Hourly; estimated NTE \$2,500.00

****NOTES****

1. Client will be responsible for all **application fees, permitting fees, and mitigation credits**
2. Survey fees shown hereon do not include ALTA/ACSM Land Title Surveys, certifications to specific parties or certifications outside of the certification required by the Standard of Practice for Land Surveying in the State of Alabama.
3. * A separate agreement for construction inspection and testing will be proposed once final plan is designed and let out for construction.
4. Landscaping design is not provided in this proposal and will be marked as To Be Determined until the project has undergone review from Planning and Zoning. This being a City project and a project for the Fire Department, the requirement for Landscaping may be waived. If required, this will be handled under a separate agreement.
5. Foundation design of the burn tower/challenge tower/pavilion will be by others. Sawgrass will provide a placeholder only and results of the Geotechnical Investigation for a Structural Engineer and the Supplier of those facilities.