

TOWN OF GOLDEN BEACH, FLORIDA

RESOLUTION NO. 1995.09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, APPROVING WORK AUTHORIZATION AGREEMENT FOR DESIGN AND ENGINEERING SERVICES FOR RE-CONSTRUCTION OF PHASE 1 OF THE STORMWATER MANAGEMENT SYSTEM BETWEEN THE TOWN AND CRAIG A. SMITH & ASSOCIATES; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 287.055, Florida Statutes, the TOWN previously requested qualifications from qualified architects which resulted in the selection of Craig A. Smith & Associates ("CONSULTANT") to provide continuing professional services to the TOWN; and

WHEREAS, the TOWN wishes to engage CONSULTANT to provide design and engineering Services for re-construction of Phase 1 of the Stormwater Management System Project, which services are within the scope of services in the Professional Services Agreement by and between the TOWN and CONSULTANT entered into on October 17, 2000; and

WHEREAS, the TOWN finds that it is in the best interest of the TOWN to further engage CONSULTANT to perform the work outlined in the Work Authorization Agreement attached as Exhibit "A" (the "Agreement"); and

WHEREAS, the CONSULTANT is willing and able to perform such professional, services for the TOWN within the basic terms and conditions set forth in the Professional Services Agreement and the Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. Agreement Approved. That the Agreement, in substantially the form attached hereto, between the TOWN and CONSULTANT is hereby approved, and the Mayor is hereby authorized to execute the Agreement, on behalf of the Town, once approved as to form and legal sufficiency by the Town Attorney.

Section 3. Implementation. That the Mayor and Town Manager are hereby authorized to take any and all action necessary to implement this Resolution and the Agreement in accordance with the terms, conditions and purposes of this Resolution and the Agreement.

Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption.

Sponsored by Town Administration.

The Motion to adopt the foregoing Resolution was offered by Councilmember Rojas, seconded by Councilmember Bernstein and on roll call the following vote ensued:

Mayor Glenn Singer	<u>Aye</u>
Vice Mayor Judy Lusskin	<u>Aye</u>
Councilmember Ben Einstein	<u>Aye</u>
Councilmember Amy Rojas	<u>Aye</u>
Councilmember Ken Bernstein	<u>Aye</u>

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach,
Florida, this 21st day of April, 2009.



MAYOR GLENN SINGER

ATTEST:



ELIZABETH SEWELL
TOWN CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



STEPHEN J. HELMAN
TOWN ATTORNEY

WORK AUTHORIZATION AGREEMENT

Between

TOWN OF GOLDEN BEACH, FLORIDA

and

CRAIG A. SMITH & ASSOCIATES, INC.

For

DESIGN AND ENGINEERING SERVICES FOR RE-CONSTRUCTION OF THE STORM WATER MANAGEMENT SYSTEM – PHASE 1

THIS WORK AUTHORIZATION AGREEMENT (this “Agreement”) is made effective as of April 21, 2009 (the “Effective Date”) by and between the TOWN OF GOLDEN BEACH, Florida, a Florida municipal corporation (hereinafter referred to as the “TOWN”), and CRAIG A. SMITH & ASSOCIATES, INC. (“CAS” or “CONSULTANT”), a Florida corporation authorized to do business in the State of Florida, whose principal place of business is 1000 West McNab Road, Pompano Beach, Florida 33069.

WHEREAS, pursuant to Competitive Consultants Negotiation Act, Section 287.055, Florida Statutes (“CCNA”), the TOWN previously requested qualifications from qualified architects which resulted in the selection of CONSULTANT to provide continuing professional services to the TOWN; and

WHEREAS, the TOWN wishes to engage CONSULTANT to provide Design and Engineering Services for the re-construction of the Phases 1 of the Stormwater Management System Project, which services are within the scope of services of the Professional Services Agreement entered into between the TOWN and CONSULTANT on October 17, 2000; and

WHEREAS, the CONSULTANT is willing and able to perform such professional, services for the TOWN within the basic terms and conditions set forth in this Agreement; and

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the TOWN and CONSULTANT agree as follows:

SECTION 1. SCOPE AND SERVICES

1.1 **The Professional Services Agreement.** This Agreement includes the terms of the Professional Services Agreement, a copy of which is attached hereto and incorporated herein as Exhibit “A”. The Services to be provided and performed with respect to the Project and the Deliverables defined in Section 2 hereof shall be at all times subject to the requirements of the Professional Services Agreement. To the extent that the documents conflict, this terms contained in this Agreement shall prevail.

1.2 **Services.** The CONSULTANT shall provide to the TOWN design and engineering services which are more specifically set forth in Exhibit "B" attached hereto.

SECTION 2. BILLING AND PAYMENTS TO THE CONSULTANT

2.1 **Invoices.** The TOWN shall pay CONSULTANT within thirty (30) calendar days of approval by the Town Manager of any invoices submitted by CONSULTANT to the TOWN. The TOWN shall make payments to CONSULTANT pursuant to applicable Florida law. Payments shall follow the lump sum fee schedule contained in Exhibit "B" incorporated herein by reference.

2.3 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the TOWN for payment to the CONSULTANT is disputed, or additional backup documentation is required, the TOWN shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the TOWN with additional backup documentation within five (5) working days of the date of the TOWN'S notice. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The TOWN shall pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the disputed portions in a mutually agreeable fashion.

2.3 **Suspension of Payment.** In the event that the TOWN becomes credibly informed that any representations of the CONSULTANT, provided pursuant to this Section 3, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Agreement, the TOWN may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy or other breach of this Agreement and the cause thereof is corrected to the TOWN'S reasonable satisfaction.

2.4 **Final Payment.** Submission of the CONSULTANT'S invoice for final payment and reimbursement shall constitute the CONSULTANT'S representation to the TOWN that, upon receipt from the TOWN of the amount invoiced, all obligations of the CONSULTANT to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the TOWN all documents requested by the TOWN evidencing payments to any and all consultants, and all final specifications, plans, or any other document as dictated by the Services or the Deliverables. Acceptance of final payment shall constitute a waiver of any and all claims against the TOWN by the CONSULTANT. Any increase in the total amount paid pursuant to the Payment Schedule as described in Section 3.1 hereof shall be included in the final payment to the CONSULTANT.

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of three years, unless otherwise terminated pursuant to the terms of this Agreement (the "Term"). The TOWN, in its sole discretion, may extend the term of this Agreement through written notification to the CONSULTANT from the Town Manager. Such extension shall not exceed thirty (30) days. No further extensions of this Agreement shall be effective unless authorized by the Town Council.

3.2 **Commencement.** The CONSULTANT'S services under this Agreement and the time frames applicable to this Agreement shall commence upon the Effective Date. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of a notification of commencement (the "Notification of Commencement") for the Project, and the CONSULTANT must receive the Notification of Commencement from the Town Manager prior to beginning the performance of the Services.

3.3 **Contract Time.** From and after the receipt of the Notification of Commencement, the CONSULTANT shall continuously perform the Services to the TOWN, without interruption, for the duration of the Term (the "Contract Time"). All limitations of time set forth in this Agreement are of the essence.

SECTION 4. TERMINATION OF AGREEMENT

4.1 **Termination.** The TOWN has the right to terminate this Agreement for any reason or no reason, upon seven (7) days written notice to CONSULTANT. Upon termination of this Agreement, and final payment of any outstanding invoices due through the date of receipt of notice of termination, copies of all charts, sketches, studies, drawings, and other documents related to the Services performed under this Agreement, whether finished or not, shall be turned over to the TOWN within ten (10) days.

4.2 **Payment after Termination.** Provided that CONSULTANT has performed in accordance with the terms of this Agreement as of the date of termination pursuant to Section 4.1 above, CONSULTANT shall receive all payments due to CONSULTANT for Services rendered and accepted up to the date of termination.

SECTION 5. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

5.1 **Changes Permitted.** Changes in the Services or the Project consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by Change Order (as defined below) without invalidating the terms of this Agreement.

5.2 **Change Order Defined.** "Change Order" shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of this Agreement, authorizing

and directing a change in the Services, the Project, the Payment Schedule or the Contract Time, or any combination thereof. The Payment Schedule and/or the Contract Time may be changed only by Change Order.

5.3 **Effect of Executed Change Order.** The execution of a Change Order by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT's agreement to the ordered changes in the Services or the Project, or an adjustment in the Payment Schedule or the Contract Time, or any combination thereof. The CONSULTANT, by executing the Change Order, waives and forever releases any claim against the TOWN for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order. Change Order costs shall be determined at a negotiated fee between the parties or based on the scheduled hourly fees provided herein.

5.4 **Authority to Execute Changes or Requests for Additional Services.** The Town Manager is authorized to negotiate and execute Change Orders, in an amount not to exceed \$10,000.00 per contract. Changes or Requests for Additional Services, which exceed \$10,000.00, shall be approved by the Town Council.

SECTION 6. SURVIVAL OF PROVISIONS

Any terms or conditions of this Agreement that require acts beyond the date of the Term, shall survive termination of this Agreement, and shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 7. TOWN'S RESPONSIBILITIES

7.1 The TOWN will assist CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT relating to the Project and allow reasonable access to all pertinent information relating to the Services to be performed by CONSULTANT.

7.2 The TOWN shall furnish to CONSULTANT, at the CONSULTANT'S written request, all available maps, plans, existing studies, reports and other data, pertinent to the Services to be provided by CONSULTANT, that are in possession of the TOWN. In addition, the TOWN shall provide recent copies of topographic and boundary surveys, geotechnical survey and report, and any other information required for the Services to be provided. The CONSULTANT shall be able to rely on the accuracy of said surveys, reports and information without independent verification.

7.3 The TOWN shall arrange for access to and make all provisions for CONSULTANT to enter upon public property as required for CONSULTANT to perform the Services.

SECTION 8. CODE OF ETHICS

The AIA Code of Ethics shall be incorporated in this Agreement by this reference.

SECTION 9. POLICY OF NON-DISCRIMINATION/WAGES

9.1 The CONSULTANT shall comply with applicable federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

9.2 The CONSULTANT shall comply with the wage provisions of Section 287.055, Florida Statutes. If the Project is subject to federal or state grant funding that requires specific wage and non-discrimination provisions, the CONSULTANT shall be required to comply with the same.

SECTION 10. OWNERSHIP OF DOCUMENTS/DELIVERABLES

10.1 Any and all drawings and specifications, as instruments of the Services to be performed (the "Drawings and Specifications"), are and shall become the property of the TOWN whether the Project for which they are made is executed or not. The CONSULTANT shall be permitted to retain copies, including reproducible copies, of the Drawings and Specifications for information and reference in connection with the TOWN'S use and occupancy of the Project. The TOWN shall not use the Drawings and Specifications for any other project without the express written consent of the CONSULTANT.

10.2 The CONSULTANT agrees not to divulge, furnish or make available to any third person, firm or organization, without the TOWN'S prior written consent, or unless incident to the proper performance of the CONSULTANT'S obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, or if reasonably necessary for the CONSULTANT to defend itself from any suit or claim, any non-public information concerning the Services to be rendered by the CONSULTANT hereunder, and the CONSULTANT shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph.

10.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

SECTION 11. RECORDS/AUDITS

11.1 The CONSULTANT shall maintain and require any subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Project. Such records, books, documents, papers and accounts shall be available at all reasonable times

for examination and audit by the Town Manager or any authorized Town representative with reasonable notice and shall be kept for a period of three (3) years after the completion of the Project. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the TOWN of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.

11.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable.

11.3 Refusal of the CONSULTANT to comply with the provisions of Sections 11.1 or 11.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement.

SECTION 12. NO CONTINGENT FEE

The CONSULTANT (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the TOWN shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

SECTION 13. INDEPENDENT CONTRACTOR

The CONSULTANT is an independent contractor under this Agreement. Personal services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the CONSULTANT.

SECTION 14. ASSIGNMENT; AMENDMENTS

14.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN.

14.2 Except as otherwise specifically provided herein, no modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement by both parties.

SECTION 15. INDEMNIFICATION/HOLD HARMLESS

15.1 Pursuant to Section 725.08, Florida Statutes, the CONSULTANT shall indemnify and hold harmless the TOWN, 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, wrongful conduct, errors or omissions of the CONSULTANT or any subconsultants or other persons employed or utilized by the CONSULTANT in the performance of this Agreement. The CONSULTANT'S obligation under this paragraph shall not be limited in any way by the agreed upon Payment Schedule, or the CONSULTANT'S limit of, or lack of, sufficient insurance protection.

15.2 The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT or any subconsultants or other persons employed or utilized by the CONSULTANT in the performance of this Agreement, under worker's compensation acts, disability benefit acts, or other employee benefit acts.

15.3 To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as it may be subsequently amended, this Section 16 and all aspects of this Agreement shall hereby be interpreted as the parties' intention for the indemnification clauses and this Agreement to comply with Chapter 725, Florida Statutes, as may be amended.

15.4 The CONSULTANT shall not specify or allow any subconsultant or other persons employed or utilized by the CONSULTANT in the performance of this Agreement to specify a particular design, process or product that infringes upon any patent. The CONSULTANT shall indemnify and hold TOWN and its officers and employees harmless from any loss, cost or expense, including reasonable attorney's fees and costs incurred, on account thereof if the CONSULTANT violates the requirements of this Section 16.

15.5 Subject to the provisions and monetary limitations of Sec. 768.28, Florida Statutes, which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the TOWN agrees to indemnify and hold harmless the CONSULTANT, its officers, directors, employees, and sub-consultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the TOWN's sole negligent acts in connection with the project.

15.6 Neither the TOWN nor the CONSULTANT shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

SECTION 16. INSURANCE

The CONSULTANT shall secure and maintain throughout the duration of this Agreement, insurance of such type and in such amounts necessary to protect its interest and the

interest of the TOWN against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the TOWN, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The insurance coverage shall include a minimum of:

16.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$100,000.00 each accident, \$100,000 each disease, and \$500,000 each aggregate disease. In the case of any work sublet, the CONSULTANT shall require the SUBCONSULTANT similarly to provide statutory Worker's Compensation and Employer's Liability Insurance with the same limits as those required above of the CONSULTANT.

16.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the TOWN against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of non-owned and hired motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

16.3 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the TOWN against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

(b) The TOWN is to be specifically included as an "Additional Insured" for the liability of the TOWN resulting from operations performed by or on behalf of CONSULTANT in performance of this Agreement. CONSULTANT'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary

basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

16.4 **Professional Liability:** The CONSULTANT shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.00 with a deductible of no more than \$25,000.00 per claim. The CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of this Agreement provided such insurance is commercially available. Upon request of the TOWN, the CONSULTANT shall make available for inspection copies of any claims filed or made against the policy during the policy term. The CONSULTANT shall additionally notify the TOWN, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$100,000.00 during the policy term.

16.5 **Certificate of Insurance:** Upon execution of this Agreement the CONSULTANT shall provide to the Town Manager, the Certificate of Insurance evidencing the required insurance coverage. The Certificate of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The TOWN reserves the right to require the CONSULTANT to provide a certified copy of such policies, upon written request by the TOWN. If a policy is due to expire prior to the completion of the services, a renewal Certificate of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. Acceptance of the Certificate of Insurance is subject to approval of the Town Manager.

16.6 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

SECTION 17. REPRESENTATIVE OF TOWN AND CONSULTANT

17.1 **Town Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager or his or her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

17.2 **Consultant Representative.** CONSULTANT shall inform the Town Manager, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 18. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

18.1 If either the TOWN or CONSULTANT is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

18.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 20. CONSULTANT'S RESPONSIBILITIES

20.1 The CONSULTANT warrants that the Services to be performed hereunder shall be performed by the CONSULTANT'S own staff, unless otherwise approved in writing by the TOWN. Said approval shall not be construed as constituting an agreement between the TOWN and said other person or firm. The CONSULTANT'S services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality and under the same or similar circumstances and conditions.

20.2 The CONSULTANT represents that it possesses the requisite skills and shall follow the professional standards of the American Institute of Architects and the standard of conduct for engineers in performing all services under this Agreement. The CONSULTANT agrees to use its skill and judgment in furthering the TOWN's interests hereunder and CONSULTANT shall perform its services in accordance with the practice of the pertinent industry and as expeditiously as is consistent with reasonable skill and care. If at any time during the term of this Agreement or the construction of the Project for which the CONSULTANT has provided engineering, architectural, surveying or mapping services under this Agreement, it is determined that the CONSULTANT's documents are incorrect, defective or fail to conform to the terms of this Agreement, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made

necessary thereby, save and except any costs which the TOWN would have otherwise paid absent the CONSULTANT's error or omission. The TOWN's and or any governmental agency's approval, acceptance, use of or payment for all or any part of the CONSULTANT's services shall in no way alter the CONSULTANT's obligations or TOWN's rights hereunder.

20.3 CONSULTANT agrees, within fourteen (14) calendar days of receipt of a written request from the TOWN, to promptly remove and replace any personnel employed or retained by the CONSULTANT, any subconsultants or subcontractors or other persons employed or utilized by the CONSULTANT in the performance of this Agreement or any personnel of any such subconsultant or subcontractors or other persons employed or utilized by the CONSULTANT to provide and perform services or work pursuant to the requirements of this Agreement, whom the TOWN shall request in writing to be removed, which request may be made by the TOWN.

20.4 If the CONSULTANT allows any work to be performed knowing, or when with the exercise of due care the CONSULTANT should have known, it to be contrary to any such applicable, known and published laws, ordinances, rules, regulations or restrictions and fails to give TOWN written notice thereof prior to performance thereof, the CONSULTANT shall bear all costs, liabilities, and expenses arising therefrom, which costs, liabilities and expenses shall not be considered a part of the CONSULTANT'S fees or any other amounts due hereunder.

20.5 The CONSULTANT'S obligations under this Section 20 shall survive termination of this Agreement.

SECTION 21. NOTICES

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR CONSULTANT:

Craig A. Smith & Associates, Inc.
1000 W. McNab Road, Suite 114
Pompano Beach, Florida 33069
Phone: (954) 782-8222
Facsimile: (954) 786-8927

FOR TOWN:

Town of Golden Beach
Attn: Alexander Diaz, Town Manager
1 Golden Beach Drive
Golden Beach, FL 33160-2296
Phone: (305) 932-0744
Facsimile: (305) 933-3825

With a copy to:

Stephen P. Helfman, Esq.
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
Town Attorneys
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
Phone: (305) 854-0800
Facsimile: (305) 854-2323

SECTION 22. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. This Agreement's Payment Schedule and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Project's Payment Schedule was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of this Agreement.

SECTION 23. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement. Venue of any action to enforce this Agreement shall be proper exclusively in Miami-Dade County, Florida.

SECTION 24. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 25. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 26. EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits if not physically attached, should be treated as part of this Agreement, and are hereby incorporated by reference.

SECTION 27. NO WAIVER OF BREACH

The failure of a party to insist on strict performance of any provision of this Agreement shall not be construed to constitute a waiver of a breach of any other provision or of a subsequent breach of the same provision.

SECTION 28. SEVERABILITY

If any provision of this Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 29. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

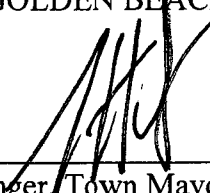
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IN WITNESS WHEREOF, the parties hereby execute this Agreement on the date first stated above.

ATTEST:

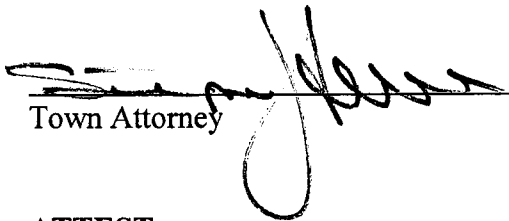
TOWN OF GOLDEN BEACH, FLORIDA

Elizabeth Sewell
Town Clerk

By: 
Glenn Singer, Town Mayor

Date: 5/11/09

**APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
TOWN OF GOLDEN BEACH, FLORIDA, ONLY:**


Town Attorney

ATTEST:

CRAIG A. SMITH & ASSOCIATES, INC.

Secretary

Please type name of Secretary

By: _____
Name: _____
Title: _____
Date: _____

TOWN OF GOLDEN BEACH

PROPOSED SCOPE OF SERVICES AND PROPOSED FEE

FOR

PROFESSIONAL ENGINEERING

FOR

STORMWATER MANAGEMENT SYSTEM

**DESIGN AND ENGINEERING SERVICES FOR
RE-CONSTRUCTION OF PHASES 1**

DATED: July 31, 2008

CRAIG A. SMITH & ASSOCIATES

Consulting Engineers • Planners • Surveyors

1000 West McNab Road, Pompano Beach, FL 33069

Broward (954) 782-8222, Palm Beach (561) 736-3188, Dade (305) 940-4661

FAX (954) 786-8927

CRAIG A. SMITH & ASSOCIATES

PROPOSED SCOPE OF SERVICES AND PROPOSED FEE

FOR

STORMWATER MANAGEMENT SYSTEM

Re-construction of Phase 1

PROJECT NAME: TOWN OF GOLDEN BEACH

PROPOSAL NO: P2207

PROJECT DESCRIPTION: Providing professional engineering, design, permitting, surveying and utility location the re-construction of Phases 1 as identified in the Town's Stormwater Master Plan.

OWNER:

Name: Town of Golden Beach

Attention: Alexander Diaz, Town Manager

Address: 1 Golden Beach Drive
Golden Beach, FL 33160

Phone: (305) 932-0744

FAX (305) 933-3825

GENERAL

Craig A. Smith & Associates (CAS) proposes to accomplish the services as follows:

**ITEM
NO.****E-74 ONE CALL COORDINATION**

Coordinate with SSOCOF to contact and meet with know utility owners/operators indicated to exist within the project boundaries. Ascertain approximate facility locations and review reported facility sizes, types and composition. Prepare sketch of identified facilities for record comparison.

\$250.00**E-75 UNDERGROUND UTILITY LOCATION SERVICES**

Perform utility location services to confirm information derived from SSOCOF coordination and locates, identify potentially unknown/unclaimed facilities and supplement surface markings for collection by CAS Survey. Prepare sketch of identified facilities.

\$3,750.00**E-78 VACUUM EXCAVATION (SOFT DIGS)**

Perform up to twelve (12) "soft digs" to identify the type, size and material as well as depth to the top of potentially conflicting and/or newly identified or previously unknown facilities. Prepare Vacuum Excavation reports including location sketch.

\$3,900.00**E19 COORDINATION**

Provide coordination with CAS Survey and Engineering Departments to review subsurface utility information and review survey maps to ensure accurate depiction of located facilities.

\$250.00**S50 SURVEYING**

Surveying to locate utility markings as completed by CAS utility locates department and add to the previously developed base map. Drainage structures will be verified as to inverts, rims, pipe direction, etc. The area of the pump station immediately across from Town Hall will be surveyed and utilities as marked located and also added to the base map.

\$8,335.00

E53D DRAINAGE SYSTEM DESIGN AND ANALYSIS

Provide construction design and calculations and sufficient drainage analysis for Re-construction of Phases 1. Provide plans sufficient to bid and construct the proposed collection / conveyance system.

\$7,680.00

SUMMARY OF COSTS

CAS proposes to accomplish the professional engineering services listed for the following total lump sum fee, which is the sum of the fees for each phase and its specific work tasks:

ONE CALL COORDINATION	\$250.00
UNDERGROUND UTILITY DESIGNATION SERVICES	\$3,750.00
VACUUM EXCAVATION (SOFT DIGS)	\$3,900.00
COORDINATION	\$250.00
SURVEYING	\$8,335.00
DRAINAGE SYSTEM DESIGN & ANALYSIS	\$7,680.00
TOTAL	\$24,165.00

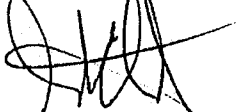
Additional Services

Any service not specifically included in the final Agreement will be considered as an Additional Service. CAS will accomplish Additional Services upon proper written authorization of the CLIENT. The fees for Additional Services are at the attached hourly rates or at a mutually agreed upon Lump Sum Fee.

If this proposal is acceptable to you, please execute as indicated and return one executed copy to our office for our files.

Yours Sincerely,

CRAIG A. SMITH & ASSOCIATES



Stephen C. Smith, P.E.
Senior Vice-President / COO

ACCEPTED BY:

TOWN OF GOLDEN BEACH
Corporation Name

Alex B.
Signature

5/14/09
Date

ALEXANDER DIAZ
Name of Authorized Representative

TOWN MANAGER
Title of Authorized Representative