

## **AGREEMENT**

THIS AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the CITY OF NAPLES, FLORIDA, a municipal corporation, (hereinafter referred to as the "CITY") and BEAR'S PAW COUNTRY CLUB, INC., a Florida not-for-profit corporation, (hereinafter referred to as "BEAR'S PAW").

### **WITNESSETH:**

WHEREAS, BEAR'S PAW desires to obtain the services of the CITY concerning certain services related to the installation of a new street lighting system (hereinafter referred to as the "Project"), said services being more fully described in Exhibit A, "Scope of Services", which is attached hereto and incorporated herein; and

WHEREAS, the CITY and BEAR'S PAW have agreed upon a proposal for provision of those services whereby the CITY is fully reimbursed for all of its costs and expenses associated with the Project; and

WHEREAS, the CITY represents that it has obtained firm bids from LUMEC and Bentley Electric for services described in Exhibit A; and

WHEREAS, the CITY and BEAR'S PAW have agreed that upon completion of the Project, the CITY shall not be responsible for the cost of maintaining, replacing or powering the lighting system.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

### **ARTICLE ONE CITY'S RESPONSIBILITY**

1.1. The CITY shall provide to BEAR'S PAW the services in all phases of the Project to which this Agreement applies.

1.2. The CITY agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

1.3. The CITY shall be authorized and responsible to act on behalf of BEAR'S PAW with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

1.4. The CITY agrees that all services to be provided by the CITY pursuant to this Agreement shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by the CITY hereunder. In the event of any conflicts in these requirements, the CITY shall notify BEAR'S PAW of such conflict and utilize its best professional judgment to advise BEAR'S PAW regarding resolution of the conflict.

### **ARTICLE TWO BEAR'S PAW RESPONSIBILITIES**

2.1. BEAR'S PAW shall designate in writing a project coordinator to act as BEAR'S PAW'S representative with respect to the services to be rendered under this Agreement (hereinafter referred to as the "Project

Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define BEAR'S PAW'S policies and decisions with respect to the CITY'S services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CITY that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CITY hereunder;
- (b) The time the CITY is obligated to commence and complete all such services; or
- (c) The amount of compensation BEAR'S PAW is obligated or committed to pay the CITY.

2.2. BEAR'S PAW shall provide appropriate notice and authorization to Florida Power and Light for electrical power service to the Project.

2.3. The Project Coordinator shall:

- (a) Review and make appropriate recommendations on all requests submitted by the CITY for payment for services and work provided and performed in accordance with this Agreement;
- (b) Arrange for access to and make all provisions for the CITY to enter the Project site to perform the services to be provided by the CITY under this Agreement; and
- (c) Provide notice to the CITY of any deficiencies or defects discovered by BEAR'S PAW with respect to the services to be rendered by the CITY hereunder.

### **ARTICLE THREE TIME**

3.1. Services to be rendered by the CITY shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from BEAR'S PAW for all or any designated portion of the Project and shall be performed and completed within six (6) months from the date of execution of this Agreement.

3.2. Should the CITY be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of the CITY, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of BEAR'S PAW, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then the CITY shall notify BEAR'S PAW in writing within ten (10) working days after commencement of such delay, stating the cause or causes thereof and requesting a reasonable time for extension.

3.3. If through no fault or neglect of the CITY, the services to be provided hereunder have not been completed within 6 months of the date hereof, the CITY'S compensation may be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by the CITY after expiration of said 6 month period.

3.4. Should the CITY fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, and by the time provided in this Agreement, in addition to any other rights or remedies available to BEAR'S PAW hereunder, BEAR'S PAW may withhold any and all payments due and owing to the CITY until such time as the CITY resumes performance of its obligations hereunder in such a manner so as to reasonably establish to BEAR'S PAW'S satisfaction that the CITY'S performance is or will shortly be back on schedule.

**ARTICLE FOUR  
COMPENSATION**

4.1. The total compensation to be paid the CITY by BEAR'S PAW for all services to be provided by the CITY hereunder is estimated to be TWO HUNDRED NINETY SEVEN THOUSAND DOLLARS (\$297,000.00) and shall be paid in the manner set forth in and Exhibit B, "Basis of Compensation", which is attached hereto and incorporated herein. In the event that at any time during the term of this Agreement the CITY projects that the costs to be incurred by the CITY in the performance of this Agreement exceed TWO HUNDRED NINETY SEVEN THOUSAND DOLLARS (\$297,000.00), the CITY shall give notice to BEAR'S PAW of such likelihood. In response to any such notice, BEAR'S PAW may agree to pay any additional costs or terminate this Agreement. In the event that BEAR'S PAW terminates this Agreement, the CITY shall cease all performance and BEAR'S PAW shall fully reimburse the CITY for all of its costs in the performance of this Agreement up to the date of termination, so as to prevent an unlawful expenditure of public funds.

**ARTICLE FIVE  
MAINTENANCE OF RECORDS**

5.1. The CITY will keep adequate records and supporting documentation that concern or reflect its services hereunder. BEAR'S PAW, or any of its duly authorized agents or representatives, shall have the right to audit, inspect and copy all such records and documentation as often as reasonably necessary during the period of this Agreement; provided, however, such activity shall be conducted only during normal business hours.

**ARTICLE SIX  
INDEMNIFICATION**

6.1. BEAR'S PAW agrees to indemnify and hold the CITY harmless 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 misconduct of BEAR'S PAW and persons employed or utilized by BEAR'S PAW in the performance of this Agreement.

**ARTICLE SEVEN  
INSURANCE**

7.1. The CITY shall obtain and carry reasonable insurance at all times during its performance under the Agreement.

**ARTICLE EIGHT  
SERVICES BY CONTRACTOR'S OWN STAFF**

8.1. The services to be performed hereunder shall be performed by the CITY'S own staff, unless otherwise indicated in Exhibit A, "Scope of Services". The employment of, contract with, or use of the services of any other person or firm by the CITY, as independent contractor or otherwise, shall not be construed as constituting an agreement between BEAR'S PAW and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against BEAR'S PAW beyond such as may otherwise exist without regard to this Agreement.

**ARTICLE NINE  
WAIVER OF CLAIMS**

9.1. The CITY'S acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against BEAR'S PAW arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by the CITY as unsettled at the time of

the final payment. BEAR'S PAW'S acceptance of the CITY'S services or final payment by BEAR'S PAW shall be deemed to be a waiver of any of BEAR'S PAW'S rights against the CITY arising out of this Agreement.

**ARTICLE TEN  
TERMINATION OR SUSPENSION**

10.1. The CITY shall be considered in material default of this Agreement and such default will be considered cause for BEAR'S PAW to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder, or (c) failure to obey laws, ordinances, regulations or other codes of conduct, or (d) failure to perform or abide by the terms or spirit of this Agreement, or (e) for any other just cause. Notwithstanding anything to the contrary contained in this Agreement, the City shall have one thirty (30) day grace period to cure any default by the City that arises under this Agreement.

10.2. If, after notice of termination of this Agreement in accordance with paragraph 10.1 above, it is determined for any reason that the CITY was not in default, or that its default was excusable, or that BEAR'S PAW otherwise was not entitled to terminate, then the CITY shall be allowed to recover from BEAR'S PAW that portion of the fee earned through the date of termination and any costs reasonably incurred by the CITY that are directly attributable to the termination.

**ARTICLE ELEVEN  
CONFLICT OF INTEREST**

11.1. The CITY represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The CITY further represents that no persons having any such interest shall be employed to perform those services.

**ARTICLE TWELVE  
MODIFICATION**

12.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

**ARTICLE THIRTEEN  
NOTICES AND ADDRESS OF RECORD**

13.1. All notices required or made pursuant to this Agreement to be given by BEAR'S PAW to the CITY shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested and addressed as follows:

City of Naples  
735 Eighth Street South  
Naples, Florida 34102-3796  
Attention: City Manager

13.2. All notices required or made pursuant to this Agreement to be given by the CITY to BEAR'S PAW shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested and addressed as follows:

Bear' Paw Country Club

Board of Governors  
2500 Golden Gate Parkway  
Naples, FL 34105  
Attention: Terry Cook, General Manager

13.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

#### **ARTICLE FOURTEEN MISCELLANEOUS**

14.1. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

14.2. This Agreement is not assignable, in whole or in part, by the CITY without the prior written consent of BEAR'S PAW.

14.3. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

14.4. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

14.5. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

#### **ARTICLE FIFTEEN APPLICABLE LAW**

15.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the day and year first written above.

ATTEST:

**CITY:**

CITY OF NAPLES, FLORIDA,  
A Municipal Corporation

By: \_\_\_\_\_  
Tara A. Norman, City Clerk

By: \_\_\_\_\_  
Kevin Rambosk, City Manager

Approved as to form  
and legal sufficiency:

By: \_\_\_\_\_  
Robert D. Pritt, City Attorney

**BEAR'S PAW:**

BEAR'S PAW COUNRTY CLUB, INC.,  
A Florida not-for-profit corporation

By: \_\_\_\_\_  
Kenneth L. Lyons, Vice President & Treasurer

\_\_\_\_\_  
Witness

EXHIBIT A  
SCOPE OF SERVICES

A.1.1. The CITY agrees to perform the following services in accordance with the Agreement and the attached plans and specifications set forth in this Exhibit A:

Purchasing the street lighting fixtures, assemblies and bases from LUMEC (“Supplier”);

Managing Bentley Electric’s (“Contractor”) installation of the street lighting system; and

Performing engineering, construction inspection and contract administration services for the Project.

All warranties relating to the Project shall be provided by the Supplier and the Contractor and shall not exceed a period of one year.

The CITY reserves the right to substitute another supplier for LUMEC and another contractor for Bentley Electric.

**ATTACHED PLANS AND SPECIFICATIONS TO FOLLOW**

**EXHIBIT B**  
**BASIS OF COMPENSATION**

B.1.1. As consideration for the CITY providing the services as set forth in the Agreement, BEAR'S PAW agrees to pay as follows:

\$100,000.00 upon purchase of fixtures, assemblies and bases from LUMEC;

\$175,000.00 upon installation of system by Bentley Electric; and

All costs incurred by the CITY in connection with performance of the Agreement, including but not limited to engineering, construction inspection, contract administration and legal services; it is estimated that such costs shall not exceed \$22,000.00.

In the event the CITY is able to realize any savings in the costs set forth above, such savings shall be for the benefit of BEAR'S PAW.

END OF EXHIBIT B.

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