

**FIRST AMENDMENT TO AGREEMENT  
(PROFESSIONAL SERVICES)**

**THIS FIRST AMENDMENT** (the "First Amendment") to the Contract for Professional Services is made and entered into this 21<sup>st</sup> day of July, 2014 by and between the **CITY OF NAPLES**, a Florida Municipal Corporation (the "City"), and **JOHNSON ENGINEERING, INCORPORATED** a Florida Profit Corporation (the "Consultant").

**WITNESSETH**

**WHEREAS**, the City and the Consultant entered into that certain Agreement to furnish Contract for Professional Services, dated March 3, 2010; Resolution No. 09-12326 (the "Original Agreement") for services associated with **Design of Wastewater Collection System Construction Management & Inspection 14<sup>th</sup> Avenue North, 13<sup>th</sup> Avenue North and Bembury Subdivision** ('Project'); and

**WHEREAS**, the parties desire to amend the Original Agreement by this First Amendment so that the Consultant will provide services tabled by the City and additional services pursuant to the terms and conditions contained herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants, promises and conditions herein set forth, it is hereby acknowledged and agreed as follows:

1. The above recitals are true and correct and are incorporated herein by this Reference.
2. "Article Three, Time" shall be amended for the provision of additional time by the Consultant with a completion date of September 30, 2015.
3. "Article Four, Compensation" shall be amended and reinstate the provision of services tabled by the City in the amount of \$32,170.00 and additional fees by the Consultant in the amount of **\$6,500.00** permitting assistance for City of Naples indicated Project. **Exhibit A-1 Scope of Services and Basis of Compensation** is attached and made a part of this First Amendment.
4. The terms of this First Amendment shall control and take precedence over any and all terms, provisions and conditions of Original Agreement which might vary, contradict or otherwise be inconsistent with the terms and conditions hereof. All of the other terms, provisions and conditions of Original Agreement, except as expressly amended and modified by this First Amendment, shall remain unchanged and are hereby ratified and confirmed and shall remain in full force and effect.
5. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original as against any part whose signature appears thereon and all of which shall together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the City and the Consultant have caused this First Amendment to be duly executed by their duly authorized officers, all as of the day and year first above written.

**ATTEST:**

By: Jessica R. Rosenbee for  
Patricia L. Rambosk, City Clerk

**CITY:**

**CITY OF NAPLES, FLORIDA**

By: A. William Moss  
A. William Moss, City Manager

Approved as to form and legal sufficiency:

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

**Johnson Engineering, Inc.**  
2122 Johnson Street  
Fort Myers, Florida 33901  
Attention: Michael S. Dickey, P.E.  
Vice President /Dir. of Utility Services  
FEI/EIN Number: 59-1173834 (FL)

LJB  
Witness (Signature)

By: Michael Dickey  
(Signature)

Printed Name: LISA J. BAUGHMAN

Printed Name: Michael Dickey

Title: Vice-President



SINCE 1946

July 2, 2014

Mr. Justin Frederiksen  
City of Naples – Utilities  
380 Riverside Circle  
Naples, FL 34102

Re: Bembury Subdivision Wastewater Improvements  
City of Naples No. 010-09 Dated March 3, 2010

Dear Justin,

Pursuant to your request, please accept this letter as our request to finish the remaining scope of work for the above referenced project. The remaining scope items and amounts are listed below.

Task 3.0 – Design - \$4,030  
Task 6.0 – Post Design Services -\$6,640  
Task 8.0 – Construction Contract Administration- \$21,500

Task 3.0 must be completed in order for the project to enter into competitive bidding and Tasks 6.0 and 8.0 will be required during the bidding phase and during construction. We have also attached an additional scope and fee for assistance in acquiring a dewatering permit needed for construction that was not included in the original scope of services.

If you have any questions or need any further information, please do not hesitate to contact me. Thank you for this opportunity to work with the City of Naples.

Sincerely,

**JOHNSON ENGINEERING, INC.**

A handwritten signature in cursive script that reads "Michael Dickey".

Michael S. Dickey, P.E.  
Vice President/Director of Utility Services

MSD/ljb  
Enclosure

DATE: July 11, 2014



**PROFESSIONAL SERVICES AGREEMENT**

BETWEEN

**JOHNSON ENGINEERING, INC.,**

**CITY OF NAPLES**

(CONSULTANT),

AND

(OWNER).

**PROJECT NAME: SFWMD DEWATERING PERMIT FOR BEMBURY IMPROVEMENTS**

**Section: 34 Township: 49S Range: 25E County: Collier**

**Latitude: 26.162854 Longitude: -81.787830 Comments: \_\_\_\_\_**

**CONSULTANT CONTACT INFORMATION**

**Project Manager:** Michael S. Dickey, P.E.  
**Address:** 2122 Johnson Street  
**City:** Fort Myers  
**State/Zip:** Florida, 33901  
**Phone:** (239) 334-0046  
**Fax:** (239) 334-3661  
**Email:** MSD@johnsoneng.com

**OWNER CONTACT INFORMATION**

**Bill to the attention of:** Justin Frederiksen, P.E.  
**Billing Address:** 380 Riverside Circle  
**City/State/Zip:** Naples, FL 34102  
**Phone:** 239-213-4763  
**Cell:**  
**Fax:** 239-213-4799  
**Email:** JFrederiksen@naplesgov.com

**SCOPE OF SERVICES (LIMITED TO THE FOLLOWING):**

CONSULTANT will assist OWNER in obtaining a dewatering permit for construction/installation of underground utilities at the project site. CONSULTANT will prepare required SFWMD forms and exhibits, evaluate potential impacts to existing legal users of the Water Table aquifer and wetlands, prepare a report of potential pollution sources, estimate volumes of dewatering effluent, prepare a dewatering plan and schedule, prepare a turbidity monitoring plan (if necessary), and prepare exhibits of temporary retention areas and recharge trenches, if necessary. CONSULTANT will coordinate with OWNER to prepare a feasible dewatering plan to meet SFWMD regulatory requirements and take into account site constraints and construction schedule. CONSULTANT will respond to one (1) RAI and informal requests for information from the SFWMD during the review period, if required. CONSULTANT will coordinate with contractor/OWNER (in Ft. Myers) as required to develop dewatering plan. OWNER is responsible for all SFWMD permit processing fees.

This scope of services assumes the project will not be subject to the proposed SFWMD permitting rule changes that require projects requesting off-site discharge of dewatering effluent to obtain an individual dewatering permit (40E-2.061 & 40E-2.071, F.A.C.). The proposed rules are anticipated to take effect in 2014. This scope of services assumes the project will not require a FDEP permit for the discharge of produced groundwater to Waters of the State [62-621.300(2), F.A.C.].

<b>FEE &amp; TYPE:</b>	Time & Materials (based on current Rate Schedule in effect at the time service is rendered:	<b>\$6,300</b>	<b>T&amp;M</b>
	Not-To-Exceed Fixed Fee based on Rate Schedule in effect at the time service is rendered:		<b>NTE</b>
	Reimbursables :	<b>\$200</b>	<b>T&amp;M</b>
	<b>TOTAL FEES:</b>	<b>\$6,500</b>	<b>T&amp;M</b>

**OWNER AUTHORIZATION:** I warrant and represent I am authorized to enter into this contract for professional services and I hereby authorize the performance of the above services and agree to pay the charges resulting there from as identified in the "FEE TYPE" section above. I have read, understand and agree to the Standard Business Terms and Conditions, including Limitation of Liability, printed on page 2 of this Agreement.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Typed Name & Title: Justin Frederiksen, P.E., Deputy Utilities Director

These Standard Business Terms and Conditions are attached to, and made a part of, Proposals and Agreements for services by Johnson Engineering, Inc. ("CONSULTANT").

**Standard of Care:** The Standard of Care for all professional engineering and related services performed or furnished by the CONSULTANT under this Agreement with the care and skill ordinarily used by members of the CONSULTANT's profession practicing under similar conditions at the same time and the same locality.

**Information from Owner:** OWNER to provide supporting information and extraordinary project considerations or special services, deeds, easements, rights-of-way, etc. needed for CONSULTANT to complete the Scope described herein.

**Cooperation with Other Consultants or Owner's Attorney:** Due to the various laws, rules and ordinances relating to projects of this nature, legal counsel may be required, which is excluded from this Agreement. OWNER is expected to retain an attorney as needed for advice and participation as a professional team member. OWNER will serve as project coordinator and be responsible for assuring the cooperation of consultants contracting directly with him.

**Permit and Application Fees:** OWNER shall pay all project-related fees including, but not limited to plan review, platting, permits, DRI, impact fees, etc.

**Termination:** This Agreement and obligation to provide further service may be terminated by either party upon 30 days written notice in the event of substantial failure by the other party to perform to the terms hereof through no fault of the terminating party.

**Billings and Payment:** Fixed fees shall be billed monthly for the project portion completed to the billing date, plus reimbursables. Time/Material/Expenses (TME) fees shall be billed monthly based on time, materials, and expenses incurred to the billing date, plus reimbursables. A T/M/E estimate, if provided, is for information purposes only. Actual fee may be more or less and based on the Rate Code Schedule in effect at the time services are rendered. Additional Services mutually agreed upon by CONSULTANT and OWNER shall be billed monthly based on time, materials, and expenses incurred to the billing date plus Reimbursables based on the Rate Code Schedule in effect at the time services are rendered. The continuous progress of CONSULTANT's service requires prompt payment. Payment is due within thirty days of the invoice date. Past due amounts shall include a late charge of 1% per month from said thirtieth day; and, in addition, we may, after seven days notice to OWNER, suspend services under this Agreement until we have been paid in full for all amounts due for our services and expenses. CONSULTANT is entitled to collect reasonable fees and costs, including attorney fees and interest, if required to obtain collection of any amount due under this Agreement by a court action or settlement without court action.

**Reimbursables:** Project-related expenses such as transportation, subsistence, long distance communications, postage, shipping, report, drawing, specification reproduction, and OWNER-authorized overtime shall be reimbursable. The amount payable for reimbursables will be the charge actually incurred by or imputed cost allocated by CONSULTANT therefore times a factor of 1.10.

**Taxes:** Any government imposed taxes or fees shall be added to the invoice for services under this Agreement.

**Renegotiation of Fees:** CONSULTANT reserves the right to renegotiate fixed fees on an annual basis to reflect changes in price indices and pay scales applicable to the period when services are, in fact, being rendered.

**Subconsultant:** Subconsultant contracts will be administered at a cost of 10% of the Subconsultant contract fee.

**Attorney Fees:** Should litigation arise related to services under this Agreement, the prevailing party is entitled to recover reasonable costs including staff time, court costs, attorney fees and related expenses.

**Legal Interpretations Clarified:** The work proposed herein is based on the services of a professional engineer, professional surveyor, professional land planner, and/or professional landscape architect, and does not constitute the rendering of legal advice or opinion. Interpretations of laws, rules, ordinances are based solely on the professional opinion of the Design Professional. OWNER is advised to secure adequate legal counsel as needed for the project.

**Responsible Party:** PURSUANT TO § 558.0035 FLORIDA STATUTE, THE CONSULTANT'S CORPORATION IS THE RESPONSIBLE PARTY FOR THE PROFESSIONAL SERVICES IT AGREES TO

**PROVIDE UNDER THIS AGREEMENT. NO INDIVIDUAL, PROFESSIONAL EMPLOYEE, AGENT, DIRECTOR, OFFICER OR PRINCIPAL MAY BE INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OF THIS AGREEMENT.**

**Project Delays:** The OWNER recognizes and agrees that various factors both within and without the control of Design Professional can operate to delay the performance of the work, the issuance of permits and licenses, and the overall construction of the project. The OWNER agrees that it shall not be entitled to any claim for damages on account of hindrances or delays from any cause whatsoever including, but not limited to: the production of contract documents; issuance of permits from any government or agency; beginning or completion of construction; or performance of any phase of the work pursuant to this Agreement. Permitting is a regulatory function and CONSULTANT does not guarantee issuance of any permit.

**Budgetary Limitations:** It is necessary that OWNER advise CONSULTANT in writing at an early date if OWNER has budgetary limitations for the overall Project Cost or Construction Cost. CONSULTANT will endeavor to work within those limitations. If OWNER requests, CONSULTANT will submit to OWNER, as an Additional Service, opinions as to the probability of completing construction within OWNER's budget and, where appropriate, request an adjustment in the budget or a revision in the scope of services of the Project. CONSULTANT does not guarantee that opinions of probable cost will not differ materially from negotiated prices, fees or bids. If OWNER wishes greater assurance as to the probable construction costs, or if formal estimates are desired, an independent cost estimator should be employed.

**Excluded Services:** CONSULTANT will provide services including and limited to those described in the Scope of Services (Scope of Work). All other services are specifically excluded. Listed below are excluded services, unless otherwise specifically included in the Scope, which may be required or desired for the Project: Abstract of Title Review - Geotechnical Services - Materials Testing - Architectural Services - Hazardous Waste Assessments

**Mediation:** In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the OWNER and the Design Professional agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless parties mutually agree otherwise.

**Betterment:** If CONSULTANT mistakenly leaves out of the Construction Documents, any component or item required for the Project, CONSULTANT shall not be responsible for the cost or expense of constructing or adding the component or item to the extent such item or component would have been required and included in the original construction documents. In no event will the CONSULTANT be responsible for any cost or expense that provides betterment, upgrades or enhances the value of the Project.

**Ownership of Instruments of Service:** All reports, plans, specifications, field data, and notes or other documents, including all documents on electronic media, prepared by the Design Professional as instruments of service shall remain the property of the Design Professional.

**Hazardous Materials:** Services related to asbestos, hazardous or toxic materials are excluded. OWNER shall provide a site that complies with applicable laws and regulations. CONSULTANT may, at its option and without liability for consequential or other damages, suspend services until OWNER retains specialist consultants to abate or remove asbestos, hazardous, or toxic materials.

**Entire Understanding:** This Proposal/Agreement represents the entire understanding between OWNER and CONSULTANT in respect to this Project and may only be modified in writing.

**Consultant's Limited Liability:** Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT's officers, directors, partners, employees, agents and CONSULTANT's Sub-Consultants, and any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the Project, this Agreement, or any supplemental Agreements written or oral from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty, express or implied of CONSULTANT or CONSULTANT's officers, directors, partners, employees, agents or CONSULTANT's Sub-Consultants or any of them, shall not exceed \$6,500 (dollar amount).