



**AGREEMENT BETWEEN THE CITY OF HOLMES BEACH
AND NEWSON CONSTRUCTION AND CONSULTING, LLC
FOR DRAINAGE IMPROVEMENTS FOR THE SEASIDE GARDENS BASIN**

This Agreement is entered into this ____ day of _____, 2024, between the City of Holmes Beach, located at 5801 Marina Drive, Holmes Beach, Florida, 34217, a municipal corporation organized and existing under the laws of the State of Florida, (the "City"), and Newson Construction and Consulting, LLC (the "Contractor"), whose address is 118 SW 21st Terrace, Cape Coral, Florida, 33991.

NOW THEREFORE, in consideration of the mutual covenants, representations, and agreements herein contained, the Parties agree as follows:

1. **SCOPE OF SERVICES**: The Contractor shall furnish all labor, materials, equipment, transportation, and perform all of the work described in the bid documents and specifications contained in the Invitation to Bid No. 24-PW003 (hereinafter "ITB"), for the Seaside Gardens Basin Drainage Improvements dated June 28, 2024, and Contractor's response thereto, attached hereto as **Exhibits A and B, respectively**, which are incorporated and made a part hereof and shall do everything required by this Agreement.

To the extent that this Agreement conflicts with any provision of the ITB or Contractor's response thereto, the terms and conditions of this Agreement shall prevail.

2. **COMPENSATION SCHEDULE**: The City agrees to and does engage Contractor to perform the Scope of Services for compensation described herein and as set forth in **Exhibits A and B** attached hereto and incorporated herein, in an amount not to exceed **\$139,834.00**, and the parties do further agree:

2.1 As a condition precedent to receiving payment, Contractor shall have been authorized to proceed by City for the specific task or phase, shall not be in default of any of the terms and conditions of this Agreement and shall provide to City an invoice.

2.2 City shall pay all valid, approved, and undisputed invoices pursuant to Florida Statute Section 218.70, the Prompt Payment Act, and all City Policies promulgated thereby. If City disputes any invoice submitted, it shall advise Contractor in writing and said

invoice shall not be deemed due and payable under this agreement. Neither the City 's review approval or acceptance of, nor payment for, any services provided hereunder shall be construed to operate as a waiver of any rights under this Agreement and the Contractor shall be liable to City for all damages to City caused by the Contractor's negligent or wrongful performance of any of the services furnished under this Agreement.

2.3 Contractor agrees to assign competent professionals to perform the assigned responsibilities and duties faithfully, intelligently, and to the best of their ability, and in the best interest of City during the term of this Agreement. All services provided shall be performed in accordance with this Agreement and with any and all applicable law, professional standards and guidelines. City may request Contractor to make changes in the scope of services or revise the work performed. Any changes or revisions requested by City that are not due to Contractor error, omission or negligence will be incorporated into the scope of services by written amendment to this agreement and the Contractor may be entitled to additional compensation upon the agreement of the parties. Contractor will perform its Services with that level of care and skill ordinarily exercised by other professionals practicing in the same discipline(s), under similar circumstances and at the time and place where the Services are performed.

3. AUTHORIZATION TO PROVIDE SERVICES: Contractor shall not be authorized to provide any services as set forth above until such time as Contractor has received specific authorization from the Mayor, or the Mayor's designee.

4. TERM: This Agreement shall become effective upon execution by both parties and shall remain in effect for no longer than **two-hundred fifty (250) days** from the date of the Notice of Proceed.

5. TERMINATION: The City reserves the right to cancel the agreement without cause with a minimum seven (7) business day's written notice. Termination or cancellation of the agreement will not relieve the Contractor of any obligations or liabilities resulting from any acts committed by the Contractor prior to the termination of the agreement. The Contractor may cancel the resulting agreement with 90 calendar day's written notice to the City. Failure to provide proper notice to the City may result in the Contractor being barred from future business with the City.

5.1 Termination for Default: The City shall notify, in writing, the Contractor of deficiencies or default in the performance of its duties under the Agreement. Three (3) separate documented instances of deficiency or failure to perform in accordance with the specifications contained herein shall constitute cause for termination for default. It shall be at the City's discretion whether to exercise the right to terminate. Contractor shall not be found in default for events arising due to acts of God.

5.2 Termination for City's Convenience: The performance of work under this agreement may be terminated for convenience should the City determine it is in the best interest of the City. Any such termination shall be affected by the delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the agreement is terminated and the date upon which such termination becomes effective. Upon such termination for convenience, Contractor shall be entitled to payment, in accordance with the payment provisions, for services rendered up to the termination date, and the City shall have no other obligations to Contractor. Contractor shall be obligated to continue performance of agreement services, in accordance with the agreement, until the termination date and shall have no further obligation to perform services after the termination date.

5.3 City may terminate this agreement at any time in accordance with Section 287.135 Florida Statutes, as may be amended.

6. RESPONSIBILITIES OF CONTRACTOR: In addition to all other responsibilities provided herein, Contractor expressly understands and agrees that, through the above-referenced assigned personnel, it shall perform all the services required in the Scope of Services, and further agrees as follows:

6.1 Contractor may retain subcontractors to provide any of the services contemplated herein. Said subcontractors shall be used at the sole expense of Contractor, under the direct supervision of Contractor and with the prior written approval of City.

6.2 Contractor expressly acknowledges that all documents, logos, marketing and advertising material, plans, designs, reports, and specifications related to the project and acquired or created by Contractor shall remain, at all times the property of City and Contractor. Contractor, therefore, shall preserve and maintain said records and shall immediately provide copies of them to City upon termination of this Agreement.

7. WARRANTY OF CONTRACTOR: Contractor does hereby expressly warrant and guarantee the services provided hereunder from all defects, failures, faulty construction, and inconsistency with plans, or damage, other than that resulting from reasonable wear and tear or actions of third parties, for a period of one year from the acceptance of the work by City. If such a claim occurs, Contractor shall immediately act to repair, replace, and restore the damaged work or, if applicable, reconstruct the work to make it completely and strictly comply with the agreement documents. All warranty services provided hereunder shall be performed at Contractor's sole expense, including materials and labor. It is expressly agreed and understood that this warranty shall not apply to materials and equipment normally expected to deteriorate or wear out or become subject to normal repair and replacement before their condition is discovered. Additionally, Contractor shall not be required to do normal maintenance work under this provision. Failure of the Contractor to substantially act within thirty (30) days of notice of a claim hereunder shall entitle City, at its sole option, to replace

or repair the subject defect and to recover the reasonable costs of said repair from Contractor. The enforcement of the warranty provision shall not be deemed a waiver of any rights that City may have to declare Contractor in breach of the terms of this agreement and to pursue all available legal remedies.

8. **RESPONSIBILITIES OF CITY:** The City shall provide full information, as reasonably directed by Contractor, regarding the requirements of the project.

9. **AUTHORIZED REPRESENTATIVE OF THE CITY:** During the term of this Agreement, the City's Superintendent of Public Works, or his/her authorized representative shall be the designated representative authorized to act on behalf of the City, as provided by law, with respect to the project, and shall serve as the City's Contract Administrator or Owner's Representative.

10. **INSURANCE PROVIDED BY CONTRACTOR:**

10.1 The Contractor shall, at its sole cost and expense, procure and maintain throughout the term of this Agreement insurance coverage in such amounts as required and authorized by Florida law, and will provide endorsed certificates of insurance generated and executed by a licensed insurance broker, brokerage, or similar licensed insurance professional evidencing such coverage, and naming the City as additional insured, as well as furnishing the City with certificates of insurance. The insurance coverages procured by the Contractor as required by this Agreement shall be considered, and the Contractor agrees that the insurance coverages it procures as required by this Agreement shall be considered, as primary insurance over and above any other insurance or self-insurance, available to the City, and that any other insurance or self-insurance available to the City shall be considered secondary to, or in excess of, the insurance coverage(s) procured by the Contractor as required by this Agreement. Nothing herein shall be construed to extend the City's liability beyond that provided in Section 768.28, Florida Statutes, or any other applicable law.

10.2 The Contractor shall secure, pay for, and file with the City, prior to commencing any Services under this Agreement, all certificates for workers' compensation, public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto in at least the following minimum amounts with specific amounts to prevail if greater than minimum amounts are indicated. Notwithstanding any other provision of the Agreement, the Contractor shall provide the minimum limits of liability insurance coverage as follows:

Auto Liability	\$1,000,000	Combined Single Limit
General Liability	\$2,000,000	Aggregate
	\$2,000,000	Products Aggregate

	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
Additional Umbrella	\$1,000,000	Occurrence/Aggregate
Professional Liability	\$1,000,000	Per Claim/Aggregate

The Contractor shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, the City of Holmes Beach named as an additional insured on its General Liability and Automobile Liability policies on a PRIMARY and NON-CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, (combination of CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations, is acceptable) including a waiver of subrogation clause in favor of the City on all policies. The Contractor shall maintain the General Liability and Professional Liability insurance coverages summarized above with coverage continuing in full force, including the additional insured endorsement on the General Liability policy until at least three (3) years beyond completion and delivery of the Services agreed upon herein.

Notwithstanding any other provision of the Agreement, the Contractor shall maintain complete workers' compensation coverage for every employee, principal, officer, representative, or agent of the Contractor who is performing any labor, services, or material under the Agreement. Further, with respect to Employers' Liability, Contractor shall additionally maintain the following minimum limits of coverage:

Bodily Injury Each Accident	\$1,000,000
Bodily Injury/Disease/Employee	\$1,000,000
Bodily Injury/Disease/Policy Limit	\$1,000,000
Bodily Injury Each Accident	\$1,000,000
Bodily Injury by Disease Each Employee	\$1,000,000
Bodily Injury by Disease Policy Limit	\$1,000,000

10.3 The Contractor's insurance policies shall be endorsed to give thirty (30) days written notice to the City in the event of cancellation or material change. The Contractor will comply with all safety regulations required by any agency or regulatory body including but not limited to OSHA. The Contractor will notify the City immediately by telephone at (941) 779-3332 of any accident or injury to anyone that occurs on the services site and is related to any of the services being performed by the Contractor.

10.4 Nothing herein shall be construed to extend the City's liability beyond that provided in Section 768.28, Florida Statutes, or any other applicable law.

- 10.5** If during the period which an insurance company is providing the coverage required by this Agreement, an insurance company shall: 1) lose its Certificate of Authority, 2) no longer comply with any applicable Florida Law, or 3) fail to maintain the Best Rating and Financial Size Category, Contractor shall, as soon as it has knowledge of any such circumstance, immediately notify City and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until the Contractor has replaced the unacceptable insurer with an insurer acceptable to City, the Contractor shall be deemed in default of this Agreement.
- 10.6** The maintenance of insurance coverage as provided herein shall not be construed to limit or have the effect of limiting Contractor 's liability to City under the provision of any clause or paragraph contained in this Agreement.
- 10.7** Notwithstanding anything to the contrary in this Agreement, neither party shall have any liability to the other party for indirect, consequential, or special damages including, but not limited to, liability or damages for delays of any nature, loss of anticipated revenues or profits, costs of shutdown or startup whether such damages are based on contract, tort including negligence, strict liability or otherwise.
- 11. INDEMNIFICATION:** The Contractor assumes all risk of loss or injury to property or persons caused by its performance of this Agreement. The Contractor agrees to indemnify and hold harmless the City and its agents, directors, employees, officers, and servants from and against all such suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses, or expenses, including but not limited reasonable attorney's fees caused by a willful or negligent act or omission under this Agreement by the Contractor's officers and employees and any suppliers or subcontractors. The City's liability hereunder is subject to the limitations and provisions of Section 768.28, Florida Statutes, and any other applicable law limiting the City's liability, and nothing herein shall be deemed to waive the sovereign immunity of the City. The obligation to indemnify the City shall include the duty to defend the City and its officials and employees in any action arising out of this Agreement.
- 12. PROHIBITION AGAINST CONTINGENT FEES:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee/contractor working solely for Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of making of this agreement. For breach or violation of this provision, in addition to all remedies available to City, City shall have the right to terminate this agreement without liability and to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

Sage Kamiya
Superintendent of Public Works/City Engineer
City of Holmes Beach
5801 Marina Drive
Holmes Beach, Florida 34217
skamiya@holmesbeachfl.org

Contractor: Rondell Newson
Owner
118 SW 21st Terrace
Cape Coral, Florida 33991
ronnewson@icloud.com

17. GENERAL PROVISIONS:

- 17.1** Assignment and Disclosure of Intellectual Property. All original works of authorship that are made by the Contractor or its representatives (solely or jointly with others), within the scope of, those described as works for hire and during the period of City's agreement with the Contractor and that are protectable by copyright as that term is defined in the United States Copyright Act and that the Contractor will be considered the author thereof and shall have expressly authorized the use thereof by City for all purposes consistent with this Agreement. Any reuse of the Work described above without written verification or adaptation by Contractor, as appropriate, for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to Contractor. Any future verification or adaptation of such Work will entitle Contractor to further compensation at rates to be agreed upon by City and Contractor.
- 17.2** Pre-suit Mediation: Prior to, and as a condition precedent to the commencement of any lawsuit or administrative proceeding to resolve any disputes arising out of this Agreement the parties agree that the dispute first shall be summited to non-binding mediation before a business mediation organization approved by the parties. Such mediation shall be held at the City's offices at the address set forth in this Agreement. The parties shall bear the costs of the mediation equally.
- 17.3** Attorneys' Fees and Costs: Should any party to the Agreement be required to sue to enforce its rights under this Agreement, the prevailing party in such litigation shall be entitled to receive from the non-prevailing party its expenses, fees, and costs, including reasonable attorney's fees, for all pre-lawsuit, lawsuit, and appellate proceedings. The same prevailing party provision shall apply to any arbitration proceedings if the parties agree to resolve a contractual dispute through arbitration.
- 17.4** Controlling Law and Venue: The Contractor and the City agree this Agreement shall be controlled and governed by the laws of the State of Florida. Venue for any legal

proceedings brought under this Agreement shall be in Manatee County, Florida, and the state courts of Manatee County shall have jurisdiction to hear any proceeding brought under this Agreement.

- 17.5** Remedies: Upon receipt of notice of any defective materials, labor, or work or other failure in the monitoring system provided by the Contractor, the Contractor shall remedy or replace defective programs, materials, equipment or remedy any faulty workmanship within ten (10) calendar days of receipt of notice. This guarantee and warranty provision does not create any limitations on the City as to any claims or legal actions for breach of guaranty or breach of warranty that the City may have against the Contractor or others and does not constitute an exclusive remedy against the Contractor or any other person or entity that provides materials, equipment, or labor for the project.
- 17.6** Relationship of Parties: The parties agree that the Contractor is an independent contractor and the relationship between the City and the Contractor is not that of employer and employee.
- 17.7** Assignment: This Agreement shall be binding upon the parties and shall not be assignable, provided that any request for assignment to a non-affiliated third party by the Contractor shall not be effective unless approved by the City's Board of Commissioners.
- 17.8** Severability: If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.
- 17.9** Amendment: This Agreement may be amended, and its material provisions may be waived, only by written instrument expressly approved for the City by the City's Board of Commissioners and for the Contractor by a named officer and only if properly executed by all the parties to this Agreement.
- 17.10** Waiver: The waiver by City of breach of any provision of this agreement shall not be construed or operate as a waiver of any subsequent breach of such provision or of such provision itself and shall in no way affect the enforcement of any other provisions of this agreement.
- 17.11** Entire Agreement: This agreement, including the documents incorporated by reference, contains the entire understanding of the parties hereto and supersedes all prior and contemporaneous agreements between the parties with respect to the performance of services by Contractor.

17.12 Non-Exclusive Contract: Contractor agrees and understands that the contract shall not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical products/services at its sole option.

17.13 Annual Appropriation: The Contractor acknowledges that during any fiscal year, the City shall not expend money, incur any liability, or enter into any Agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any Agreement, verbal or written, the City may enter into in violation of this fiscal limitation is null and void, and no money shall be paid on such Agreement. The City may enter into Agreements which the duration exceeds one (1) year; however, any such Agreement shall be executory only for the value of the services to be rendered which the City agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the City's performance and obligation to pay the Contractor under this Agreement is contingent upon an annual appropriation being made for that purpose.

17.14 Affidavit of Anti-Human Trafficking: Contractor shall provide City with a no-coercion affidavit in compliance with Section 787.06(1), Florida Statutes, upon execution of this Agreement and any subsequent extensions or renewals.

17.15 Compliance with Law: The Contractor shall perform all the work required under this Agreement in accordance with applicable federal, state, and local statutes, ordinances, rules, and regulations, whether or not expressly set forth in the Agreement Documents. The Contractor shall maintain all required State and local licenses that are required to perform the work and supply the equipment under this Agreement, including registration with "Sunbiz.org" as required by applicable Florida law. The required licenses shall remain valid during the entire term of this Agreement. The Contractor shall provide the City with a copy of all required licenses upon request.

In accordance with Section 448.095(2), Florida Statutes, the Contractor shall comply with all E-Verify requirements in its hiring practices. This Agreement shall be subject to termination as provided in Section 448.095(2), Florida Statutes if the City determines that the Contractor is not in compliance with the requirements of that provision.

17.16 Conflict of Interest: The Contractor shall be required to disclose prior to signing this Agreement the name of any officer, director, employee, or agent who may be employed by the City or otherwise affiliated with the City. The Contractor shall disclose the name of any City official or employee who owns, directly or indirectly, any interest in the Contractor's company or any affiliated business entity. Any additional conflicts of interest that may occur during the term of the Agreement must be disclosed to the City immediately upon discovery of the conflict or potential conflict.

17.17 Federal and State Taxes: The City is exempt from Federal Tax and State Sales and Use Taxes. Upon written request, the City will provide an exemption certificate to the Contractor. The Contractor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor shall the Contractor be authorized to use the City's Tax Exemption Number in securing such materials.

17.18 Access and Audits: The Contractor shall maintain adequate records to justify all charges and costs incurred in performing the Services for at least three (3) years after completion of this Agreement. The City shall have access to all books, records, and documents that the Contractor must maintain in accordance with this Agreement for the purpose of inspection or audit during the Contractor's normal business hours at its usual place of business. If the City determines that the City has overpaid the Contractor because the Contractor has misrepresented its billable time or reimbursable expenses, the Contractor shall deliver the full amount of any overpayment to the City. If the City incurs any fees, costs, or expenses to recover the overpayment amount including, but not limited to, administrative accounting and attorneys' fees, costs, and expenses, then the Contractor must pay the City the full amount of the same as such fees, costs, and expenses come due.

If the City determines that the Contractor has under-billed the City because the Contractor has miscalculated any reimbursable items or rates after submitting the invoice in accordance with this Agreement, the Contractor waives any claim for additional payment for those services or reimbursable items. All invoices submitted to the City pursuant to this Agreement are subject to audit and demand for refund of overpayment for a time period extending three (3) years beyond the expiration or earlier termination of this Agreement.

17.19 Public Records: Pursuant to Section 119.0701, Florida Statutes, the Contractor agrees to:

- (a) Keep and maintain public records required by the public agency to perform the service and supply goods and materials;
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in the Florida Public Records Act or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the public agency; and

(d) Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS ANY QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 941-708-5800, EXTENSION 226, OR CITYCLERK@HOLMESBEACHFL.ORG, 5801 MARINA DRIVE, HOLMES BEACH, FL 34217.

IN WITNESS WHEREOF, the Parties have signed this Agreement:

CITY OF HOLMES BEACH:

NEWSON CONSTRUCTION AND CONSULTING, LLC

By: _____
Judy Titsworth, Mayor

By:  _____

Title: Owner

Date: _____

Date: 9/3/24

ATTEST:

Stacey Johnston, City Clerk