

SERVICE AGREEMENT
For
BEACH ACCESS ENGINEERING PROJECT

THIS AGREEMENT, entered into this ___ day of ____ 202_, by and between _____, hereinafter called the “Consultant”, and the Board of Parks and Recreation of the Town of Beverly Shores, Indiana, hereinafter called the “Town”.

WITNESSETH THAT:

WHEREAS, the Town has determined a need for engineering services to evaluate, analyze, and design beach access infrastructure along Lake Michigan.

WHEREAS, the Consultant has specialized skills, knowledge, and assets with respect to the provision of said services, and thereby fulfills the requisite qualifications;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Consultant as Independent Contractor.** The Town shall engage the Consultant as an independent consultant and not as an agent of the Town, and the Consultant agrees to provide the Engineering Services described in Exhibit 1 attached hereto and incorporated herein. The Consultant will be responsible for all soil borings, surveys and code compliance with State and Federal Regulations as well as any other code, rule, or regulation applicable throughout the duration of this agreement. The Consultant agrees to provide services consistent with the terms contained within this Agreement and related Exhibits, as same may be amended in writing from time to time, by the Consultant and the Town. The foregoing services shall be performed to the satisfaction of the Town pursuant to the terms of this Agreement. Said services shall be in full conformance with all appropriate federal, state and industry standards and regulations.

The scope of this Agreement and the Work is defined by the following exhibits which are attached hereto and incorporated herein by reference:

Exhibits

1. Work Scope
2. Fee Structure
3. Summary Manhour Estimate

4. Certificates
 - B-3 -- Eligible Proposer Certificate
 - B-4 -- Lower Tier Certificate
 - C -- Restrictions on Lobbying Certificate
 - F – Certification regarding Debarment
 - G – Nondiscrimination Certificate

- H -- Drug Free Workplace Certificate
- I -- Certificate of Qualification
- J -- Non-collusion Affidavit
- K -- E-Verify Affidavit
- L -- Certificate regarding Investment Activities in Iran

Consultant understands that the representations contained within Exhibit 2 are material terms of this Agreement. Failure to conform, misstatement of fact, or other misrepresentation with respect to said certificates listed above may result in this Agreement's termination for default.

2. **Definitions.** As used in this Agreement, the following terms when capitalized as in this Section and documents appended hereto, shall have the following meanings:

Agreement -- This Agreement, including, but not limited to, those General Conditions, Work Scope, exhibits, appendices, and attachments thereto.

Contract Officer -- The Town Council President or their written designee.

Contract Price -- The cost to provide the Work, as has been agreed to by both parties, as same is defined within this Agreement.

Consultant --

Effective Date -- The date that this Agreement and the obligations of the parties herein shall become effective.

General Conditions -- The terms and conditions of this Agreement, which set each party's responsibility to the other and to the associated funding and regulatory agencies.

IDEM -- The Indiana Department of Environmental Management, and any successor entity, if any.

Project Manager -- The Town Council President or their written designee.

Town -- The Town of Beverly Shores, Indiana, an Indiana municipal corporation and political subdivision.

USEPA -- The United States Environmental Protection Agency, and its successor entity, if any.

Work -- The labor and services necessary for the timely accomplishment of the services contracted under this Agreement.

Work Scope -- The General, Special and Technical Conditions defining requirements of this Agreement.

3. **Scope of Work.** The Consultant agrees to provide, as an independent consultant and not as an agent of the Town, and the Consultant agrees to provide the Engineering Services to the satisfaction of the Town pursuant to the terms of this Agreement including, but not limited to, the Specifications set forth at Exhibit 1 - Work Scope ("Work"). Unless otherwise required in writing by the Town, said services shall be in full conformance with all appropriate federal, state, and industry standards and regulations. Work is to be completed no later than _____, 202____.

4. **Compensation.** The Town agrees to pay the Consultant for services rendered at the per diem rates inclusive of all expenses.

The Town will compensate Consultant a maximum amount of _____ over the term of the Contract, to the satisfaction of the Town.

5. **Payment Stipulations.** The Consultant may submit invoices for payments not more frequently than once every thirty (30) days. The address for submittal of invoices is:

Town of Beverly Shores
Attention: Clerk-Treasurer
PO Box 38
Beverly Shores, IN 46301

As a precondition to payment, the Consultant shall specify its performance of all or part of the Work in full conformance with this Agreement and that the Consultant is entitled to receive the amount requested. The Town shall have the right to withhold payment on all, part, or none of the performed Work until same is completed to the Town's full satisfaction. Said request for payment shall be submitted on forms required and approved by the Town, shall be submitted for payment in accordance with usual Town procedure, and shall be paid within thirty (30) days as usual procedure permits.

6. **Prompt Payment.** The prime contractor agrees to pay each subcontractor (whether DBE or non-DBE) under this prime contract for satisfactory performance of its contract no later than 30 calendar days from its receipt of each payment from the Town.

The prime contractor agrees further to return retainage payments to each subcontractor within 30 calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from these time frames may occur only for good cause following written approval of the Town of the prime contractor's written request for such a delay or postponement. The request for delay or postponement must state the reasons for the request in sufficient detail as to permit the Town to make a determination on the request. The decision to allow a delay or postponement shall rest solely and exclusively with the Town.

Absent written approval from the Town for a delay or postponement, and upon receipt by the Town of written notification from the subcontractor that prompt payment requirements have not been met, the Town may withhold reimbursement from future prime contractor invoices for amounts

due to subcontractors for satisfactory work unless and until the prime contractor takes corrective action by paying its subcontractors any past due amounts promptly in accordance with this requirement and also assuring, in writing, that future payments will be so made. A prime contractor who does not take such corrective action when required to do so will not be permitted to bid on future projects involving subcontractors unless and until a written assurance of compliance with prompt payment provisions is provided to the Town. the Town reserves the right to determine that a prime contractor who has not met prompt payment provisions is not a responsible bidder for future contracts.

7. **Insurance.** Prior to and during all times when the Contractor and its subcontractors, if any, are present on Town property under the terms of this Contract, the Contractor and its subcontractors shall purchase and maintain the following insurance coverage from any responsible carrier(s) rated "A-VII" or better by Best's Review. The total cost of the premiums for such insurance coverage shall be at the sole expense of the Contractor, and/or its subcontractor(s):

A. **Comprehensive General Liability Insurance:** A general liability policy to protect the Contractor from claims for bodily injury, death or property damage as may arise in the performance of Contractor's services as identified in this Contract. Such coverage is to be equal to or greater that the following limits:

\$2,000,000	General Aggregate
\$1,000,000	Each Occurrence
\$ 750,000	Per Person Bodily Injury or Death
\$ 250,000	Property Damage
\$ 50,000	Damage to Premises Rented to You (Fire Damage)
\$ 10,000	Medical Payments

The Contractor's general liability coverage is to be primary and non-contributory, including completed operation. The CG2010 10\01 and CG2037 10\01 endorsement forms or their equivalent shall be used. Said insurance policy shall list the Town of Beverly Shores, the Beverly Shores Redevelopment Commission, the Beverly Shores Redevelopment Authority, and the United States of America as additional insureds. Contractor expressly agrees to waive any right of subrogation against the Town of Beverly Shores, the Beverly Shores Redevelopment Commission, the Beverly Shores Redevelopment Authority, and the United States of America.

B. **Workers' Compensation:** The Contractor and its subcontractors shall furnish evidence, with respect to the operations they perform, of worker's compensation insurance complying in all respects with the requirements of the state where the work is to be performed, covering their employee's, including, but not limited to, compliance with the required monetary limits of worker's compensation insurance.

C. **Automobile Liability:** A One Million Dollar (\$1,000,000.00) combined single limit for all damages in any one occurrence is required for any accidents that arise out of the use

of all owned, non-owned, hired, rented or leased vehicles which bear or are required to bear license plates according to the laws of the State of Indiana and which are not covered under the comprehensive general liability of the Contractor or its Subcontractors. The policy shall name the Town of Beverly Shores as an additional insured.

D. Commercial Umbrella Liability. The Contractor shall secure and maintain a commercial umbrella policy to protect it from claims for bodily jury, death or property damage as may arise in the performance of Contractor's services as identified in this Contract. Such coverage is to be equal to or greater than the following limits:

\$2,000,000	Each Occurrence
\$4,000,000	Aggregate

The umbrella coverage should provide coverage excess the primary coverage and, at a minimum, should follow the form of the underlying insurance policies as outlined above.

All insurances required of the Contractor within this Contract are primary to any other insurance purchased by or to the benefit of the Town of Beverly Shores.

Any insurance purchased by or to the benefit of the Town of Beverly Shores and all subsidiaries and affiliated companies is secondary and non-contributory to the insurance required of the Contractor as outlined in this Contract

E. Professional Liability Errors and Omissions Policy: The Consultant and its subcontractors shall furnish evidence, with respect to the operations they perform, of professional liability (errors and omissions) insurance complying with the statutes of the State of Indiana. Coverage under this policy for the consultant shall have limits of liability of not less than Two Million Dollars (\$2,000,000.00) per occurrence and shall be primary and non-contributory. For subcontractors, coverage under this policy shall have limits of liability of not less than One Million Dollars (\$1,000,000.00) per occurrence and shall be primary and non-contributory.

Failure to carry or keep such insurance in force for until all Services provided are satisfactorily completed or to reinstate same when entry on Town property is required shall constitute a violation of the Agreement and subject Consultant to immediate termination of the rights granted under this Agreement. The Consultant shall furnish the Town with properly endorsed certificates of insurance for comprehensive general liability, workers compensation, automobile liability insurance and Professional Liability Errors and Omissions coverages. All certificates shall provide for written notice to the Town at least thirty (30) days in advance of cancellation.

The insurance must be in a form acceptable to the Town within five (5) days from the date that the Consultant and the Town sign an Agreement concerning the Work to be covered by insurance.

8. Term. Except for the indemnification obligations contained within Section 32 (Indemnification), this Agreement shall expire upon final payment.

9. **Notices.** Except as otherwise provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers, services of process or other documents required by or associated with this Agreement shall be written in English and shall be delivered to, or deposited postage prepaid in the registered or certified mails of the United States addressed to, or if delivered in person to the Town at:

Town of Beverly Shores
Attention: Town Council President
PO Box 38
Beverly Shores, IN 46301

For the Consultant:

or to such person and at such other address as either party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a party when received at its address set forth or designated as above provided.

10. **Certification.** Consultant will provide all required certifications and test results to verify that work is consistent with Exhibit 1 (Work Scope). Any misrepresentation contained therein shall be grounds for termination pursuant to Section 30 (Termination for Default).

11. **The Work, Generally.** The work shall in every respect be in accordance with the best modern practice, and whenever the Work Scope or directions of the Town admit of a doubt as to what is permissible or fail to note the quality of any work, the interpretation which calls for the best quality of work is to be followed.

Any approval given by the Town pursuant to any provision of the Agreement of work, methods or procedure shall not release Consultant from its full responsibility for the accurate and complete performance of the Work in accordance with the Work Scope or from any duty, obligation or liability imposed upon it by this Agreement.

After execution of the Agreement, Consultant will, if reasonably required by the Town, prepare a detailed analysis of specific bid items for use by the Town in administering change orders.

If Consultant is required to furnish an analysis of bid, the Town will provide it with the necessary forms. Consultant shall complete such forms and return them to the Town within fifteen (15) calendar days after such forms are received by it.

12. **Force Majeure.** Not applicable to this Agreement.

13. **Amendment.** No modification, amendment, addition to, or termination of this Agreement, nor waiver of any of its provisions shall be valid or enforceable unless it is in writing and signed by both parties.

14. **Employment of Competent Workers.** The Consultant represents that it has, or will secure at its own expense, all personnel required in performing the Consultant's services under this Agreement. Such personnel shall not be employees of or have any other contractual relationships with the Town. All personnel engaged in the Work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services. Any subcontracting beyond that detailed in the Consultant's proposal and agreed to by the Town shall require the Town's prior written approval. In its sole discretion and without right of administrative review, the Town shall have the right to bar any of Consultant's employees who conduct themselves in an unsafe or otherwise improper manner while on Town property. The provisions of this Section shall extend to subcontractors.

15. **Ineligible Consultants and Subcontractors.** Any firm, person, or other entity appearing upon the list of ineligible contractors for Federally financed and assisted contracts or construction projects, as published by the Comptroller General of the United States, shall not be eligible to act as a subcontractor for the Consultant, pursuant to this or any other agreement associated with this project. In the event Consultant is placed on the Comptroller General's list of ineligible contractors for Federally financed or assisted contracts or construction projects prior to or during performance of this Agreement, this Agreement may be canceled, terminated for default, or suspended by the Town. The Consultant agrees, that as a condition to current eligibility and present responsibility for this Agreement, as well as continuing eligibility and present responsibility that it is not now listed and will remain unlisted in any federal or state contractor debarment or suspension list. In the event that Consultant is placed on such a list during the pendency of this Agreement, Consultant agrees to provide the Town with timely notice of said listing.

16. **Changes.**

a. The Town may, from time to time, request changes in the scope of the Work to be performed under this Agreement. Such changes which are mutually agreed and approved by the parties shall be incorporated as written amendments to this Agreement.

Any change proposed by the Consultant to this Agreement including, but not limited to, changes in the amount of work or compensation shall be submitted to the Town in writing for its prior approval. If approved, the Town will make the change by a written modification. Acknowledgment and signing of the Agreement indicates that the Consultant will abide by the rules in order for payment to be made.

Changes in the Work necessitated by laws or regulations enacted or promulgated after the date of this Agreement award shall constitute contract changes and shall be governed by the terms of this Section.

b. Either party may submit proposed changes for consideration by the other party. Changes which are mutually agreed as to scope and price shall be set forth as a written

change order and incorporated into this Agreement. Changes in the Work necessitated by laws or regulations enacted or promulgated after the date of the contract award shall also constitute contract changes. In the event that the parties are unable to agree on the effect of such changes, the matter shall be resolved in accordance with Section 33 (Disputes).

c. The Project Manager or Contract Officer may at any time, by a written order, propose changes within the general scope of this Agreement, in any one or more of the following:

1. Drawings, designs, or specifications;
2. Method of shipment or packing;
3. Place of delivery; and
4. Increase or decrease in the scope, duration, or quantity of requested work.

Such proposals shall reflect the Town's expected adjustment to the cost or delivery schedule of the Agreement arising from the proposed change.

17. **Claims.** The following procedure shall govern the processing of any claim of the Consultant resulting from changes in this Agreement for the work contracted:

a. The claim and any documentation for the claim shall be submitted in writing to the Project Manager or Contract Officer within fifteen (15) days from the date of receipt of the notification of change, by the Consultant.

b. Within thirty (30) days from the receipt of the claim the Town shall respond in one of the following ways:

- (1) Approve the claim.
- (2) Deny the claim. If denied, the matter becomes a disputed issue of fact which may, at the Consultant's election, be resolved in accordance with Section 33 (Disputes).
- (3) Request necessary information from the Consultant to enable the Town to resolve the claim. In this instance, the Town shall render its decision on the claim within forty-five (45) days of its receipt of the requested information.

c. Judicial review of any determination shall always be available to any party in accordance with state or federal law.

18. **Consultant Representations.** Consultant represents and warrants:

- a. That it is financially solvent, and that it is authorized by the laws of the state of its incorporation, the State of Indiana and any and all locations where the work is to be performed.
- b. That the prime consultant represents any subcontractors it uses are to be experienced, capable of performing the work, financially solvent, and that it is authorized by the laws of the state of its incorporation, the State of Indiana and any and all locations where the work is to be performed, and that it has adequate facilities, sufficient technical expertise, and experienced labor to enable it to perform the Work and to complete it within the time required.
- c. That it will comply with all general and special federal, state and municipal local laws, ordinances and regulations, if any, which may in any way affect the Work or its performance, or those employed thereunder, and with the appropriate professional standards referred to in the Work Scope or otherwise appropriate in relation to the Work. The Consultant shall indemnify the Town from all fines or penalties assessed against the Town arising out of Consultant's performance of this Agreement.
- d. That it has carefully examined this Agreement including all relevant exhibits, and that from its own investigation it has satisfied itself as to the nature of the Work, the character of the equipment and other facilities needed to perform the Work, and all other matters which may in any way affect the Work or its performance.
- e. That those who sign this Agreement are also authorized to do so, with the full ability to commit and bind Consultant to this Agreement and the terms and conditions herein.
- f. Except possibly as a shareholder of the Consultant's publicly held parent corporation, that to the best of its knowledge, no member, director, officer, agent or employee of the Town is personally interested directly or indirectly in this Agreement or the compensation to be paid thereunder; and that no representation, statement or promise, oral or in writing, of the Town or its members, directors, officers, agents or employees has induced it to enter into this Agreement excepting only those contained in the Agreement itself.
- g. That no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Consultant for the purpose of securing business. For breach or violation of this warranty, the Town shall have the right to cancel this Agreement without liability or, at its sole discretion, to deduct from this Agreement all of the compensation or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

h. That it has not offered or given gratuities (in the form of entertainment or otherwise) to any official or employee of the Town with a view toward securing favorable treatment in the award, amendment or evaluation of this Agreement.

i. The Consultant covenants that he presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of services required to be performed under this Agreement. The Consultant further covenants that, in the performance of this Agreement, no person having any such interest shall be employed.

19. **Restrictions on Lobbying.** Consultants, their Subcontractors, or other lower tiers who receive or expect to receive One Hundred Thousand Dollars (\$100,000.00) or more in compensation from the Consultant, who apply or bid for an award of One Hundred Thousand Dollars (\$100,000.00) or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." The Consultant and Subcontractors, if any, certify that the entity will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Consultant and Subcontractors, if applicable, shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from Consultant tier to Consultant for delivery to the Town.

20. **The Project Manager or Contract Officer.** The Town's President, at their option, may designate in writing any person to act as the Project Manager or Contract Officer or one person to act as Project Manager and one person to act as Contract Officer, and delegate authority on behalf of the Town to determine the quality, acceptability and fitness of the Work and to interpret or provide the Town's interpretation of the Work Scope or of any extra work orders or agreements. Upon request, the Project Manager or Contract Officer will confirm in writing any oral order, direction, requirement or determination. In the performance of the Work, Consultant shall conform to all orders, directions and requirements of the Project Manager or Contract Officer, provided they are in compliance with the Work Scope. The Work shall at all stages be subject to his or their inspection.

21. **Environmental Requirements.** The Consultant recognizes that many Federal and State statutes imposing environmental, resource conservation, and energy requirements may apply to this Agreement. Some, but not all, of the major Federal laws that may affect this Agreement include: the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq.; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. 1251, and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. The Consultant also recognizes that the Environmental Protective Agency (EPA), the Federal Highway Administration (FHWA) and other agencies of the Federal Government have issued and are expected in the future to issue

requirements in the form of regulations, guidelines, standards, orders, or other directives that may affect this Agreement. Accordingly, the Consultant agrees to adhere to, and impose on its Subcontractors, any such Federal requirements, as the Government may now or in the future promulgate.

22. **Civil Rights Obligations.** The following requirements apply to the underlying Agreement:

a. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations.

b. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying Agreement:

(1) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age.

(3) **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity

Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities.

c. Disadvantaged Business Enterprise. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The requirements of 49 CFR Part 23 are incorporated in this Agreement by reference. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Town deems appropriate.

d. The Consultant also agrees to include these requirements in each sub-contractor agreement.

23. Employee Protections. The Consultant agrees to comply with and assures compliance by other approved Consultants and subcontractors employed by Consultant with applicable employee protection requirements for nonconstruction employees of Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, and implementing U.S. DOL regulations, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act), 29 CFR Part 5.

24. Fair Labor Standards. The requirements of the clauses contained in 29 CFR § 5.5 (b) are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR § 5.1. The Consultant shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of this Agreement for all laborers and mechanics, including guards and watchmen, working on this Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this clause shall be made available by the Consultant for inspection, copying, or transcription by authorized representatives of the Town, and the Consultant will permit such representatives to interview employees during working hours on the job.

25. Notice to the Town of Labor Disputes. Whenever the Consultant has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, the Consultant shall immediately give notice thereof, including all relevant information with respect thereto, to the Town.

The Consultant agrees to insert the substance of this sentence in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Agreement except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime consultant, as the case may be, of all relevant information with respect to such dispute.

26. **Final Payment: Release.** Unless otherwise specifically communicated to the Town in writing prior to acceptance, the acceptance by Consultant or any person claiming under it of the final payment for the Work, whether such payment be made pursuant to any judgment or order of any Court or otherwise, shall be and shall operate as a release to the Town from all claim and liability for anything theretofore done or furnished for, or default by the Town, its trustees, officers, agents or employees, relating to or affecting the Work, except only the claim against the Town for the remainder, if any there be, of the amounts kept or retained as provided in the Agreement.

27. **Patent, Copyright and Other Rights:**

a. If, in accordance with this Contract, Contractor furnishes research or development services in connection with the performance of the Work and if, in the course of such research or development, patentable subject matter is produced by Contractor, its officers, agents, employees, subcontractors or suppliers, then subject to the last sentence of this paragraph, the Town shall have, without cost or expense to it, an irrevocable, non-exclusive, royalty-free license to make, have made, and use, either itself or themselves or by anyone on its or their behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Town. Promptly upon request by the Town, Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to the Town, but as between Contractor and the Town the license herein provided for shall nevertheless arise for the benefit of the Town immediately upon the production of said subject matter and shall not await formal exemplification in a written license agreement as provided for above. In any case, however, if any patentable subject matter referred to in the first sentence of the paragraph is produced by a subcontractor or supplier, and, if, after the exercise of its best efforts to have such subcontractor or supplier furnish the form of license provided for in the second sentence of this paragraph, Contractor is unable to have such subcontractor or supplier do so, then the license referred to in the first sentence of this paragraph shall not be deemed to have arisen with respect to such subcontractor or supplier, and Contractor shall have no further obligation to procure the form of license referred to in the second sentence of this paragraph.

b. The right to use all patented material, compositions of matter, manufacturers, apparatus, appliances, processes of manufacture or types of construction as part of the Work shall be obtained by Contractor without separate or additional compensation, whether the same is patented before, during or after the performance of the Work.

c. Subject to the provisions set forth below in this paragraph, Contractor shall indemnify the Town, its directors, officers, agents and employees against and save them harmless from all loss and expense incurred in the defense, settlement or satisfaction of any claims in the nature of patent infringement arising out of or in connection with the use, in accordance with the preceding two paragraphs, of such patentable subject matter or patented material, compositions of matter, manufacturers, apparatus, appliances, processes of manufacture or types of construction; provided, however, that nothing in this Contract shall be construed to require Contractor to procure a patent license for or indemnify the aforementioned parties against patent claims arising out of or in connection with any patentable subject matter or patented material, compositions of matter, manufacturers, apparatus, appliances, processes or manufacture or types of construction, if the complete details of the patented or patentable aspects thereof are contained in the Contract Documents in their present form to be of such manufacture, and, if there is a patent infringement and if Contractor notifies the Town of such probability within ten (10) days after such order, then if the Town does not cancel such order, it shall not be entitled, with respect to such item, to the indemnity provided for in the first sentence of the paragraph and the Town shall indemnify Contractor against and save it harmless from all loss and expense incurred by Contractor in the defense, settlement or satisfaction of any claims in the nature of patent infringement arising out of or in connection with the use of such item in the Goods provided that (1) the Town is afforded the opportunity before any action is taken by Contractor to contest said claim in the manner and to the extent that the Town may choose and to settle or satisfy said claim, and such attorney as the Town may designate is authorized to act for the purpose of contesting, settling and satisfying said claim and (2) Contractor gives immediate notice to the Town of any such claim, cooperates with the Town and its designated attorney in contesting said claim and furnishes promptly to the Town and said attorney all information and documents necessary or convenient for contesting said claim, said information and documents to be preserved for six (6) years after the date of payment for the last unit of Goods delivered or longer if such a claim is pending or threatened at the end of such six (6) years. If the Town elects to contest any such claim, it will bear the expense of such contest. If requested by the Town and if notified promptly in writing of any claim as to which Contractor shall conduct all negotiations with respect to, and defend, such claim without expense to the Town. If the Town is enjoined from using the equipment or any portion thereof as to which Contractor is to indemnify the Town against patent claims, the Town may, at its option, and without thereby limiting any other right it may have hereunder at law or in equity, require Contractor to supply at its own expense, temporarily or permanently, facilities not subject to such injunction and not infringing any patent, and if Contractor fails to do so, Contractor shall, at its expense, remove all such facilities and refund the costs of the offending equipment to the Town or take such steps as may be necessary to insure compliance by the Town with such injunction, to the satisfaction of the Town.

- e. All drawings, parts, lists, data and other papers, to include electronic files, of any type whatsoever, whether in the form of writing, figures of delineations, which have been or may be received by from the Contractor, at any time either prior to of subsequent to the execution of this Contract and which are prepared in connection with the Contract and submitted to the Town shall become the property of the Town. Except to the extent that rights are reserved to others under existing valid patents and are not given to the Town under this paragraph, the Town shall have the right to use or permit the use of all such drawings, data, and other papers, and also any oral information of any nature whatsoever received by the Town, and any ideas or methods represented by such papers and information, for any purposes and at any time without other compensation than that specifically provided herein, and no such papers or information shall be deemed to have been given in confidence and any statement or legend to the contrary on any of said drawings, data, or other papers shall be void and of no effect.

28. **Termination for Convenience:** The Town may, at its sole discretion, terminate this Agreement, in whole or in part, at any time by giving written notice to the Consultant. The Consultant shall be paid only its costs, including close-out costs, and a reasonable profit on work performed up to the time of termination with respect to the work task. The final determination concerning what constitutes proper close-out costs and a reasonable profit shall be determined by the Town, in its sole discretion, which determination shall be final and conclusive upon the parties to this Agreement. The Consultant shall promptly submit its proposed termination claim to the Town. If the Consultant has any property in its possession paid for by or belonging to the Town, the Consultant will account for the same, and dispose of it in the manner the Town directs.

29. **Termination for Default:**

a. If Consultant does not perform in accordance with all terms of this Contract, or any part thereof, including in accordance with any schedule or any extension thereof or, in the absence of such a schedule in a timely manner; or if the Consultant fails to comply with any other provision of the Contract, or so fails to make progress as to endanger performance of the Contract in accordance with its terms, and in either of these two latter circumstances does not cure such failure within a period of fifteen (15) calendar days after receipt of notice from the Town specifying such failure, the Town shall have the following rights and remedies in addition to any others provided by law:

(1) If the Consultant fails to perform the services within the time specified in this Contract or any extension or if the Consultant fails to comply with any other provisions of this Contract, the Town may terminate this Contract for default. The Town shall terminate by delivering to the Consultant a Notice of Termination specifying the nature of the default. The Consultant will only be paid the contract price for services performed in accordance with the manner or performance set forth in this Contract.

In this event, the Town may take over the work and complete it by contract. The Consultant shall be liable for monetary or other damages to the Town resulting from the Consultant's refusal or failure to complete the work within specified time, whether or not the Consultant's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Town over the contract amount in order to have the work completed.

Additionally, the Consultant shall pay to the Town any and all attorney's fees incurred by the Town pertaining to Consultant's default, whether or not litigations ensues, and all costs of the Town's paid staff incurred in order to remedy the default and/or complete the Work.

(2) The right to declare the Consultant in default and to terminate the Contract as to any part of the Services not yet completed as defined by Section 3 (Scope of Work), herein; in any event reserving to the Town its rights to actual damages, liquidated or otherwise arising out of any such takeover or default.

b. If, after notice of termination of the Contract, it is determined for any reason that the Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if notice of termination had been issued pursuant to Section 29 (Termination For Convenience).

30. **Limitations**. No suit, action or proceeding shall lie or be maintained by Consultant against the Town upon any claim relating to, arising out of or based upon the Agreement, unless such suit, action or proceeding shall be commenced within one (1) year after the date that the Town tenders final payment under the Agreement; or upon any claim relating to monies permitted or required to be retained for any period after final payment, unless commenced within six (6) months after the Town tenders payment of such monies become due and payable under the terms of the Agreement; or, if this Agreement is terminated or declared abandoned by the Town as herein provided, unless commenced within six (6) months after the date of such termination or declaration of abandonment.

31. **Indemnification**.

a. Notwithstanding any other terms and conditions stated herein, including any obligations regarding insurance coverage, the Consultant shall defend, indemnify, keep, save and hold harmless the Town, its agents, officials and employees, against all claims, suits or judgments, costs or expenses, including attorney's reasonable fees, that may be based on the resultant error, omission, or other negligent or wrongful act, including willful or intentional tortious conduct, of the Consultant or of any person employed or engaged by the Consultant to perform the services provided under this Agreement. The aforementioned indemnification provision shall survive the termination of this Agreement insofar as it relates to any claim or incident which occurred during the period of this Agreement but is raised after expiration of the Agreement.

b. Consultant shall be solely responsible for all physical injuries (including death) to persons (including, but not limited to, employees of the Consultant and its subcontractors and directors, officers, agents, and employees of the Town) or damage to property (including, but not limited to, property of the Town or Consultant or its subcontractors) arising out of the Consultant's performance of the services provided pursuant to this Agreement, and shall assume the defense of the Town, except for such injury, death, or damage which is solely related to the negligent, wrongful or intentional acts or omissions of the Town or any of its Directors, Officers, Agents, other contractors or their subcontractors or employees. This responsibility shall include, but is not limited to, liability for the payment of worker's compensation under worker's compensations laws and of judgments under the Federal Employer's Liability Act, and Consultant specifically covenants to make all such payments and pay all such judgments, irrespective of whether the injuries involved arose from the negligence of the injured employee of the Consultant or its subcontractor.

32. **Disputes.**

a. Except for the other rights and remedies reserved to the Town elsewhere within this Agreement, any dispute or question arising under this Agreement, which is not disposed of, shall be decided by the Project Manager or Contract Officer, who shall reduce his decision to writing and forward by certified mail, a copy thereof to the Consultant. The Consultant shall abide by the decision of the Project Manager or Contract Officer.

b. Pending final disposition of a dispute hereunder, the Consultant shall carry on the production schedule and continue to maintain all progress schedules unless otherwise agreed to by the Project Manager or Contract Officer and the Consultant in writing.

33. **Attorney's Fees / Indiana Law and Courts.** The following requirements apply to the underlying Agreement:

a. Attorney's Fees - The Contractor shall pay to the Town any and all attorney's fees incurred by the Town pertaining to Contractor's default, whether or not litigation ensues, and whether or not the Town has terminated this Contract due to Contractor's default, along with all costs of the Town's paid staff and other consultants incurred in order to remedy the default and/or to complete the Work.

b. Indiana Law and Courts - This Agreement is to be construed and enforced pursuant to the laws of the State of Indiana. The parties agree and the Contractor specifically acknowledges that the sole and exclusive venue for any lawsuit filed as a result of this Agreement shall be the Superior or Circuit Court of Porter County, Indiana.

34. **Entire Agreement.** This Agreement, together with any other documents expressly incorporated into same, contain the entire agreement between the parties hereto. There are no prior or contemporaneous oral or written understandings or agreements binding the Town affecting the subject matter of this Agreement other than those expressly referred to herein. No agreement, other understanding, acknowledgment, invoice, or other form used by the Consultant, in any way purporting to modify or alter the provisions of this Agreement, will be binding upon the Town unless made in writing and signed by both parties, except that a termination or declaration of abandonment shall be effective when signed by the party initiating same.

35. **Program Fraud and False or Fraudulent Statements or Related Acts.**

a. The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or causes to be made, pertaining to the Agreement. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

b. The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

c. The Consultant agrees to include the above two clauses in each sub-contractor agreement. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

36. **Third Party Benefits.** Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon any person, firm, or corporation, other than the parties thereto and their successors and assigns, any right, remedy, claim or benefit under or by reason of this Agreement or of any term, covenant or condition hereof.

37. **Taxes, Duties, Etc.** Consultant covenants and agrees to pay all Federal, State and Municipal taxes, assessments and charges arising out of or in connection with the performance of the Work or the furnishing or completion of the Work, all to the end that the prices set forth in this Agreement shall be "laid down" and/or "net".

Inasmuch as the Town is exempt from payment of state and municipal taxes in the State of Indiana, Consultant shall not include or add to the price to be paid for any materials or services provided in

relation to the Work any possible sales, occupation, service, or use taxes with respect to the materials or services provided hereunder or the transfer or delivery of any such materials or services to the Town. In the event any claim is made against Consultant for payment of any such taxes, the Town shall be promptly notified and afforded the opportunity, before payment of any such taxes, to contest said claim in the manner and to the extent it may choose and to settle or satisfy such claim. In the event Consultant shall be required to pay any such taxes, the Town shall reimburse Consultant therefore, but Consultant shall assign to the Town any rights with respect to refund thereof, and shall cooperate with the Town in connection with any contest thereof, and shall furnish all information or documents necessary or convenient for contesting same.

38. **Assignment.** Consultant shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or its right, title or interest therein, or its power to execute such Agreement to any other person, firm or corporation without the previous consent, in writing, of the Town. Approval by the Town is not required for the assignment of monies due or to become due under this Agreement. Notice of any such assignment or transfer shall be furnished promptly to the Town.

39. **Audit, Inspection, and Retention of Records.**

a. The Consultant agrees to provide the Town, or any of their authorized representatives access, during Consultant's normal office hours, to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

b. The Consultant agrees to permit the Town's Clerk-Treasurer, or their authorized representatives, to inspect all Work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Consultant and its sub-contractors directly pertinent to this Agreement. The Consultant agrees to require each third party contractor whose contract award is not based on competitive bidding procedures to permit the Town, or its duly authorized representative, to inspect all work, materials, payrolls, and other data and records directly pertinent to said Agreement, and to audit the books, records, and accounts directly pertinent to said Agreement as it affects this Agreement.

c. The Consultant agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claim arising from the performance of this Agreement, in which case upon written notice, Consultant agrees to maintain same until the Town, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

d. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

40. **Severability.** This Agreement is executed by all parties under current interpretations of applicable federal, state or local statutes, ordinances, laws and regulations. Each and every separate division (paragraph, clause, conditions, covenant, agreement, section, or subsection) herein contained shall have independent and severable status from each other, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall have no effect on the validity or enforceability of each and every other separate division herein contained, or any other combination thereof.

41. **Loss of Federal or State or Local Funding.**

a. In the event that this Agreement involves multiple year funding, the Consultant understands that this Agreement is subject to continued funding from the Town of Beverly Shores, the State of Indiana, and/or the United States. The Consultant also understands that the loss of continued funding from any of these sources shall limit the Town's financial obligation to pay for that work delivered as of the date that funding is lost. In the event that the Town determines, at its sole discretion, that sufficient funds are not available from these sources to pay any remaining unpaid part or parts of this Agreement, the Town may immediately terminate any obligations to purchase said undelivered Work, and the Town shall have no further financial obligations under this Agreement for said undelivered Work, but shall remain obligated for any Work completed until such termination. At such time as the Town should cease its Agreement payments for lack of funds, the Town at that time shall also relieve the Consultant of any further obligations under this Agreement. The foregoing rights are recognized as separate and distinct from the parties' rights to termination set forth elsewhere within the Agreement and General Conditions.

b. The Consultant agrees to include the above clause in each sub-contractor agreement. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

42. **Subcontracting.** Any subcontracting not specified in this Agreement requires the Town's prior written advance approval.

43. **Liens.** The Consultant shall not create or suffer to exist any lien or encumbrance on the Work or any other property owned or controlled by the Town. Any Agreement entered into by

Consultant providing for Work to be manufactured on or delivered to Town property shall provide that no lien may be placed upon such property. The Town may require waivers of lien prior to making payment under this Agreement.

44. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts and may be executed by facsimile or electronic signature, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. **Interpretation.** The headings contained in this Agreement are inserted for convenience only and shall not constitute a part hereof. The language used in this Agreement is language developed and chosen by all parties to express their mutual intent and no rule of strict construction shall be applied against any party.

46. **Authority.** Each party warrants that it has all of the requisite authority to execute this Agreement and to carry out all obligations under this Agreement.

47. **Binding Nature of Agreement.** The terms of this Agreement shall be binding and effective upon all the parties to it. Unless and until terminated as provided above, this Agreement shall also inure to the benefit of and be binding upon the parties' successors, lessees, heirs, executors, administrators, assigns, and legal or personal representatives.

48. **Notice of Federal Requirements.**

a. **Federal Laws and Regulations.** The Consultant understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date this Agreement was executed may be modified from time to time. The Consultant agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date this Agreement has been executed and may apply to this Agreement. To achieve compliance with changing Federal requirements, the Consultant agrees to include in all sub-contractor agreements specific notice that Federal requirements may change and the changed requirements will apply to the project as required. All limits or standards set forth in this Agreement to be observed in the performance of this Agreement are minimum requirements.

b. **State or Territorial Law and Local Law.** Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in this Agreement shall require the Consultant to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of this Agreement violate any applicable State or territorial law, or if compliance with the provisions of this Agreement would require the Consultant to violate any applicable State or territorial law, the Consultant agrees to notify the Town immediately in writing in order that the Town and the Consultant may make appropriate arrangements to proceed with this Agreement as soon as possible.

49. **Fly America**. Not applicable to this Agreement.
50. **Buy America**: Not applicable to this Agreement
51. **Effective Date**: This Contract and the obligations of the parties herein shall be effective as of this _____2022.

IN WITNESS WHEREOF, the Town and Consultant have caused this Agreement to be executed on the day and year first above written.

By: _____

Date: _____

Attest:

TOWN OF BEVERLY SHORES

By: _____

Date: _____

President, Board of Parks and Recreation

Attest:

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Agreement No. _____

SERVICE AGREEMENT

Between

and the

**BOARD OF PARKS AND RECREATION,
TOWN OF BEVERLY SHORES, INDIANA**

WORK SCOPE

Exhibit 1

FEE STRUCTURE

SUMMARY MANHOUR ESTIMATE

CERTIFICATES

Exhibit 4