

RESOLUTION 21-120

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH ATKINS NORTH AMERICA, INC. FOR CONSTRUCTION ENGINEERING INSPECTION SERVICES FOR THE ALF COLEMAN ROAD SIDEWALK LIGHTING AND RESURFACING PROJECT IN A NOT TO EXCEED AMOUNT OF \$198,354.82.

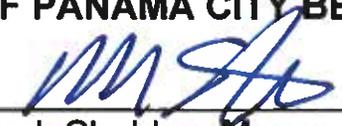
BE IT RESOLVED that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Agreement between the City and Atkins North America, Inc., relating to Construction Engineering and Inspection Services for the Alf Coleman Road Sidewalk Lighting and Resurfacing Project, in the basic amount of One Hundred Ninety Eight Thousand, Three Hundred Fifty Four Dollars and Eighty-Two Cents (\$198,354.82), in substantially the form attached and presented to the Council today, draft dated March 2, 2021, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 25th day March, 2021.

CITY OF PANAMA CITY BEACH

By: _____


Mark Sheldon, Mayor

ATTEST:



Lynne Fasone, City Clerk

**AGREEMENT FOR CIVIL ENGINEERING SERVICES
FOR CONSTRUCTION ENGINEERING AND INSPECTION
OF ALF COLEMAN ROAD SIDEWALK, LIGHTING AND
RESURFACING PROJECT**

THIS AGREEMENT, dated _____, 2021, is entered into by the **CITY OF PANAMA CITY BEACH**, a political subdivision of the State of Florida (hereinafter called CITY) and Atkins (hereinafter called CONSULTANT). The City and the Consultant also may be referred to individually as a "Party" or collectively as the "Parties."

Recitals

The City issued a Request for Proposal ("RFP") for civil engineering services relating to the construction engineering and inspection (CEI) for the **Alf Coleman Road Sidewalk, Lighting and Resurfacing Project**. The Consultant submitted a response, dated November 10, 2020, to the RFP, and the City, after evaluation of the responses received, selected the Consultant for an award of a contract for the CEI services. The City and the Consultant now desire to enter into a contract providing for the furnishing of such services upon the terms and subject to the conditions set forth herein.

The parties therefore agree as follows:

OBJECTIVE

The Consultant shall furnish construction engineering and inspection (CEI) services, as requested by the City, for the construction of **Alf Coleman Road Sidewalk, Lighting and Resurfacing Project**. ("Project"). The consulting services to be performed are generally described in the Scope of Services of this Agreement and is by reference incorporated herein.

CONTRACT TERM

The Scope of Services to be rendered by the Consultant shall be completed in accordance with the project schedule included in this agreement. The commencement date for services shall be the date specified in the written notice to proceed from the City's Project Manager.

Changes to such project schedule shall be subject to mutual agreement of the City and Consultant.

COMPENSATION

For the satisfactory completion of the Scope of Services, the Consultant shall be paid a total sum not to exceed \$_____. The method of payment under this Agreement will be based on SPECIFIC RATES OF COMPENSATION. The compensation shall be payable monthly based upon the proportionate amount of work completed and accepted by the CITY. The total amounts payable with respect to services rendered during each Project activity shall not exceed the amounts set forth in this agreement, unless modified by an amendment executed by the City and Consultant.

The Consultant shall submit invoices to the designated Project Manager.

The City shall pay the Consultant's invoices in accordance with the Florida Local Government Prompt Payment Act, Section 218.70, et.seq, Florida Statutes.

ADDITIONAL OBLIGATIONS OF THE CONSULTANT AND CITY

The City and the Consultant acknowledge the relation of trust and confidence established each to the other, and each Party agrees to cooperate with the other in every respect in advancing project interests. Specifically, but without limitation, the Consultant covenants with the City to perform its service to the standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and under the same or similar conditions face by Consultant. The Consultant acknowledges that the City reserves the right to provide to the Consultant from time to time, suggested approaches to problems and revisions to the work products.

When requested, and not at the expense of the Consultant, the City will furnish maps, drawings, records, audits, annual reports, and other data that are available in the

files of the City and which are required for the work undertaken pursuant to this Agreement. If the work to be undertaken will require substantial information or documents from the City's records, Consultant shall identify those requirements to the Project Manager. The City will also examine studies, reports, sketches, drawings, specifications, proposal, and other documents presented by the Consultant and render decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.

The City shall give prompt written notice to the Consultant whenever the City observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services, or any defect or non-conformance in the services performed by the Consultant or any sub-consultant.

The Consultant shall provide, to the City, copies of drawings, reports, specifications and other necessary information identified in this Agreement in electronic form or electronic data for incorporation into the instruments of service as is required for the completion of the Project. CAD files of all construction documents will be provided to the Consultant for record.

The Consultant shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Consultant during the term of this Agreement, including subconsultants assigned by the Consultant to perform work pursuant to the Contract. The E-Verify form is included as an Attachment to this agreement.

INDEMNIFICATION

The contractor/consultant shall indemnify and hold harmless the City, its officers and employees and the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Consultant and persons employed or utilized by the Consultant in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained

in this paragraph is intended to nor shall it constitute a waiver of the State of Florida or the City's sovereign immunity.

INSURANCE

Prior to commencing work, Consultant shall procure and maintain at Consultant's own cost and expense for the duration of the Agreement, the following insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of Services hereunder by Consultant, its agents, representatives, employees or sub-consultants. The cost of such insurance shall be borne by Consultant.

Consultant shall maintain the following coverage with limits no less than the indicated amounts:

- (a) Commercial General/Umbrella Liability Insurance - \$1,000,000 limit per occurrence for property damage and bodily injury. The service provider should indicate in its proposal whether the coverage is provided on a claim- made or preferably on an occurrence basis. The insurance shall include coverage for the following:
 - i. Premise/Operations
 - ii. Explosion, Collapse and Underground Property Damage Hazard
(only when applicable to the project)
 - iii. Products/Completed Operations
 - iv. Contractual
 - v. Independent Consultants
 - vi. Broad Form Property Damage
 - vii. Personal Injury

- (b) Business Automobile/Umbrella Liability Insurance - \$1,000,000 limit per accident for property damage and personal injury.
 - i. Owned/Leased Autos
 - ii. Non-Owned Autos

iii. Hired Autos

- (c) Workers' Compensation and Employers'/Umbrella Liability Insurance - Workers' Compensation statutory limits as required by Chapter 440, Florida Statutes. This policy should include Employers'/Umbrella Liability Coverage for \$1,000,000 per accident.

- (d) Professional Liability Insurance - \$1,000,000 (ultimate loss value per occurrence).

Other Insurance Provisions

- (a) Commercial General Liability and Automobile Liability Coverage's
 - (i) City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, leased or used by Consultant or premises on which Consultant is performing Services on behalf of City. The coverage shall contain no special limitations on the scope of protection afforded to City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers.
 - (ii) The Consultant's insurance coverage shall be primary insurance as respects City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers shall be excess of Consultant's insurance and shall not contribute with it.
 - (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City , members of its City

Council, boards, commissions and committees, officers, agents, employees and volunteers.

(iv) Coverage shall state that Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) **Workers' Compensation and Employers' Liability and Property Coverage's**

The insurer shall agree to waive all rights of subrogation against City , member of its City . Council, boards, commissions and committees, officers, agents, employees and volunteers for losses arising from activities and operations of Consultant in the performance of Services under this Agreement.

(c) **All Coverages**

Each insurance policy required by this Article shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to City in accordance with this Agreement.

(a) If Consultant, for any reason, fails to maintain insurance coverage that is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City , at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach.

(b) Alternatively, City may purchase such required insurance coverage (but has no special obligation to do so), and without further notice to Consultant, City may deduct from sums due to Consultant any premium costs advanced by City for such insurance.

(c) City shall be named as an additional insured on General Liability and Auto policies.

Deductibles

Any deductibles must be declared to and approved by City . At the option of City , the insurer shall reduce or eliminate such deductibles as respects City , members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers; or Consultant shall procure a bond guaranteeing payment of losses, related investigation, claim administration and defense expenses.

Acceptability of Insurers

Insurance is to be placed with Florida admitted insurers rated B+X or better by A.M. Best's rating service.

Verification of Coverage

Consultant shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be submitted with the proposal as a first peer review. Upon execution of the contract documents, the certificates and endorsements are to be received and approved by City before work commences.

Sub-consultants and Subcontractors

Consultant will obtain certificates of insurance from any subconsultant, otherwise the Consultant must provide evidence satisfactory to the City that coverage is afforded to the subconsultant or subcontractor by the Consultant's insurance policies.

NONDISCRIMINATION IN EMPLOYMENT

By the execution of this Agreement, the Consultant agrees to and assures the City of the following:

- The Consultant will not discriminate against any employee or applicant for employment because of race, creed, sex, age, disability,

marital status, color or national origin. The Consultant will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, disability, marital status, color or national origin. 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.

- The Consultant agrees to post in a conspicuous place, available to employees and applicants, notices setting forth the provisions of this nondiscrimination clause.
- The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that the firm is an Equal Opportunity Employer.
- In the event that the Consultant does not comply with these assurances of nondiscrimination, this Agreement may be canceled, terminated, or suspended in whole or part.

CONTRACT RECORDS

The City shall have access to all books, documents, papers, and records of the Consultant directly pertinent to this Agreement to making audit, examination, excerpts, and transcriptions. The Consultant shall maintain all required records and other records pertinent to this Agreement for five (5) years after the City makes final payment and all other pending matters are closed.

OWNERSHIP OF DOCUMENTS

The term "City Design Documents" or "City Construction Documents" shall mean any and all documents prepared by City staff, or by other consultants to the City, relating to design or construction of the Project, including but not limited to prints, Mylar's, plans, tracings, drawings, design data, details, design premises, calculations, survey notes and survey records, sketches, models, computer files, reports, specifications,

technical provisions, and as-built plans. All documents shall be and remain the property of the City , and the City shall retain all common law, statutory and other reserved rights, including the copyright. These documents shall not to be used on other work by the Consultant or be provided to third parties and shall be returned to the City at the conclusion or termination of this Agreement.

All designs, drawings, specifications, data and information prepared by Consultant shall be the property of the City , but the City hereby grants to the Consultant an irrevocable right to use the foregoing in its business. The Consultant shall deliver all originals (hard copy and/or electronic file) of all such documents to the City upon completion of Consultant's work under this Agreement. Without written verification or adaptation by the Consultant for the specific purpose intended, such documents are not intended or represented to be suitable for reuse by the City or others for any project other than that for which they were originally prepared.

ERRORS AND OMMISIONS

Acceptance of the work by the City or Agreement termination does not constitute City approval and will not relieve the Consultant of the responsibility for subsequent corrections of any errors and/or omissions and the clarification of any ambiguities. The Consultant shall make all necessary revisions or corrections resulting from errors and/or omissions on the part of the Consultant without additional compensation. If these errors and/or omissions are discovered during the construction of the project, they shall be corrected without additional compensation.

TERMINATION OR SUSPENSION OF PROJECT

The City may, by written notice to the Consultant, suspend any or all of the Consultant's obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected or the City may terminate this Agreement in whole or in part at any time the interest of the City requires such termination.

If the City determines that the performance of the Consultant is not satisfactory, the

City shall notify the Consultant of the deficiency in writing with a requirement that the deficiency be corrected within thirty (30) days of such notice. Such notice shall provide reasonable specificity to the Consultant of the deficiency that requires correction. If the deficiency is not corrected within such period, the City may either (1) immediately terminate the Agreement as set forth in paragraph below, or (2) take whatever action is deemed appropriate by the City to correct the deficiency. In the event the City chooses to take action and not terminate the Agreement, the Consultant shall, upon demand, promptly reimburse the City for any and all costs and expenses incurred by the City in correcting the deficiency.

If the City terminates the Agreement with cause or for convenience, the City shall notify the Consultant of such termination in writing at least fourteen (14) days in advance. The notice from the City shall include instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

If the Agreement is terminated before the Project is completed, the Consultant shall be paid only for the percentage of the Project satisfactorily performed for which costs can be substantiated. Such payment, however, shall not exceed the equivalent percentage of the contract price. All work in progress will become the property of the City and will be turned over promptly by the Consultant.

The City reserves the right to unilaterally cancel this Agreement for refusal by the Consultant or any sub-consultant to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement unless the records are exempt.

Upon receipt of any final termination or suspension notice under this paragraph 10, the Consultant shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to a minimum the costs upon the basis of which the financing is to be computed; or (b) furnish a statement of the Project activities and contracts and other

undertakings the cost of which are otherwise includable as Project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the City or upon the basis of terms and conditions imposed by the City upon the failure of the Consultant to furnish the schedule, plan, and estimate within a reasonable time. The closing out of the Project shall not constitute a waiver of any claim which the City may otherwise have arising out of this Agreement.

PROHIBITION AGAINST CONTINGENT FEES

In compliance with Sections 287.055(5)(a), and (6)(a), Florida Statutes, the Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant, a fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of the Agreement. Any breach or violation of this warranty shall entitle the City to terminate the Agreement without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

CONFLICT OF INTEREST

The Consultant hereby certifies that it will completely disclose to the City all facts bearing upon any possible conflicts, direct or indirect, with its performance which it believes that any officer, employee, or agent of the Consultant now has or will have. Said disclosure shall be made by the Consultant contemporaneously with the execution of this Agreement and at any time thereafter that such facts become known to the Consultant. The Consultant at all times shall perform its obligations under this Agreement in a manner consistent with the best interests of the City . Failure to abide by this section shall result in the immediate termination of this Agreement. No member, officer or employee of the City or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

LUMP SUM OR COST-PLUS FIXED FEE CONTRACTS

The Consultant certifies that the wage rates and other factual unit costs supporting the contract compensation are accurate, complete, and current at the time of contracting. Furthermore, to the extent that such wage rates and other factual unit costs are found by the City to be inaccurate, incomplete, or non-current, the original price for such Agreement and any additions there to shall be adjusted to exclude any increases in the compensation paid to Consultant due to such circumstances. A determination of allowable costs in accordance with the Federal cost principles will be performed for services rendered under this Agreement.

GENERAL PROVISIONS

- Consultant shall not assign any of their rights or obligations under this Agreement without prior approval by the City .
- Consultant shall be responsible for the actions of any and all of their subcontractors and consultants. Neither subcontractors nor any sub-consultants shall interface directly with the City .
- This Agreement shall be construed and interpreted in accordance with Florida Law. Venue for any action brought in relation to this Agreement shall be placed in a court of competent jurisdiction in Bay County, Florida. If any provision of this Agreement is subsequently held invalid, the remaining provisions shall continue in effect.
- Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same or any other terms, conditions, or acts; but the same shall be and remain at all times in full force and effect.

- If written notice to a party is required under this Agreement, such notice shall be given by hand delivery, recognized overnight delivery service, or by first class mail, registered and return receipt requested, as follows:

To the City:

David O. Campbell, PE
CRA Manager
116 South Arnold Drive
Panama City Beach, FL 32413
850-233-5100

To the Consultant:

Eric Rosenstein
Senior Project Engineer
3522 Thomasville Road, 5th Floor
Tallahassee, FL 32309
850-580-7859

- A party's timely performance of its obligations under this Agreement, only to the extent such performance is specifically affected thereby, shall be suspended, without forfeiture of any performance bond or the incurring of any financial liability, when and for as long as performance of such obligations is prevented by reason of any of the following cases: (i) acts of God, including without limitation severe weather events, (ii) operation of law, and (iii) any other event beyond the reasonable control of the party whose performance is affected, to the extent not caused by such party's willful or negligent acts or omissions, except in those cases where that party could have reasonably foreseen and reasonably avoided the occurrence. The party affected by any such event shall give written notice thereof to the other party as soon as practicable after it becomes aware of such an event and, to the extent practicable, shall specify the anticipated length of the delay. The affected party shall use reasonable efforts to minimize the impact of that delay on that party's performance. Additionally, neither party shall be liable to the other for damages caused by such events.

- The Consultant will be allowed to photograph the finished product at their own expense and use said photography for marketing purposes. Such marketing cannot state or imply endorsement of the Party by the City.
- The Consultant shall be evaluated within sixty (60) days upon completion of the project. The evaluation will provide an indication of the designer's ability to develop practical, accurate, complete and cost-effective construction plans. The Consultant shall be given the opportunity to give written comments in response to the completed evaluation.
- If, after Project completion, any claim is made by the City resulting from an audit or for work or services performed pursuant to this Agreement, the City may offset such amount from payments due for work or services done under any agreement which it has with the Consultant owing such amount if, upon demand, payment of the amount is not made within 60 days to the City . Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the City . In no event shall the making by the City of any payment to the Consultant constitute or be construed as a waiver by the City of any breach of covenant or any default which may then exist on the part of the Consultant and the making of such payment by the City , while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the City with respect to such breach or default.

Inspector General Cooperation

City and Consultant agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.

Public Entity Crimes

As required by Florida State Statute 287.133(2)(a), "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or a public work, may not submit proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier,

subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s.287.017 for CATEGORY TWO [\$35,000] for a period of 36 months from the date of being placed on the convicted vendor list.” Moreover, any person must notify the City within 30 days after a conviction of a public entity crime applicable to that person or to an affiliate of that person.

The selected Consultant shall implement and meet the requirements for a drug-free workplace. Certification provided in Agreement.

The Vendor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Certification and details provided in this agreement.

This project is a Federal Aid Contract. All terms included in the Local Agency Program Federal-Aid Terms for Professional Services Contracts (FDOT Form 375-040-84) shall be incorporated into this contract and any sub-consultants.

MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

NOTWITHSTANDING ANYTHING TO THE CONTRARY, ON BEHALF OF THEMSELVES, THEIR GOVERNING OFFICERS AND EMPLOYEES, THE PARTIES WAIVE ALL CLAIMS AGAINST EACH OTHER FOR CONSEQUENTIAL LOSSES OR DAMAGES, AND PUNITIVE DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, EXCESS CONSTRUCTION COSTS, ALTERNATIVE CONSTRUCTION MEANS OR METHODS, OR LOSSES OF FUNDING.

FORMS AND ATTACHMENTS

The following attachments are hereby incorporated as part of the contract documents: FDOT Form can be found at the following link: <https://fms.fdot.gov/>
Attachment A – Representations/Certifications Federal Form W-9 (www.irs.gov)

Attachment B – Local Agency Program Federal-Aid Terms for Professional Services Contracts
(FDOT Form 375-040-84)

Attachment C – DBE Bid Package Information (FDOT Form 275-030-11)

Attachment D – Certification regarding Debarment, Suspension, Ineligibility and Voluntary
Exclusion for Federal Aid Contracts (FDOT Form #375-030-32)

Attachment E – Certification for Disclosure of Lobbying Activities on Federal Aid Contracts
(FDOT Form #375-030-33 and if necessary #375-030-034)

Attachment F – FHWA Form 1273

Attachment G – Truth in Negotiation Certification (FDOT Form #375-030-30)

Attachment H – U.S. Department of Homeland Security's E-Verify form
(<https://www.uscis.gov/i-9>)

Attachment I – Conflict of Interest/Confidentiality Certification (FDOT Form #375-030-50)

Attachment J – Drug Free Workplace Program Certification

Attachment K – Public Records Form (FDOT Form #375-030-61)

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed,
the day and year first above written.

The City of Panama City Beach

17007 Panama City Beach Parkway
Panama City Beach , FL 32428

Contractor

Address

License No. _____

Fed. Tax I.D.No. _____

By: 
Signature

Al Shortt/ Interim City Manager
Name and Title

Attest: 
[SEAL]

By: _____
Signature

Name and Title

Attest: _____
[SEAL]