

RESOLUTION 17-92

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING A MASTER SERVICES AGREEMENT WITH DEWBERRY ENGINEERS, INC. RELATED TO THE ENGINEERING SERVICES FOR MAJOR STORMWATER PROJECTS; APPROVING A TASK ORDER IN A LUMP SUM AMOUNT OF \$83,775 FOR STORMWATER MASTER PLAN MODELING UPDATE.

BE IT RESOLVED that the appropriate Officers of the City are authorized to execute and deliver on behalf of the City that certain Master Services Agreement between the City and Dewberry Engineers, Inc., relating to professional stormwater engineering services, draft dated May 16, 2017, in substantially the form and at the rates attached as Exhibit A to this Resolution and presented to the Council, with such changes, insertions or omissions as may be approved by the City Manager and whose execution of such Agreement shall be conclusive evidence of such approval.

AND BE IT FURTHER RESOLVED that the appropriate Officers of the City are authorized but not required to execute and deliver on behalf of the City that certain Task Order No. 2017-01 to the Master Services Agreement between the City and Dewberry Engineers, Inc., relating to the City Stormwater Master Plan Modeling Update, for a lump sum amount of Eighty Three Thousand Seven Hundred Seventy Five Dollars (\$83,775), in substantially the form attached as Exhibit B and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager whose execution of such Agreement shall be conclusive evidence of such approval.

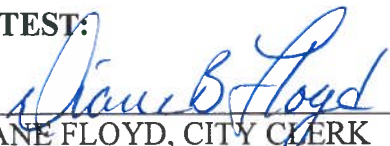
THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 25th day of May, 2017.

CITY OF PANAMA CITY BEACH

By 
MIKE THOMAS, MAYOR

ATTEST:


DIANE FLOYD, CITY CLERK



CITY OF PANAMA CITY BEACH AGENDA ITEM SUMMARY

1. DEPARTMENT MAKING REQUEST/NAME: Public Works / Paul Casto	2. MEETING DATE: 5/25/2017
3. REQUESTED MOTION/ACTION: Approval of the master services agreement and also approval of the first task order which includes analysis and updates of the City's stormwater master plan model through a master services contract with Dewberry/ Preble-Rish Engineers, Inc. in the amount of \$83,775.00.	
4. AGENDA PRESENTATION <input type="checkbox"/> PUBLIC HEARING <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> REGULAR <input type="checkbox"/>	5. IS THIS ITEM BUDGETED (IF APPLICABLE) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO N/A <input type="checkbox"/> BUDGET AMENDMENT OR N/A DETAILED BUDGET AMENDMENT ATTACHED <input type="checkbox"/> YES <input type="checkbox"/> NO N/A <input checked="" type="checkbox"/>
6. BACKGROUND: (WHY IS THE ACTION NECESSARY, WHAT GOAL WILL BE ACHIEVED) <p>The City hired CDM Smith to create the original stormwater masterplan in May 2007. The master services agreement with CDM was terminated November 8, 2016. Based on the resolution that was approved January 12, 2017, staff has negotiated a master services agreement with Dewberry/Preble-Rish as a consultant for Professional Stormwater Engineering Services. There has been significant development since then and we are in need of an updated model to serve as a planning tool on a modeling platform (ICPR) which is utilized by many consultant's and regulatory agencies including FEMA. The proposed effort will provide the ability for the City to accurately account for potential stormwater impacts from proposed developments within City limits and provide an accurate model to serve as a future capital improvements planning tool to address existing and future stormwater issues within the City.</p> <p>Staff requested and has received a proposed task order number 2017-01 (see Exhibit B Combined Task Order and Notice to Proceed) for work under the Master Services Agreement (MSA) with one of the City's stormwater consultants, Dewberry/Preble-Rish Engineering Inc. The proposed attached will provide services for project management, calibration reconnaissance and surveying, engineering services, quality control.</p> <p>Staff recommends approval of this proposal in the amount of \$83,775.00 and has sufficient funds in this fiscal year stormwater budget for the design work to be completed.</p>	

**MASTER SERVICES AGREEMENT
BETWEEN
CITY OF PANAMA CITY BEACH AND
DEWBERRY ENGINEERS, INC.
RELATING TO
PROFESSIONAL STORMWATER ENGINEERING SERVICES
(Major Analysis, Planning, Design & Constr.)**

THIS AGREEMENT is made and entered into this 16th day of MAY, 2017, by and between the **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (ACity@) and **DEWBERRY ENGINEERS, INC.** (AEngineer@).

PREMISES

WHEREAS, the City desires to have Engineer assist the City with the City stormwater master- plan, including modeling and updates, FEMA floodplain mapping, wetland evaluation and regulatory compliance evaluation, preliminary design of major stormwater improvements.

Work will consist of professional engineering planning, modeling, preliminary design of regional stormwater projects and permitting on a wide variety of general and specialized stormwater projects where at least 70% of the estimated scope is included in the above thresholds and descriptions. Incidental stormwater engineering within the overall scope of the project is also included. This work will be for services including, but not limited to – a) modeling of the stormwater master plan to determine current adequacy of the system and future needs, b) engineering services related to FEMA floodplain mapping and compliance, c) evaluation of floodplain/wetland capacity and adverse effects to stormwater system of proposed projects within floodplain/wetlands, d) identify deficiencies and perform modeling and preliminary design of large scale basin drainage improvements for Citystaff or other consultants, e) NPDES/MS4 system evaluation and permitting and/or other regulatory related stormwater compliance assistance, f) assistance with grant/loan funding, and g) assistance with implementation of new or changed stormwater regulations. The projects shall meet the following criteria:

- a) Related to City construction projects for which construction costs do not exceed \$2,000,000, or
- b) For specific engineering projects or study activities when the fee for such professional engineering service does not exceed \$200,000, or
- c) Related to City stormwater facilities and improvements which are included in the Stormwater Departments then current Five (5) Year Capital Plan, or
- d) Related to sub-services e), f) and g) above.

(collectively the “Professional Services”); and

WHEREAS, the City intends this Agreement to be a cost-effective device for in-house engineering projects, and to augment City Staff in areas where specific expertise is not available, or in some cases where timely accomplishment of budgeted projects requires additional staff support; and

Exhibit A

WHEREAS, the City desires to employ the Engineer for those purposes upon the terms and conditions in this Agreement, and the Engineer is desirous of obtaining such employment and has represented that it is qualified and competent to perform such services upon said terms and conditions;

NOW, THEREFORE, in consideration of the following covenants, it is agreed:

1. SCOPE OF PROFESSIONAL SERVICES:

A. The City retains the Engineer to diligently, competently and timely perform the "Professional Services" on an as-needed basis. Upon request, Engineer will prepare a detailed, project specific scope of work for each task and phase of work to be undertaken in accordance with the general scope of services described in this agreement and in the request for statements of qualification which led to this Agreement. The proposed scope of work shall include a schedule for the work and, separately stated, a proposed fee. The proposed fee shall be (i) a stipulated sum or (ii) a stipulated sum plus one or more specified allowances which may be authorized by the City Manager or his designee or (iii) a fee determined on a time-involved basis at the hourly rates specified on Exhibit A which shall include a maximum cost.

B. If accepted by the City, the proposed scope of work shall be incorporated into a task order in materially the form set forth as Exhibit B (each a Task Order). Each Task Order shall be numbered and dated, incorporate this Agreement and any additional terms related to that specific Task Order, and shall be signed both by the City and by the Engineer. If a term herein conflicts with a term in a Task Order, the term in the Task Order shall control to the extent of such conflict.

C. Engineer acknowledges that the City may, in its sole and unfettered discretion enter agreements with one or more engineering firms to assist the City with general stormwater engineering services for localized construction projects and localized stormwater system upgrades located within drainage sub-basins, including design, permitting and administration of localized capital projects, and that any of those tasks will be outside the scope of this Agreement.

2. COMPENSATION AND PAYMENT:

A. Engineer's compensation for the services described in each scope of work shall be stated or incorporated in the Task Order related to that scope. Hourly compensation shall be determined in increments of one-tenth (1/10) of an hour.

B. In addition, with prior, written authorization by City, the Engineer shall be reimbursed for reasonable out-of-pocket expenses upon submission of adequate documentation. The Engineer shall invoice the City at actual costs times a factor of 1.10 for all out-of-pocket costs including sub-consultants (if required). Records of costs incurred under the terms of this Agreement shall be

maintained by the Engineer and made available to the City during the period of this Agreement, and for one (1) year after the final payment is made. Copies of these documents and records shall be furnished to the City without cost.

C. Upon written instruction by the City, the Engineer shall perform additional work necessary or convenient to complete the services for which a Task Order is entered, and which are mentioned or referenced in this Agreement. The Engineer shall be entitled to additional compensation unless such work is required as a result of error, omission, or negligence by the Engineer. The additional compensation shall be computed by the Engineer on a revised fee quotation proposal and submitted to the City for written approval. If the parties cannot agree, Engineer's initial compensation will be such amount as the City shall determine in good faith to be the fair value of such services, and such amounts shall be paid to Engineer in monthly installments as set forth elsewhere in this Agreement. In the event the City shall unilaterally determine the amount to be paid for such services, Engineer shall have the right, to be exercised by written notice delivered to the City within twenty (20) days after the City Council shall unilaterally determine such amount, to have the value of such services determined by binding arbitration pursuant to the Florida Arbitration Code and in accordance with the rules of the American Arbitration Association. The Engineer and the City each shall select one arbitrator and those two shall select a third. Each arbitrator shall be familiar by trade or occupation with stormwater engineering and construction. The decision of any two (2) arbitrators shall be conclusive and may be enforced in any court of competent jurisdiction in the State of Florida. Each party shall promptly pay when billed, including in advance, one-half of all arbitration fees and costs. The prevailing party shall recover from the other its reasonable attorney's fees and costs, including fees and costs incurred in arbitration and in any action in any court of competent jurisdiction in the State of Florida to enforce the arbitration award, including appeal. Should the arbitrators award Engineer an amount equal to or less than the amount that the City has unilaterally determined, Engineer shall nonetheless be paid the amount unilaterally determined by the City but the City shall be deemed the prevailing party and Engineer shall pay the City's reasonable attorney's fees.

D. In the event that additional outside services are required due to unforeseen conditions, the Engineer shall:

- 1) Obtain a written proposal from the firm designated to render the required services, and submit such proposal to the City for written approval.
- 2) If the services are such that registration is required to perform them, the Engineer shall select a firm that is registered in the State of Florida.
- 3) If the proposal is approved in writing by the City, the Engineer shall enter into a contract with the firm for the furnishing of such services in accordance with the proposal.
- 4) The Engineer shall submit a minimum of five (5) printed copies and one (1) digital copy of deliverables for all required services to the City, unless otherwise directed by the City.
- 5) Upon approval by the City of such reports, the City shall reimburse the

Engineer for the cost of such services, which cost shall not exceed 1.10 times the amount of the proposal.

6) Services rendered by the Engineer in connection with the coordination of these additional services shall be considered within the scope of the basic contract, and no additional fee shall be due the Engineer except as part of the multiplier stated in immediately preceding subsection 2.D.5.

E. At the end of each month during which a Task Order shall be outstanding, the Engineer shall submit a separate invoice for services rendered during that month with respect to each Task Order, as follows:

1) Where a stipulated sum is specified, the City shall pay Engineer in monthly installments based upon the percentage of satisfactory completion. In support of payment, Engineer shall monthly submit a request for payment describing the work done, percentage of completion and amount requested to be paid, all by reference to line items in the scope of services where available.

2) Where fees are computed on a time-involved basis, the City shall pay Engineer monthly in arrears upon receipt of an itemized statement in form and detail reasonably acceptable to City.

F. The acceptance by the Consultant, its successors, or assigns, of any Final Payment due upon the termination of this Agreement, shall constitute a full and complete release of the City from any and all claims or demands regarding further compensation for authorized Services rendered prior to such Final Payment that the Consultant, its successors, or assigns have or may have against the City under the provisions of this Agreement. This Section does not affect any other portion of this Agreement that extends obligations of the parties beyond Final Payment.

3. **SCHEDULE:** The estimated schedule for the services required shall be included in each Task Order and related scope of services.

4. **CITY=S RESPONSIBILITY:** The City shall furnish the Engineer with all existing data, plans, profiles, and other engineering information available and useful in connection with the proposed project now on file with the City which shall be returned to the City upon the completion of the services to be performed by the Engineer, unless such data, plans, profiles, and other data are necessary for daily operations; then such forms of information shall be promptly duplicated by the Engineer and the originals returned to the City.

5. **CITY=S DESIGNATED REPRESENTATIVE:** It is understood and agreed that the City

designates the City Engineer or his designated representative to represent the City in all technical matters pertaining to and arising from the work and performance of this Agreement, whose responsibility shall include:

A. Examination of all reports, sketches, drawings, cost estimates, proposals and other documents presented by the Engineer, and rendering in writing decisions pertaining thereto within a reasonable time so as not to materially delay the work of the Engineer.

B. Transmission of instructions, receipt of information, interpretation, and definition of City policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.

C. Give prompt written notice to the Engineer whenever the City observes or otherwise becomes aware of any defects or changes necessary in the Project.

6. CHANGES IN SCOPE: The City may, from time to time, request changes in the scope of work. Such changes, including any increase or decrease in the amount of the Engineer's compensation, shall not be binding unless mutually agreed upon by and between the City and the Engineer, and incorporated in written amendments to this Agreement.

7. TERMINATION:

A. The City may terminate this Agreement for cause upon written notice to Engineer if Engineer fails to diligently, competently and timely perform any of the work, fails to cooperate with others associated with the work, or otherwise fails to perform or observe any material covenant, representation or warranty contained in this Agreement. Engineer may terminate this Agreement for cause upon written notice to City if City fails to perform or observe any material covenant, representation or warranty contained in this Agreement. In the event of such termination, the parties shall be entitled to the rights and remedies provided by law. If the City wrongfully terminates this Agreement, the City shall be responsible to Engineer solely for the reasonable value of the work performed by the Engineer prior to the City's wrongful action, including reasonable overhead and profit on the work performed, less prior payments made. Under no circumstances shall Engineer be entitled to overhead and profit on work not performed.

B. This is a continuing Agreement with a public agency. Accordingly, City may terminate this Agreement at any time without cause upon written notice to Engineer. Should the City terminate this Agreement without cause, City shall pay Engineer for work performed through the date of Notice of Termination, including overhead and profit, and shall have no further responsibility to Engineer.

8. TERM: Unless terminated sooner pursuant to the provisions of the TERMINATION clauses contained in Paragraph 7 of this Agreement, and subject to the availability of appropriated funds, this Agreement shall take effect on the day and year first above written for an initial term of

four (4) years, and the City shall have the unilateral option to extend the initial term for two, consecutive extended terms of two (2) years each by written notice delivered to the other party at any time before or within thirty (30) days after expiration of the prior term.

9. INDEMNIFICATION: The Engineer hereby does hold the City harmless of any and all claims, actions, or suits to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Engineer or any person employed or utilized by the Engineer in the performance of professional services hereunder, to the fullest extent permitted by Section 725.08(1), *Florida Statutes* (2016). The specific consideration given for the promises of the Engineer set forth in this paragraph is one dollar (\$1) in hand paid by the City to the Engineer, receipt whereof is hereby acknowledged and the adequacy of which the Engineer accepts as completely fulfilling the obligations of the City. The provisions of this Section shall survive termination of this Agreement.

10. INSURANCE:

A. The Engineer shall procure and maintain during the life of this Agreement insurance of the following types:

1) **Worker=s Compensation:** For all of his employees engaged in work on the project under this Agreement. In case any employee engaged in hazardous work on the project is not protected under the Worker=s Compensation Statute, the Engineer shall provide Employer=s Liability Insurance for the protection of such of his employees not otherwise protected under such provisions.

Coverage A - Worker=s Compensation - Statutory
Coverage B - Employer=s Liability -
\$1,000,000.00

2) **Liability:** Comprehensive General Liability insurance including, but not limited to:

- a) Independent Contractor=s Liability;
- b) Contractual Liability;
- c) Personal Injury Liability.

The minimum primary limits shall be no less than \$1,000,000 per occurrence / \$2,000,000 annual aggregate Personal Injury Liability, and no less than \$500,000 Property Damage Liability, or \$2,000,000 Combined Single Limit Liability, or higher limits if required by any Excess Liability Insurer. City shall be named as additional insured pursuant to an additional insured endorsement on ISO Form 20 10 10 01 (or superseding form) providing comprehensive general liability coverage for completed operations in addition to on-going operations.

3) **Automobile Liability:** Automobile Liability insurance including all owned, hired, and non-owned automobiles. The minimum primary limits shall be no less than \$1,000,000 Bodily Injury Liability, and no less than \$1,000,000 Property Damage Liability, or no less than \$1,000,000 Combined Single Limit Liability, or higher limits if required by the Excess Liability Insurer. City shall be named as additional insured.

4) **Professional Liability:** Professional Liability insurance covering professional services rendered in accordance with this Agreement in an amount not less than \$1,000,000 per occurrence / \$2,000,000 annual aggregate project specific coverage, or in an amount not less than \$10,000,000 per claim / \$10,000,000 annual aggregate non-project specific, company-wide coverage.

B. **Certificates of Insurance:** The Engineer shall furnish to the City copies of all policies and endorsements and certificates of insurance allowing thirty (30) days written notice of any change in limits or scope of coverage, cancellation, or non-renewal. Such certificates shall contain the following wording: **ASHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE AMENDED IN LIMITS OR SCOPE OF COVERAGE OR CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL THIRTY (30) DAYS NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN.** In the event (1) the ACORD form does not include the forgoing provision in the certificate, (2) the city has been provided a copy of a policy endorsement naming the city as additional insured (on the general liability and automobile liability insurance policies) and (3) the policy endorsement in favor of the city (for the workers compensation, general liability and automobile liability insurance policies) expressly provides that the city be given thirty (30) days written notice before an amendment in limits or scope of coverage or cancellation, then the following wording may be substituted **"SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE AMENDED IN LIMITS OR SCOPE OF COVERAGE OR CANCELED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS."** If the insurance policies expire during the term of this Agreement, a renewal certificate shall be filed with the City thirty (30) days prior to the renewal date.

11. NEGOTIATION DATA:

A. The Engineer hereby certifies, covenants, and warrants that Hourly Rates and other factual unit costs supporting the compensation provided in Exhibit A are accurate, complete, and current as of the date of negotiation.

B. Truth-in-Negotiation Certificate: Execution of this Agreement by the Consultant shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the Agreement.

The original contract price and additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual amount costs. The City shall exercise its rights under this "Certificate" within 1 year following final payment.

C. Contingency Fees: The Engineer warrants that he has no employed or retained any company or person, other than a bona fide employee working solely for the Engineer to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Engineer any fee, commission, percentage, gift, or any other consideration upon or resulting from the award of this agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability and, at its discretion, to deduct the contract price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

12. OWNERSHIP OF DOCUMENTS: It is understood and agreed that all documents, including detailed reports, plans, original tracings, specifications, and all other data in whatever form (text, graphic, digital or other electronic), prepared or obtained by the Engineer in connection with its services hereunder shall always be the property of the City and shall be delivered to the City promptly without cost or lien upon request or termination of this Agreement by lapse of time or otherwise. The Engineer shall not be liable for any use by the City of project specific design documentation if modified in any manner without written approval of the Engineer. The City shall not use the Engineer's project specific design documentation on any project other than the project described in the Scope of Work and Instructions to Respondents unless the City notifies the Engineer of its intended use, provides insurance protection for the Engineer for all claims which might arise out of the City's use of the documents, and obtains written consent of the use by the Engineer.

When transferring data in electronic media format, Engineer makes no representation as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Engineer at the beginning of the Project. Because the data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Engineer shall not be responsible to maintain documents stored in electronic media format after acceptance by City. The original hard copy of the documents containing the professional engineer's seal shall take precedence over the electronic documents.

Notwithstanding any provision to the contrary contained in this Agreement, Engineer shall retain sole ownership to its pre-existing computer programs and software.

13. WORK COMMENCEMENT/PROGRESS/DELAYS:

A. The services to be rendered by the Engineer shall commence upon execution of this Agreement, and the respective Task Order, and upon written notice to proceed from the City Manager of his designee.

B. The Engineer agrees to abide by the schedule for performance of the contracted services. The City will be entitled at all times to be advised in writing at its request as to the status of the work being done by the Engineer, and of the details thereof. City may require specification of liquidated delay damages in a Task Order. Failure to specify liquidated delay damages in a Task Order shall not relieve Engineer of liability for delays or other damages as provided by law.

C. In the event there are delays on the part of the City or regulatory agencies as to the approval of any of the plans, permits and drafts of special provisions submitted by the Engineer which delay the project schedule completion date, the City shall grant to the Engineer in writing an extension of time equal to such delays.

D. The Engineer shall maintain an adequate and competent staff of professionals and may associate with other qualified firms for the purpose of rendering services hereunder. The Engineer, however, shall not sublet, assign, or transfer any work under this Agreement without the written consent of the City.

14. STANDARDS OF CONDUCT:

A. The Engineer covenants that it or any of its employees presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of services hereunder.

B. The Engineer agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313, Florida Statutes, as it relates to work performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. The Engineer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

15. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS: The Engineer shall comply with all Federal, State, and Local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin

in the performance of work under this Agreement.

16. ASSIGNABILITY: The Engineer shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written approval of the City, provided that claims for the money due or to become due the Engineer from the City under this Agreement may be assigned to a bank, trust company, or other financial institution, or to a trustee in bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

17. INDEPENDENT CONTRACTOR: The Engineer is and shall remain an independent contractor and not an employee of the City.

18. CONTROLLING LAW AND VENUE: All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of Florida applicable to contracts made and to be performed within this state. Exclusive jurisdiction and venue to interpret or resolve any dispute under this Agreement shall lie in the Circuit Court, Fourteenth Judicial Circuit, in and for Bay County, Florida.

19. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties with respect to the subject matters. All prior agreements, representations, statements, negotiations, and undertakings are hereby superseded. Any alterations or variations of the terms of this Agreement shall not be valid unless made in writing and signed by the parties. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be illegal or unenforceable, then, notwithstanding, the remainder of the Agreement shall remain in full force and effect.

20. ATTORNEY=S FEES: If the either party is required to institute or defend any legal proceedings in connection with this Agreement, the prevailing party shall be entitled to its costs thereof, together with reasonable attorney=s fees.

21. NO WAIVER: No waiver of any provision of this Agreement shall be effective unless made in writing, signed by the party against whom it is charged. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, nor of the same provision in the future. Neither the failure nor any delay by any party in exercising any right or power under this Agreement, nor any course of dealing between or among the parties, will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

22. **COOPERATION:** Engineer acknowledges that the process of engineering and addressing the needs of the community, and coordinating those efforts with other disciplines is a multi-disciplinary effort which will require cooperation and collaboration with numerous consultants, engineers, and counsel assisting and advising the city, as well as direction from the City Manager and City Engineer, and agrees in all things to cooperate with the City and all its consultants as needed.

23. **MEDIATION:** City and Engineer agree to attempt to resolve any dispute between them related to the interpretation or performance of this Agreement by mediation in Bay County, Florida, with a mutually acceptable, certified Florida Mediator to serve at joint expense. If the parties are unable to agree upon a mediator, either party shall request the appointment of a mediator by the Chief Judge of the Circuit Court, Fourteenth Judicial Circuit in and for Bay County, Florida. Mediation contemplated by this paragraph is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives. Any settlement will require approval of City's governing board. If the parties are unable to reach a mediated settlement within ninety (90) days of the mediator's appointment, either party may terminate the settlement discussions by written notice to the other and initiate litigation. Any litigation commenced in violation of this section shall be stayed pending mediation as agreed. This section shall survive termination of this Agreement.

24. **PUBLIC RECORDS:** The City is a public agency subject to the Florida Public Records Law expressed in Chapter 119, Florida Statutes. Accordingly, to the extent that it is determined that Engineer is acting on behalf of City as provided under Section 119.011(2) (2013) and implemented through the judicially established "totality of factors" analysis, Engineer agrees to also comply with that law, specifically including to:

A. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

B. Upon request of the city, provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law, or provide the City with a copy of the requested records.

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 contract term and following completion of the contract if the Consultant does not transfer the records to the City.

D. Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of the contract and destroy any

duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

E. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, IT IS THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, AND TO CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850-233-5100, DFLOYD @PCBGOV.COM, 110 S. ARNOLD ROAD, PANAMA CITY BEACH, FL 31413

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have hereto caused the execution of these documents as of the year and date first above written.

**THE CITY OF PANAMA CITY BEACH,
FLORIDA,**
a municipal corporation

By: _____
Mario Gisbert, City Manager

ATTEST:

Diane Floyd, City Clerk

DEWBERRY ENGINEERS, INC.

Sandra M. McClain
WITNESS
PRINT NAME: Sandra M. McClain

By: [Signature]
Clifford D. Wilson III, PE, Vice President

Susan Pitts
WITNESS
PRINT NAME: Susan Pitts

EXHIBIT A of *MSA*
Hourly Rate Schedule

Standard Hourly Billing Rate Schedule

Dewberry	Hourly Rates
Professional	
Principal	\$275.00
Architect I,II,III	\$85.00, \$95.00, \$110.00
Architect IV,V,VI	\$125.00, \$140.00, \$160.00
Architect VII,VIII,IX	\$180.00, \$195.00, \$210.00
Interior Designer I,II,III,IV	\$75.00, \$85.00, \$105.00, \$140.00
Engineer I,II,III	\$95.00, \$105.00, \$120.00
Engineer IV,V,VI	\$135.00, \$155.00, \$170.00
Engineer VII,VIII,IX	\$185.00, \$200.00, \$220.00
Other Professionals I, II, III	\$90.00, \$105.00, \$115.00
Other Professionals IV, V,VI	\$135.00, \$150.00, \$165.00
Other Professionals VII, VIII, IX	\$185.00, \$210.00, \$220.00
Technical	
Geographer/GIS I,II,III	\$85.00, \$95.00, \$105.00
Geographer/GIS IV,V,VI	\$115.00, \$130.00, \$150.00
Geographer/GIS VII,VIII,IX	\$175.00, \$195.00, \$210.00
Designer I,II,III	\$100.00, \$115.00, \$135.00
Designer IV,V,VI, VII	\$150.00, \$170.00, \$190.00, \$200.00
CADD Technician I,II,III,IV	\$70.00, \$85.00, \$95.00, \$110.00
Surveyor I,II,III	\$55.00, \$65.00, \$80.00
Surveyor IV,V,VI	\$95.00, \$105.00, \$120.00
Surveyor VII,VIII,IX	\$140.00, \$160.00, \$180.00
Other Technical I,II,III	\$60.00, \$80.00, \$100.00
Other Technical IV, V, VI	\$115.00, \$130.00, \$150.00
Construction	
Construction Professional I,II,III	\$120.00, \$135.00, \$150.00
Construction Professional IV,V,VI	\$175.00, \$195.00, \$210.00
Inspector I,II,III	\$80.00, \$95.00, \$105.00
Inspector IV,V,VI	\$125.00, \$135.00, \$150.00
Survey Field Crews	
Fully Equipped 1, 2, 3, 4 Person Crews	\$120.00, \$150.00, \$180.00, \$210.00
With Laser Scanner 1, 2 Person	\$170.00, \$200.00
Administration	
Admin Professional I,II,III,IV	\$65.00, \$85.00, \$95.00, \$110.00
Non-Labor Direct Costs	Cost + 15%

CCH/PANY CONFIDENTIAL AND PROPRIETARY



EXHIBIT B
COMBINED TASK ORDER AND
NOTICE TO PROCEED

TASK ORDER NO. 2017-01

DATE May ____, 2017

Reference is made to that certain MASTER SERVICES AGREEMENT BETWEEN CITY OF PANAMA CITY BEACH AND Dewberry/Preble-Rish, Inc. RELATING TO MAJOR ANALYSIS, PLANNING, DESIGN AND CONSTRUCTION PROFESSIONAL STORMWATER ENGINEERING SERVICES dated May 16 2017, (the "Agreement"), the terms, conditions and definitions of which are incorporated herein as if set forth in full. Neither party is in breach of the Agreement.

Pursuant to the Agreement, Engineer agrees to perform the specific tasks set forth upon incorporated Exhibit B Attachments, Scope of Services, relating to the City Stormwater Master Plan Model Update.

Engineer's total compensation shall be (check one):

- a stipulated sum of \$ \$83,775.00; or
 a stipulated sum of \$ _____ plus one or more specified allowances listed below which may be authorized in writing by the City Manager or his designee,
Allowance of \$ _____ for _____, and
Allowance of \$ _____ for _____; or
 a fee determined on a time-involved basis at the rates set forth upon incorporated **Attachment B, Hourly Fee Breakdown (if applicable)**, with a maximum cost of \$ _____;

and shall be paid in monthly installments as specified in the Agreement.

Work shall begin on _____, 2017, and shall be completed within one calendar year. The date of completion of all work is therefore _____, 2017. Liquidated delay damages, if any, are set at the rate of \$0 per day. There are no additional rights and obligations related to this Task Order other than as specified in the Agreement.

Upon execution of this task order by both the Engineer and City Engineer is directed to proceed.

IN WITNESS WHEREOF the parties have caused these presents to be executed in their names on the date shown.

Witness:

Dewberry/Preble-Rish, Inc.

By: _____ Date: _____
Its:

CITY OF PANAMA CITY BEACH, FLA.

ATTEST:

By: _____ Date: _____
City Manager

City Clerk

Exhibit B

**CITY OF PANAMA CITY BEACH
MASTER SERVICES AGREEMENT
Professional Stormwater Engineering Services
(Major Analysis, Planning, Design & Construction)**

TASK ORDER 2017-01

This Task Order is for the purpose of Dewberry Engineers, Inc. as the Engineer to provide professional services for the City Stormwater Master Plan Modeling Update project to the City of Panama City Beach (City) acting by and through its Council. Dewberry Engineers, Inc. understands that the City is requesting and updated stormwater model to serve as a planning and evaluation tool on a modeling platform (ICPR) generally utilized by the engineering community. The proposed effort will provide the ability for the City to accurately account for potential stormwater impacts from proposed developments within the City and provide an accurate model to serve as a future capital improvements planning tool to address existing and future stormwater issues within the City. Dewberry Engineer, Inc. has developed the following scope of services and associated fee schedule to meet the needs of this task order.

DESCRIPTION OF SCOPE OF SERVICES

PROJECT MANAGEMENT - \$4,985.00

A. Coordination & Technical Evaluation Process

1. In addition to the regular status updates to be provided to the City, significant coordination between the Dewberry Team and the City will be necessary due to:
 - a) Complexity of the conversion from XP-SWMM to ICPR v3. There are various technical aspects of the conversion where City input will be valued.
 - b) Number of XP-SWMM models to be converted to ICPR. Prioritization of the models and tie-ins between the models will need to be managed.
 - c) Due to existing LOMRs in the City that are based on XP-SWMM, we will work with the City to determine how best to reconcile these "effective" studies with the new ICPR models that will be produced.
2. Project Kick-off meeting preparation and attendance.

CALIBRATION RECONNAISSANCE AND SURVEYING - \$14,925.00

A. Calibration Reconnaissance

1. In concert with the GIS and modeling effort, the Dewberry team will track down available as-built surveys and/or site plans from the City, FDOT, NWFWMMD, FEMA, and private entities.
2. Calibration will be performed by field-verification of existing conditions reflected in the modeling. These locations may include drainage basin divides, control structures, culverts, and channels.

B. Survey

1. After assessing our inventory and reconnaissance information, we expect there may be a need to capture additional surveys of hydraulic structures or channel cross sections. This will be a limited effort, but still necessary to ensure the modeling products reflect existing conditions.

ENGINEERING SERVICES - \$58,865.00

A. Data Inventory and Preparation

1. Review and harvest the XP-SWMM modeling (or other modeling) information from the following:
 - a) City Stormwater Management Master Plan
 - b) Alf Coleman LOMR modeling
 - c) Updated Glades modeling
 - d) North Glades Channel Improvement
 - e) Gulf Highlands
 - f) CRA Segments 1, 2, and 3
 - g) Loop Road Improvements
 - h) Nautilus Road/Colony Club Connection
 - i) Seagrass Village
 - j) Parkside Apartment Complex
 - k) Edgewater Crossings
 - l) Pelican Point
 - m) Ocean Reef Outfall Improvements
 - n) Calypso Outfall Improvements
 - o) Whisper Dunes Developments

- p) Provide plan and profiles for ditch improvements to the BPMB property limits
2. The modeling information will be retrieved, prioritized, and inventoried within a GIS framework. We will review the internal consistency between the provided modeling and provided GIS (or CAD) files.
 3. We will develop a City-wide terrain feature and detailed Digital Elevation Model (DEM) for use in model development. We will update the terrain based on the available as-built topography.
- B. GIS Updates**
1. Starting from the raw GIS data that was generated from the harvest of the modeling information provided, we will validate the overall hydraulic network, and make improvements based on field reconnaissance and other existing data obtained during reconnaissance.
 2. We will modify and improve upon the GIS drainage basins based on our reconnaissance.
 3. The GIS (and eventual ICPR model) will include details in the Beach Commerce Park area of the City.
 4. There are several aspects of the XP-SWMM modeling that will need to be scrutinized and regenerated since minimal information can be translated to ICPR for these elements. The major aspects include:
 - a) Infiltration parameters (NRCS CN method or Green-Ampt method).
 - b) Hydrograph generation (including selection of appropriate time of concentration and peak rate factor).
 - c) Control structures (XP-SWMM does not have a drop structure option as is available in ICPR).
 - d) Channels (XP-SWMM only allows a single cross section for each channel, however, ICPR allows the use of different cross sections in defining the ends of each channel).
 - e) Channels will need to include an accompanying exclusion polygon.
 5. We will include additional overland weirs, as necessary.
- C. ICPR Model Development**
1. We will generate the database elements to be used to develop the equivalent ICPR model.
 2. We will convert the GIS features and data into an ICPR model.
 3. We will review the ICPR model for technical issues, including instabilities and "glass walls". We will include additional overland weirs based on our review.
 4. We will develop appropriate boundary conditions to ensure the modeling results within the City are acceptable.
 5. We will review, confirm, or modify the initial conditions used in the ICPR model to represent "average" seasonal conditions.
 6. We will validate the model based on a known rainfall event and either surveyed high water mark, or qualitative accounts of the high water from that event. This can be an iterative process, so model parameters may be adjusted. The intent is not to limit the model to match a single storm event, but to allow the model to eventually provide reasonable results from a range of hypothetical storms.
- D. ICPR Model Simulations and Results**
1. We will simulate a range a hypothetical storm events. The critical storm has historically been of the 8-hour duration, however, 24-hour simulations will also be performed for completeness. We will coordinate with the City on the storms to be simulated prior to execution.
 2. We will develop and simulate the ICPR model representing existing conditions first, and then a follow-up ICPR version will be developed and simulated which will include the proposed projects listed in Task A-1, above.
 3. We will review the results, and develop raw floodplain mapping for 2 storm events for each of the ICPR models. We will clean and finalize 1 version of the mapping.
- E. Documentation**
1. Since the purpose of this task order is the conversion of the XP-SWMM modeling to ICPR (including the incorporation of known projects and improvements), a full Stormwater Management Master Plan Update documentation is not warranted, however, a technical memorandum will be developed to summarize our effort for future reference.

QUALITY CONTROL - \$5,000.00

A. Reviews

1. All GIS and ICPR deliverables will be reviewed by senior staff prior to submittal to the City. The deliverables will meet FEMA regulatory requirements as well as currently-accepted engineering and numerical modeling practice.

EXCLUSIONS

1. Potential stormwater designs.
2. Regulatory agency submittal(s), including application fees.
3. Capital Improvement Project Development.

FEE ESTIMATE

Professional Services Fees

A. Project Management	\$4,985.00
B. Reconnaissance and Surveying	\$14,925.00
C. Engineering Services	\$58,865.00
D. Quality Control	\$5,000.00

Total \$83,775.00

IN WITNESS WHEREOF, the parties hereto have caused this Task Order to be executed by their undersigned officials as duly authorized.

Dewberry Engineers, Inc.
203 Aberdeen Parkway
Panama City, Florida 32405

CITY OF PANAMA CITY BEACH, FLORIDA
110 S. Arnold Road
Panama City Beach, Florida 32413

By: 

By: _____

Name: Clifford D. Wilson III, PE.

Name: Mario Gisbert

Title: Vice President

Title: City Manager

Witnessed: 

Witnessed: _____

Date: 5/16/17

Date: _____