

**PROFESSIONAL SERVICES AGREEMENT  
(Transit Oriented Development Area Master Plan)**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Contract" or "Agreement") made and entered into this \_\_\_ day of \_\_\_\_\_ 2015, by and between the CITY OF DEBARY, a Florida municipal corporation, whose address is 16 Colomba Road, DeBary, Florida 32713 (hereinafter referred to as "CITY" or "Client") and Littlejohn Engineering Associates, Inc., whose address is 1615 Edgewater Drive, Suite 180 Orlando, Florida 32804 (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, the CITY desires to retain professional services of a specified nature for a single project known as the Real Estate Market Analysis And Transit Oriented Development (TOD) Master Plan Report which involves real estate marketing services and land planning services ("Project"); and

WHEREAS, the CITY desires to contract with the CONSULTANT in connection with the services required, upon the terms and conditions hereinafter set forth, and the CONSULTANT is desirous of obtaining such contract and of performing such services upon said terms and conditions.

WHEREAS, the CITY's Council has determined that it is in the best interest of the CITY to grant and the CITY's Council through its approval of this Agreement has granted a waiver to formal procurement of the professional services set forth herein in accordance with Sec 2-186(a), City of DeBary Code of Ordinances; and

WHEREAS, the CITY finds that the professional services (marketing and land planning services) being procured under this Agreement do not fall within the scope of the selection and negotiation process for professional services under Section 287.055, Florida Statutes, and to the extent any other services are provided by CONSULTANT under this Agreement, such would be incidental to the marketing and land planning services provided and well below any numerical thresholds set forth in Section 287.055, Florida Statutes.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

**SECTION 1  
GENERAL PROVISIONS**

1.1 Services. CONSULTANT shall provide services ("Services") for the CITY as specified and within the timeframes set forth in the attached **Exhibit "A" and "D"**, which is hereby incorporated herein.

CONSULTANT hereby represents and warrants to CITY that CONSULTANT is experienced in and competent to perform the Services described in this Agreement. The CONSULTANT shall perform any and all Services in a timely, efficient and cost-effective manner that comports with applicable professional industry standards, and applicable federal, state and local laws and regulations, and, in the case of engineering services, in accordance with professional engineering standards.

1.2 Notice to Proceed. CONSULTANT shall proceed with the performance of the each task constituting the Services upon receiving a notice to proceed from the CITY.

1.3 Contract Period. The Contract Period is for the earlier of the period required to complete the Services set forth herein as ordered by the CITY, or nine (9) months from the date from the Effective Date, unless terminated earlier by the CITY.

1.4 All references to drawings shall mean both traditionally drafted as well as computer-based, and all submissions of drawings will include paper, mylar and computer file versions as appropriate. The CONSULTANT shall provide all computer generated material to the CITY in a digital format that is compatible with those systems employed by the CITY. CITY acknowledges that electronically stored and transmitted documents may be subject to undetectable alteration whether or not intentional, and that, accordingly, hard copies of any documents submitted by CONSULTANT shall be the authoritative and controlling versions of CONSULTANT's drawings.

## **SECTION 2 RESPONSIBILITY OF THE CONSULTANT**

2.1 The CONSULTANT shall be responsible for the professional quality, technical quality, and the coordination of all designs, drawings, studies, assessments, specifications, and other Services furnished by the CONSULTANT under this Contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, studies, assessments, specifications, and other Services.

2.2 The CONSULTANT shall provide a Project Manager who must be currently employed by the CONSULTANT and will serve as CONSULTANT point person for correspondence and other communication with the CITY's representatives.

2.3 Substitution of the Project Manager, Project Engineer or Other Key Personnel. The CONSULTANT shall not substitute any key personnel without the prior written approval of the City Manager or the City Manager's appointee ("City Project Manager") to oversee the specific task assigned to CONSULTANT. Any such requests shall be supported by comprehensive documentation outlining the reason(s) for the proposed substitution to include the specific qualifications of the proposed substitute. Approval of the request shall be at the discretion of the CITY. Further, the CITY, in lieu of approving a substitution, may initiate other actions under the contract, including termination of CONSULTANT under this Contract or under the specific task assigned.

2.4 Neither the CITY's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the CITY in accordance with applicable law for damages suffered by the CITY caused by the CONSULTANT's negligent performance of any of the Services furnished under this Contract.

2.5 The rights and remedies of the CITY provided for under this Contract are in addition to any other rights and remedies provided by law.

2.6 CONSULTANT shall take reasonable measures and precautions to minimize damage to site(s) where Services are being performed and any improvements located thereon resulting or arising from the performance of the Services.

2.7 Public Records Laws. CONSULTANT acknowledges and agrees that the CITY is a public entity that is subject to Florida's public records laws and as such, documents in CONSULTANT's possession relating to Project(s) and services performed for the CITY are subject to inspection pursuant to Chapter 119, Florida Statutes, unless otherwise exempt or excepted by applicable law. The requirements of Section 119.0701(2),

Florida Statutes are hereby incorporated by reference and CONSULTANT shall meet all contractor obligations under said statute. It is hereby specifically agreed that any record, document, computerized information and program, e-mail, audio or video tape, photograph, or other writing of the CONSULTANT and its independent contractors and associates related, directly or indirectly, to this Agreement, shall be deemed to be a Public Record whether in the possession or control of the CITY or the CONSULTANT, unless an exemption or exception under applicable law applies. Such records, documents, computerized information and programs, e-mails, audio or video tapes, photographs, or other writings of the CONSULTANT are subject to the provisions of Chapter 119, Florida Statutes, and may not be destroyed without the specific written approval of the CITY's City Manager. While in the possession and control of the CONSULTANT, all public records shall be secured, maintained, preserved, and retained in the manner specified pursuant to the Public Records Law, at CONSULTANT's expense. Any time upon request by the CITY, the CONSULTANT shall, at CONSULTANT's expense, within a reasonable time, but not longer than five (5) business days, supply copies of said public records to the CITY. CONSULTANT shall provide the public with access to and inspection of public records on the same terms and conditions that the CITY would be required to provide such access and inspection. Further, upon termination of this Contract, CONSULTANT shall, at no costs to the CITY, transfer to the CITY all public records in CONSULTANT's possession. All books, cards, registers, receipts, documents, and other papers in connection with this Agreement shall, at any and all reasonable times during the normal working hours of the CONSULTANT, be open and freely exhibited to the CITY for the purpose of examination and/or audit. Since the CITY's documents are of utmost importance to the conduct of CITY business and because of the legal obligations imposed upon the CITY and CONSULTANT by the Public Records Law, CONSULTANT agrees that it shall, under no circumstances, withhold possession of any public records, including originals, copies or electronic images thereof when such are requested by the CITY, regardless of any contractual or other dispute that may arise between CONSULTANT and the CITY. This provision shall survive expiration and termination of this Agreement.

2.8 The standard of care applicable to the CONSULTANT's Services under this Agreement shall be the degree of skill and care ordinarily exercised by similarly practicing design professionals performing similar services under similar conditions ("Standard of Care").

### **SECTION 3 CITY'S RESPONSIBILITIES**

3.1 Information Pertinent to the Project. CITY shall furnish the CONSULTANT with existing data, plans, profiles, and other information necessary or useful in connection with the planning of the program that is available in the CITY's files, all of which shall be and remain the property of the CITY and shall be returned to the CITY upon completion of the services to be performed by the CONSULTANT. CONSULTANT shall have the right to rely on the accuracy and completeness of data, reports, surveys, requirements and other information provided by the CITY under this Agreement.

3.2 Access to Property. CITY shall arrange for access to and make provisions for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform its Services.

3.3 Examination. CITY shall examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by the CONSULTANT, and render, in writing, decisions pertaining thereto within a reasonable time.

3.4 Notice and Extension of Term. 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 the

CONSULTANT's Services, or any defect in the work of contractor(s) affecting the Project. If the CONSULTANT has been delayed in completing its Services through no fault or negligence of its own, and, as a result, will be unable to complete performance fully and satisfactorily under the provisions of any Services, then, in the CITY's discretion, and upon the submission to the CITY of evidence of the causes of the delay, the CONSULTANT shall be granted an extension of its Project schedule equal to the period the CONSULTANT was actually and necessarily delayed, as CONSULTANT's sole and exclusive remedy. In no event shall the CITY be liable to the CONSULTANT for damages caused by delays, impacts, disruption, acceleration, resequencing, and interruptions regardless of the cause. CONSULTANT expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays in services, and CONSULTANT expressly waives any and all other remedies for any claim for increase in the Contract price or sum, damages, expenses, losses, or additional compensation.

#### **SECTION 4 PAYMENTS TO CONSULTANT**

4.1 CONSULTANT will invoice the CITY for services upon completion of each Services task assigned by the CITY or once each month for Services performed during the preceding monthly period. The CITY will pay the CONSULTANT for the Services as detailed in each of the CONSULTANT's narrative invoices in accordance with the lump sum fee per task price negotiated for such services as set forth in **Exhibit "A"** attached hereto and incorporated herein. The invoices shall be in a format and contain information required by the CITY. The lump sum fee per task prices set forth in Exhibit "A" are based upon the schedule of fees set forth in CONSULTANT's Hourly Billing Rates document also attached to this Agreement as Exhibit "B". This Agreement does not guarantee CONSULTANT that it will be performing all of the task set forth in Exhibit "A" or receive all of the compensation set forth in Exhibit "A," as the CITY shall have the right to select which tasks to have CONSULTANT perform and complete. CONSULTANT shall only be compensated for the tasks for which the CITY has authorized CONSULTANT to proceed and CONSULTANT properly completes and provides to the CITY all required deliverables concerning such tasks ordered. **In no event shall the compensation to CONSULTANT under this Agreement exceed \$75,127.50.**

4.2 In accordance with Part VII, Chapter 218, Florida Statutes (Local Government Prompt Payment Act), invoices shall be paid by the CITY to the CONSULTANT within forty-five (45) calendar days of the CITY's receipt of a proper invoice(s) ("Payment Period"), unless, the CITY: 1) within 10 days after the improper payment request or invoice is received, notifies the CONSULTANT, in writing, that the payment request or invoice is improper and indicates what corrective action on the part of the CONSULTANT is needed to make the payment request or invoice proper.

4.3 The CONSULTANT fully acknowledges and agrees that if at any time it performs Services on the Project contemplated by the parties, such Services which have not been, a) fully negotiated, reduced to writing, and formally executed by both the CITY and CONSULTANT; or b) reduced to writing by the CITY and signed by the CITY, then the CONSULTANT shall perform such Services without liability to the CITY, and at the CONSULTANT's own risk.

4.4 No Liens. CONSULTANT acknowledges and agrees that the CITY is a Florida municipality and, as such, the CITY's public property and the Project(s) involved are not subject to construction liens pursuant to Chapter 713, Florida Statutes or any other lien statute. CONSULTANT shall not file or record claims of lien or any other liens against any Project or property owned by the CITY.

4.5 Records. CONSULTANT agrees to maintain, and to cause each of CONSULTANT's subconsultants and subcontractors to maintain, complete and accurate books and records ("Books") in accordance with sound accounting principles and standards, and relating to all Services and the Project, and the related costs and

expenditures to the CITY that have been contracted for and paid. These Books shall be maintained for five (5) years following Final Payment; five (5) years following termination of any Services; or any other time beyond five (5) years as may be required by Florida's applicable Public Records retention schedules, whichever is the longer of these times. All Books shall be subject to audit by the CITY at all times during the term of this Agreement and for a period of one (1) year after the termination of this Agreement.

4.6 Final Payment. The acceptance by the CONSULTANT, its successors, or assigns, of Final Payment for Services 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, unless otherwise previously and properly filed pursuant to the provisions of this Agreement, or in a court of competent jurisdiction. This subsection does not affect any other portion of this Agreement that extends obligations of the parties beyond Final Payment.

4.7 Local Government Prompt Payment Act (Disputed Invoices). In the event that the CITY receives an improper payment request or invoice, the CITY shall notify the CONSULTANT, in writing, that the payment request or invoice is improper and indicate what corrective action on the part of the vendor is needed to make the payment request or invoice proper. If a dispute arises between the CITY and the CONSULTANT concerning payment of a payment request or proper invoice, the dispute shall be finally determined by the local governmental entity pursuant to administrative dispute resolution procedures, which shall be commenced within 45 days after the CITY received the disputed payment request or proper invoice and concluded by final decision of the CITY within 60 days after the CITY received such. Such dispute resolution procedures shall be those procedures as may be currently established by resolution or ordinance of the CITY, or, if no such procedures have been established, the dispute shall be reviewed by the City Manager or his/her designee, who shall endeavor to meet with the CONSULTANT to discuss the nature of the dispute and attempt to reach a resolution of the dispute within the time allotted by law. If no resolution amenable to the parties can be reached, the City Manager or his/her designee shall issue a final decision in writing to the CONSULTANT within 60 days as required by statute.

## **SECTION 5 SCOPE, COST AND FEE ADJUSTMENT**

5.1 Scope Reduction. The CITY shall have the sole right to reduce (or eliminate, in whole or in part) the Scope of the Services at any time and for any reason, upon written notice to the CONSULTANT specifying the nature and extent of the reduction. In such event the CONSULTANT shall be fully compensated for the Services already performed, including payment of all Project-specific fee amounts due and payable prior to the effective date stated in the CITY's notification of the reduction. The CONSULTANT shall also be compensated for the Services remaining to be done and not reduced or eliminated on the Project. However, CONSULTANT will not be compensation for services not performed or that are eliminated from this Agreement by CITY.

5.2 Scope Suspension. The CITY may, at any time and for any reason, direct the CONSULTANT to suspend work (in whole or in part) under this Agreement. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The CONSULTANT shall resume its Services upon the date specified or upon such other date as the CITY may thereafter specify in writing. The period during which the CITY stops the Services shall be added to the original completion date as CONSULTANT's sole remedy for such suspension or delay. The suspension or delay of Services, regardless of whether caused by the actions or inactions of the CITY, shall not give rise to any claim by the CONSULTANT against the CITY.

## **SECTION 6 TERMINATION**

## 6.1 Termination

This Agreement may be terminated, at any time, by the CITY by delivering a written notice to the CONSULTANT at least thirty (30) days prior to the intended termination date. In the event of the termination of this Agreement, CONSULTANT shall be paid for Services completed prior to and on the date of termination, including those reimbursable reasonable and provable expenses actually incurred by the CONSULTANT. Otherwise, this Agreement may also be terminated by mutual agreement of the parties.

## 6.2 Delivery of Materials Upon Termination

In the event of termination of this Agreement and prior to the CONSULTANT's satisfactory completion of all the Services described or alluded to herein, the CONSULTANT, unless otherwise excused by the CITY in writing, shall promptly furnish the CITY, at no additional cost or expense, with one (1) physical copy and one (1) electronic copy of the following items, any or all of which may have been produced prior to and including the date of termination: data, specifications, test results, calculations, estimates, plans, drawings, computer print outs, surveys, construction documents, photographs, summaries, reports, memoranda; and any and all other documents, instruments, information, and materials (whether or not completed) generated or prepared by the CONSULTANT, or by any subconsultant or subcontractor, in rendering the Services described herein ("Documents"), and not previously furnished to the CITY by the CONSULTANT pursuant to this Agreement. Upon full payment therefor, the Documents shall be the sole property of the CITY, and the CITY shall be vested with all rights provided therein of whatever kind and however created. The CONSULTANT shall also require that all such Subconsultants agree in writing to be bound by the provisions of this Subsection.

## **SECTION 7 MATERIALS, REUSE OF DOCUMENTS, AND CONFIDENTIALITY**

7.1 General. One reproducible copy and one electronic copy of all Documents shall be supplied to the CITY at the CITY's request by the CONSULTANT, and at the CITY's cost. Upon full payment therefor, the final work product of all such materials, along with all formal CONSULTANT-CITY correspondence concerning any Project (e.g. letters, tapes, memoranda, etc.) shall be the sole property of the CITY. Furthermore, the CITY may reuse such Documents at no additional cost, and the CITY shall be vested with all rights of whatever kind and however created that may be in existence thereto.

7.2 Reuse of Documents. The CITY acknowledges that the Documents are not intended for use in connection with any other Project, extensions of the Project or purpose other than the Project and purpose for which the materials are prepared. Any use by the CITY of such Documents in connection with a Project or purpose other than that for which such Documents were prepared, without the prior written consent of the CONSULTANT, shall be at the CITY's sole risk, and the CONSULTANT shall have no responsibility or liability related thereto.

## **SECTION 8 NOTICES**

All notices denominated as such by this Agreement, or the City Code, or Florida law, required to be given to the CONSULTANT hereunder shall be in writing, and shall be given by hand-delivery or United States mail, postage prepaid, addressed to:

LittleJohn  
1615 Edgewater Drive, Suite 180  
Orlando, Florida 32804

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All notices required to be given to the CITY shall be in writing, and shall be given by hand-delivery or United States mail, postage prepaid, to the CITY and City Attorney, separately, at:

CITY OF DEBARY  
16 Colomba Road  
DeBary, Florida 32713  
Attention: City Manager

DeBary City Attorney  
Kurt Ardaman  
Fishback Dominick  
1947 Lee Road  
Winter Park, Florida 32789

Either party may change its address, for the purposes of this Subsection, by written notice to the other party given in accordance with the provisions of this Subsection.

**SECTION 9  
WAIVER OF CONSEQUENTIAL DAMAGES**

IN NO EVENT SHALL THE CITY OR CONSULTANT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF USE, OR COST OF COVER INCURRED BY CONSULTANT OR ANY THIRD PARTIES ARISING OUT OF THIS AGREEMENT AND/OR CONCERNING THE PERFORMANCE OF SERVICES BY THE CONSULTANT OR BY THE CITY UNDER THIS AGREEMENT.

**SECTION 10  
INDEMNIFICATION AND INSURANCE**

10.1 Indemnification. CONSULTANT agrees to indemnify and hold harmless the CITY, its representatives, employees, and elected and appointed officials, from all claims, judgments, damages, losses, and expense (including reasonable attorneys' fees, experts' fees and litigation costs incurred) arising out of or resulting from the performance or nonperformance of the work or services provided within the scope of this Agreement to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT or persons employed or utilized by the CONSULTANT in the performance of any Services rendered under this Agreement. If the type of services being performed under this Agreement require a maximum monetary limit of indemnification under general law, then the maximum monetary limit under this section and other indemnifications contained within this Agreement shall be two million dollars per occurrence, which the CITY and the CONSULTANT agree bears a commercially reasonable relationship to this Agreement; otherwise there is no maximum limit of indemnification. This section shall survive the termination, cancellation, or expiration of the Agreement, and shall not be limited by reason of any insurance coverage.

10.2 Insurance. CONSULTANT shall purchase, maintain, and keep in full force, effect, and good standing, insurance in an amount necessary to fully protect CONSULTANT and its employees, agents, subconsultants and subcontractors from claims of the nature that are detailed below, that may arise out of, or result from, the CONSULTANT's operations, performance, or Services, or all of these things, or any of these things in combination (CONSULTANT's Operations), whether the CONSULTANT's Operations are by the CONSULTANT, any of its employees, agents, subconsultants or subcontractors, or anyone directly or indirectly employed by any of them for whose act or acts any of them may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Services to be performed with coverage limits required by present Florida Statutes;
2. Comprehensive General Liability insurance with limits of liability in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000 in aggregate;
3. Professional Liability insurance (Errors and Omissions) with coverage of at least \$1,000,000 per claim and in the aggregate;
4. Automobile Liability Insurance including non-owned and hired automobiles with a combined single limit of \$1,000,000 per occurrence.

10.3 CITY's Right to Inspect Policies. CONSULTANT shall, upon fifteen (15) days' written request from the CITY, deliver copies to the CITY of any or all certificates of insurance relating to such policies that are required in this Agreement.

## **SECTION 11 MISCELLANEOUS PROVISIONS**

11.1 Discrimination. CONSULTANT, for itself, its delegates, successors-in-interest, and its assigns, and as a part of the consideration hereof, does hereby covenant and agree that, 1) in the furnishing of Services to the CITY hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to this Agreement on the grounds of such person's race, color, creed, national origin, disability, marital status, religion or sex; and 2) the CONSULTANT shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines, and as such rules, regulations, or guidelines may be from time to time amended. In the event of a breach of any of the nondiscrimination covenants described in this subsection, the CITY shall have the right to terminate this Agreement.

11.2 Compliance with Law. CONSULTANT and its employees shall promptly observe, comply with, and execute the provision of any and all present and future federal, state, and local laws, rules, regulations, requirements, ordinances, and orders which may pertain or apply to the Services that may be rendered hereto, or to the wages paid by the CONSULTANT to its employees. The CONSULTANT shall also require, by contract, that all subconsultants and subcontractors shall comply with the provisions of this subsection.

11.3 Licenses. CONSULTANT shall, during the life of this Agreement, procure and keep in full force, effect, and good standing all necessary licenses, registrations, certificates, permits, and other authorizations as are required by local, state, or federal law, in order for the CONSULTANT to render its Services or Work as described herein. The CONSULTANT shall also require all subconsultants and subcontractors to comply by contract with the provisions of this subsection.

11.4 Compliance With New Regulations. CONSULTANT agrees that at such time as the local, state, or federal agencies modify their grant procedures in order for the CITY or the CONSULTANT to qualify for local, state, or federal funding for the Services to be rendered by the CONSULTANT, then the CONSULTANT shall consent to and make such modifications or amendments in a timely manner. If the CONSULTANT is unable to comply with applicable local, state, or federal laws and regulations governing the grant of such funds for Services to be rendered herein, then the CITY shall have the right, by written notice to the CONSULTANT, to terminate this Agreement. Furthermore, if the CONSULTANT's compliance with such laws, regulations, rules, or procedures causes a material change to a term or condition of this Agreement, then the CITY agrees, upon sufficient proof of material changes as may be presented to it by the CONSULTANT, to amend all related CITY/CONSULTANT contractual obligations, and to revise such Project budgets accordingly.

11.4 Consultant Not Agent of City. CONSULTANT is not authorized to act as the CITY's agent hereunder and shall have no authority, expressed or implied, to act for or bind the CITY hereunder, either in CONSULTANT's relations with subconsultants or subcontractor, or in any other manner whatsoever. CONSULTANT shall perform its Services as an independent contractor and shall have responsibility for and control over the details of and means for performing the Services assigned and shall be subject to the directions of the CITY only with respect to the scope of work and the general results required.

11.5 Assignment and Delegation. CITY and the CONSULTANT bind themselves and their partners, successors, executors, administrators, and assigns, to the other party of this Agreement in respect to all duties, rights, responsibilities, obligations, provisions, conditions, and covenants of this Agreement; except that the CONSULTANT shall not assign, transfer, or delegate its rights or duties, or both of these things, in this Agreement without the prior written consent of the CITY, except that the CONSULTANT may assign its right to collect payment as required by its lender agreements. The CITY has the absolute right to withhold such consent at its convenience, and, furthermore, if the CONSULTANT attempts to assign, transfer, or delegate its rights or duties in violation of these provisions without the CITY's consent, then the CITY may immediately terminate this Agreement as a breach of contract by the CONSULTANT and a failure by the CONSULTANT to substantially perform its obligations hereunder, and any such assignment shall be null, void, and of no legal effect. The CITY shall have the right to assign its rights (or any part of them) or to delegate its duties and obligations (or any part of them) to another entity that shall be bound by all applicable terms and conditions as provided in this Agreement.

11.6 Entire Agreement. This Agreement constitutes the entire Agreement between the parties, and shall supersede and replace all prior agreements or understandings, written or oral, relating to the matters set forth therein, and that specifically related to the execution of this particular document.

11.7 Amendment. This Agreement may be amended or modified only by an Amendment, and as duly authorized and executed in writing by the parties.

11.8 Validity. The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and governed by the laws of the State of Florida, only. In the event any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. To that extent, this Agreement is deemed severable.

11.9 Headings. The headings of the Sections or Subsections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such Sections or Subsections.

11.10 Timeliness. The CITY and the CONSULTANT acknowledge and understand that time is of the essence in this Agreement, and that the Services shall be performed in as expeditious a manner as may be in accord with the nature of the Project and consistent with the exercise of sound professional practices.

11.11 Public Entity Crime. Any Person or affiliate, as defined in 287.133 of the Florida Statutes, shall not be allowed to contract with the CITY, nor be allowed to enter into a subcontract for work on this Agreement, if such a person or affiliate has been convicted of a public entity crime within three (3) years of the date this Agreement was advertised for proposals, or if such person or affiliate was listed on the State's convicted vendor list within three (3) years of the date this Agreement was advertised, whichever time period is greater. A public entity crime means a violation of any state or federal law with respect to and directly related to the transaction of business with any public entity or agency (federal, state or local), involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, forgery, falsification of records, receiving stolen property or material misrepresentation. Any Agreement with the CITY obtained in violation of this Section shall be subject to termination for cause. A subconsultant or subcontractor who obtains a subcontract in violation of this Section shall be removed from the Project and promptly replaced by a subconsultant or subcontractor acceptable to the City.

11.12 Force Majeure. Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God (“Force Majeure Event”). Should there be such an occurrence that impacts the ability of either party to perform their responsibilities under this Agreement, the nonperforming party shall give immediate written notice to the other party to explain the cause and probable duration of any such nonperformance. If feasible, the Parties may agree to amend in writing the time periods for any Services authorized to accommodate the situation; however, should a Force Majeure Event preclude the CONSULTANT from performing time-sensitive Services for the CITY, the CITY may terminate this Agreement and reassign Services to another Consultant at no risk or liability to the CITY.

11.13 Remedies And Costs. Unless specified otherwise herein, all remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity.

11.14 Dispute Resolution and Exclusive Venue. As a condition precedent to the filing of any suit or other legal proceeding or if the parties do not agree to the resolution of a dispute pursuant to Section 4.7 of this Contract, the parties shall endeavor to resolve claims, disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The parties shall, by mutual agreement, select a mediator within fifteen (15) days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator, then the CITY shall select the mediator who, if selected solely by the CITY, shall be a mediator certified by the Supreme Court of Florida. No suit or other legal proceeding shall be filed until (i) the mediator declares an impasse, which declaration, in any event, shall be issued by the mediator not later than sixty (60) days after the initial mediation conference; or (ii) sixty (60) days has elapsed since the written mediation request was made in the event the other party refuses to or has not committed to attend mediation. The parties shall share the mediator’s fee equally. The mediation shall be held in Seminole County, Florida, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The sole and exclusive venue for any litigation arising out of or relating to this Agreement or the Services shall be in Volusia County, Florida before the County Court or Circuit Court in and for Volusia County, Florida.

11.15 Attorneys’ Fees & Litigation Costs. In the event of mediation or litigation between the parties concerning or arising from this Agreement and unless otherwise provided by law, each party shall bear their own attorneys’ fees and litigation costs except for in claims by the CITY for indemnity against CONSULTANT under this Agreement, for which claim(s), attorneys’ fees and litigation cost shall be due and payable to the prevailing party.

11.16 Non-Appropriation. Regardless of anything to the contrary contained in this Agreement, the CITY's payment and performance of obligations under this Agreement for each and every fiscal year of the CITY's beyond the fiscal year when the Agreement is executed shall be subject to discretionary annual appropriation by the CITY's City Commission of funds therefore. When sufficient funds are not appropriated or otherwise made available to support the continuation of payment and performance in a subsequent fiscal period, this Agreement shall be deemed terminated on the last day of the fiscal period for which appropriations were made or at such other time as the CITY may determine, without further cost, penalty or obligation to the CITY; provided however, CONSULTANT will be paid for services rendered prior to termination of this Agreement.

11.17 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall be considered or deemed a waiver of the CITY's sovereign immunity protections or of any other immunity, defense or privilege afforded to the CITY or its officials, officers, employees and agents under law.

*IN WITNESS WHEREOF*, this Agreement has been fully executed on behalf of the parties hereto and by its duly authorized representatives, as of the date first written above.

ATTEST:

CONSULTANT

**Littlejohn Engineering Associates, Inc.**

\_\_\_\_\_

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

(SEAL)

Title: \_\_\_\_\_

**CITY OF DEBARY, a Florida municipal corporation**

ATTEST:

\_\_\_\_\_, City Clerk

\_\_\_\_\_  
Clint Johnson, Mayor

(SEAL)

Approved by the City Council  
On \_\_\_\_\_, 2015