



Agenda Item # 04A

VILLAGE OF ROYAL PALM BEACH

Agenda Item Summary

AGENDA ITEM:

Approval and authorization for the Village Manager to enter into a Professional Services Agreement for Electrical Engineering Services with Smith Engineering Consultants, Inc.

ISSUE:

On May 6, 2019, a Request for Qualifications ("RFQ") for Electrical Engineering Services was advertised in the Palm Beach Post. Sealed Proposals were opened on May 21, 2019 and received from SGM Engineering, Inc. and Smith Engineering Consultants, Inc.

A four person selection committee independently evaluated the proposals and ranked them as follows:

1. Smith Engineering Consultants, Inc
2. SGM Engineering, Inc

RECOMMENDED ACTION:

Staff recommends a motion to authorize the Manager to enter into an agreement with Smith Engineering Consultants, Inc. for Electrical Engineering Services.

Initiator:	Village Manager	Agenda Date:	Village Council
	Approval:		Action:
Village Engineer		6/20/2019	

Agreement for Professional Electrical Engineering Services

This Agreement, between the Village of Royal Palm Beach, (hereinafter referred to as VILLAGE) and Smith Engineering Consultants, Inc.
(hereinafter referred to as CONSULTANT), a _____ Corporation, whose Federal Identification Number is: _____.

Whereas, VILLAGE owns and operates lands throughout the Village; and

Whereas, VILLAGE requires certain professional services in connection with Electrical Engineering Services; and

Whereas, CONSULTANT represents it is capable and prepared to provide such Services.

Now, therefore, in consideration of the promises contained herein, the parties hereto agree as follows:

ARTICLE 1 - EFFECTIVE DATE; TERM

Effective date of this agreement will be _____. Term of Agreement shall be for a two-year period, unless otherwise terminated as provided herein. The Village shall have the option of extending the Agreement for two additional two-year periods on the same terms and conditions. Such extension shall be in the form of a written Amendment to the Agreement executed by both parties.

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT shall perform such of the services as specifically stated in the Statement of Work and other related services as may be specifically designated and authorized by the VILLAGE. Such authorizations will be referred to as Consultant Services Authorizations (CSA) and each CSA will be numbered consecutively. Each CSA form will set forth a specific Scope of Services, total amount of compensation and completion date. An individual CSA must be approved by the VILLAGE prior to commencement by CONSULTANT on each of the task or tasks.

ARTICLE 3 – COMPENSATION

3.1 GENERAL

VILLAGE shall pay CONSULTANT in accordance with each Consultant Services Authorization (CSA). Such CSA shall be by mutual consent of both parties and shall include at a minimum the scope of services, length of time to complete project, any work or information required of the Village, list of deliverables and cost. Compensation will be negotiated on a per-project basis, on each individual CSA as set forth in Article 2 herein above.

Invoices must reference the current contract number and Consultant Services Authorization number (if any) and will be submitted to the Village within thirty (30) days from the billing period. Each individual invoice shall be due and payable within thirty (30) days after receipt of correct, fully documented, invoice by the VILLAGE. All invoices shall be delivered to:

Village of Royal Palm Beach
1050 Royal Palm Beach Blvd.
Royal Palm Beach, Florida 33411
Attention: Village Engineer

In order for both parties herein to close their books and records, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT'S final/last billing to the VILLAGE for each CSA Authorization. This certifies that all services have been properly performed and all charges and costs have been invoiced to the Village. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONSULTANT.

3.2 REIMBURSABLES

All requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices or other documentation acceptable to the Village's Engineering Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement.

Reimbursable Expenses mean the actual, pre-approved, expenses incurred directly or indirectly in connection with the applicable Consultant Services Authorization, and include:

Overnight Deliveries
Reproduction
Subconsultants
Long Distance Telephone Calls

Reimbursable Expenses, including sub-consultants, shall be reimbursed at cost.
Pre-approved travel costs shall be reimbursed in accordance with F.S. 112.061.

All work product(s) shall become the property of the VILLAGE upon completion of the work for which the asset was utilized in accordance with Article 26.

ARTICLE 4 - INSURANCE

During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance policies, and be written by an insurance company authorized to do business in Florida.

1. General Liability

Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence, and with property damage limits of not less than \$1,000,000 for each occurrence.

2. **Automobile Liability** Insurance with bodily injury limits of not less than \$1,000,000 for each person and not less than \$1,000,000 for each accident and with property damage limits of not less than \$1,000,000 for each accident.
3. **Workers' Compensation** Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each accident, \$100,000 for each disease, and \$500,000 aggregate.
4. **Professional Liability** Insurance with limits of not less than \$1,000,000 annual aggregate.

CONSULTANT shall endorse all involved policies so that thirty (30) days written notification of cancellation for any reason other than non-payment of premium, and any material change(s) in coverage shall be provided to the VILLAGE. CONSULTANT also shall endorse all involved policies so that ten (10) days written notice of cancellation for non-payment of premium shall be provided to the VILLAGE.

CONSULTANT shall include VILLAGE as an additional insured on the General Liability and Automobile Liability insurance policy required by the Agreement. All of CONSULTANT's sub-contractors shall be required to include VILLAGE and CONSULTANT as additional insured on their General Liability insurance policies.

The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the VILLAGE.

ARTICLE 5 - STANDARD OF CARE

CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a comparable professional under similar circumstances and CONSULTANT shall, at no additional cost to VILLAGE, re-perform services which fail to satisfy the foregoing standard of care.

The CONSULTANT warrants that all services shall be performed to comparable professional standards in the field by skilled and competent personnel.

ARTICLE 6 - INDEMNIFICATION

6.1 GENERAL

Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, VILLAGE and CONSULTANT agree to allocate such liabilities in accordance with this Article 6.

6.2 INDEMNIFICATION

CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the VILLAGE, its employees and officers, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, for which the VILLAGE, its employees and officers can or may be held liable, to the extent caused by the negligence, recklessness, or

intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of Services under this Agreement in conformance with

Sec. 725.08, *Florida Statutes*. The CONSULTANT shall not be required to indemnify the VILLAGE or its agents, employees or representatives, when an occurrence results from the negligence, wrongful acts or omissions of the VILLAGE, or its agents, employees or representatives.

6.3 SURVIVAL

Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive.

ARTICLE 7 - INDEPENDENT CONTRACTOR

CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. VILLAGE shall have no right to supervise the methods used, but VILLAGE shall have the right to observe such performance. The Village as well as the Value Engineer shall have the right to review and make comments/recommendations relating to the Scope of Services. CONSULTANT shall work closely with VILLAGE in performing Services under this Agreement.

The CONSULTANT shall not pledge the VILLAGE's credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 8 - AUTHORITY TO PRACTICE

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 9 - COMPLIANCE WITH LAWS

In performance of the Services, CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

ARTICLE 10 - SUBCONTRACTING

The VILLAGE reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor to ensure that the selected subcontractor will be able to perform properly under this Agreement.

If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the Village.

ARTICLE 11 - FEDERAL AND STATE TAXES

The VILLAGE is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the VILLAGE will provide an exemption certificate to CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the VILLAGE, nor shall the CONSULTANT be authorized to use the

VILLAGE's Tax Exemption Number in securing such materials.

ARTICLE 12 - AVAILABILITY OF FUNDS

The obligations of the VILLAGE under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Council of the Village of Royal Palm Beach.

ARTICLE 13 - VILLAGE'S RESPONSIBILITIES

VILLAGE shall be responsible for providing access to all project sites and providing information on hand required by CONSULTANT, including: existing reports, existing design plans and drawings, studies, financial information and other required data that are available in the files of the VILLAGE.

ARTICLE 14 - TERMINATION OF AGREEMENT

This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the VILLAGE in the event of substantial failure by the VILLAGE to perform in accordance with the terms of the Agreement through no fault of the CONSULTANT. It may also be terminated by the VILLAGE with or without cause immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Agreement, the CONSULTANT shall be paid for services rendered to the VILLAGE's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the VILLAGE, the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other material related to the terminated work to the VILLAGE.
- D. Continue and complete all parts of the work that have not been terminated.

The CONSULTANT shall be paid for services actually rendered to the date of termination unless CONSULTANT is in breach of contract as set forth earlier in this Article.

ARTICLE 15 - UNCONTROLLABLE FORCES

Neither the VILLAGE nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable

dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 16 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County and the Agreement will be interpreted according to the laws of Florida.

ARTICLE 17 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court cost (including, without limitation, all such fees, costs and expenses incidental to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 18 - NON-DISCRIMINATION

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

ARTICLE 19 - WAIVER

A waiver by either VILLAGE or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver,

such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

ARTICLE 20 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

ARTICLE 21 – INSPECTOR GENERAL

Pursuant to Article XII of the Palm Beach County Charter, the Office of the Inspector General has jurisdiction to investigate municipal matters, review and audit municipal contracts and other transactions, and make reports and recommendations to municipal governing bodies based on such audits, reviews or investigations. All parties doing business with the Village shall fully cooperate with the inspector general in the exercise of the inspector general's functions, authority and power. The inspector general has the power to take sworn statements, require the production of records and to audit, monitor, investigate and inspect the activities of the Village as well as contractors and lobbyists of the Village in order to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct and abuses.

ARTICLE 22 – PUBLIC RECORDS

In accordance with Sec. 119.0701, *Florida Statutes*, CONTRACTOR must keep and maintain this Agreement and any other records associated therewith and that are associated with the performance of the work described in the Proposal or Bid. Upon request from the Village's custodian of public records, CONTRACTOR must provide the Village with copies of requested records, or allow such records to be inspected or copied, within a reasonable time in accordance with access and cost requirements of Chapter 119, *Florida Statutes*. A CONTRACTOR who fails to provide the public records to the Village, or fails to make them available for inspection or copying, within a reasonable time may be subject to attorney's fees and costs pursuant to Sec. 119.0701, *Florida Statutes*, and other penalties pursuant to Sec. 119.10, *Florida Statutes*. Further, CONTRACTOR shall ensure that any exempt or confidential records associated with this Agreement or associated with the performance of the work described in the Proposal or Bid are not disclosed except as authorized by law for the duration of the Agreement term, and following completion of the Agreement if the CONTRACTOR does not transfer the records to the Village. Finally, upon completion of the Agreement, CONTRACTOR shall transfer, at no cost to the Village, all public records in possession of the CONTRACTOR, or keep and maintain

public records required by the Village. If the CONTRACTOR transfers all public records to the Village upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. Records that are stored electronically must be provided to the VILLAGE, upon request from the Village's custodian of public records, in a format that is compatible with the Village's information technology systems.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE VILLAGE CLERK, RECORDS CUSTODIAN FOR THE VILLAGE, AT (561) 790-5100, OR AT Ddisanto@RoyalPalmBeach.com, OR AT 1050 ROYAL PALM BEACH BLVD., ROYAL PALM BEACH, FLORIDA 33411.

ARTICLE 23 - MODIFICATION

The Agreement may not be modified unless such modifications are evidenced in writing signed by both VILLAGE and CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both parties.

ARTICLE 24 - SUCCESSORS AND ASSIGNS

VILLAGE and CONSULTANT each binds itself and its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives. CONSULTANT shall not assign this Agreement without the express written approval of the VILLAGE via executed amendment.

ARTICLE 25 - CONTINGENT FEES

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 it 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, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 26 - OWNERSHIP OF DOCUMENTS

CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the VILLAGE for its use and/or distribution as may be deemed appropriate by the VILLAGE. However, any re-use of such documents by the VILLAGE, for other than the specific purpose intended, without written verification and adaptation by the CONSULTANT for such specific purpose will be at the sole risk of the VILLAGE and without liability or legal exposure to the CONSULTANT.

ARTICLE 27 - ACCESS AND AUDITS

CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The VILLAGE shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the CONSULTANT's place of business.

ARTICLE 28 - NOTICE

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As To VILLAGE

Village of Royal Palm Beach
1050 Royal Palm Beach Blvd.
Royal Palm Beach, Florida 33411
Attention: Christopher Marsh, P.E., Village Engineer
561-790-5161 cmarsh@royalpalmbeach.com

As To CONSULTANT

Name: _____

Address: _____

Attention: _____

Phone: _____

Email: _____

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and VILLAGE.

ARTICLE 29 - AUTHORIZED REPRESENTATIVE

The parties agree that in order to facilitate the orderly and efficient implementation of the Project and the work contemplated by this Agreement, each party shall appoint an authorized representative (or representatives) for such party. The VILLAGE's representative shall have the authority to transmit instructions, receive information, and interpret and define the VILLAGE's policies and decisions pertinent to the work covered by this Agreement. The parties understand and agree that the VILLAGE Manager has the authority under the VILLAGE'S purchasing guidelines to issue individual Consultant Service Authorizations that do not exceed fifty thousand dollars (\$50,000.00) in value. The parties understand and agree that only the VILLAGE Council has the authority to issue individual Consultant Service Authorizations that exceed fifty thousand dollars (\$50,000.00) in value, or approve changes or modifications to this Agreement on behalf of the VILLAGE. The CONSULTANT's representative shall be authorized to act on behalf of CONSULTANT regarding all matters involving the conduct of its performance under this Agreement. The initial representatives shall be Raymond C. Liggins Jr., P.E., Village Manager, for the VILLAGE; and _____, for CONSULTANT. Either party shall have the right to change its authorized representative or representatives, or to add additional representatives, from time to time, throughout the term hereof, by giving written notice to the other party hereto in accordance with the notice provisions of this Agreement and by mutual consent of both parties.

ARTICLE 30 - ENTIRETY OF AGREEMENT

The VILLAGE and the CONSULTANT agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the VILLAGE and CONSULTANT pertaining to the Services described herein, whether written or oral. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

In Witness Whereof, the parties have hereunto set their hands the day and year first above written.

Village of Royal Palm Beach

WITNESSES:

1. _____ By: _____
Signature

2. _____ Name: Raymond C. Liggins, P.E.

Title: Village Manager

Approved as to Form and Legal Sufficiency

By: _____
Village Attorney

Smith Engineering Consultants, Inc.

WITNESSES:

1. _____ By: _____
Signature

2. _____ Name: _____

Title: _____

Approved by Village Council on _____

Item No. _____