

RESOLUTION 20-17

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH DAG ARCHITECTS RELATING TO ROOF EVALUATION SERVICES IN THE TOTAL AMOUNT OF \$19,200.

BE IT RESOLVED by the City Council of the City of Panama City Beach that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement between the City and DAG Architects, relating to roof evaluation services on 23 Utilities Department structures and buildings, for a total amount of Nineteen Thousand, Two Hundred Dollars (\$19,200.00) on substantially the terms and conditions of the Agreement attached as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in special session this 2nd day of December, 2019.

CITY OF PANAMA CITY BEACH

By: _____


Mike Thomas, Mayor

ATTEST:


Mary Jan Bossert, City Clerk



November 20, 2019

Al Shortt, Utilities Director/City Engineer
Panama City Beach Utilities & Engineering Department
116 S. Highway 79
Panama City, Florida 32413

RE: Panama City Beach Utilities Roof Evaluations
Fee Proposal for Roof Evaluation Services

Al,

Thank you for the opportunity to submit this proposal for evaluation services related to the above referenced task.

For this specific request, we offer the following proposal:

For clarity, we offer the following scope of services for the desired tasks:

1. Provide site visits to each of the 23 listed PCB Utilities Department structures. This includes three offsite facilities from the Gulf Blvd facility.
2. Roof areas for each structure will be evaluated to determine size, composition and condition of existing roof systems.
3. Core samples will be taken as needed to determine the construction make up of the areas in question. Temporary repairs will be made to core sampled areas.
4. A report of findings and recommendations for each roof area will be provided.

Once the City has determined which, if any, structures require attention immediately, DAG will be available to assist in the preparation of bid documents similar to our recent efforts provided at the Electrical Building. This proposal only includes the review and reporting (items 1-4 above). All proposals for the preparation of bid documents will be addressed after submittal of the report and will be handled on a case by case basis. Any additional services desired above those specifically noted above will be provided on an as-needed basis and tracked and billed at the currently published hourly rates. We have determined that the designated reporting, once released, should require no more than four weeks to provide. This assumes that proper scheduling can be arranged for site visits. We are confident we can improve on this time; however, without knowing when the release would come, it is difficult to know what other tasks may be in front of this work.

DAG architects
AA C000745
455 harrison avenue
suite b
panama city, florida
32401
p 850.387.1671
www.dagarchitects.com

REVIEW & REPORTING FEE

This scope for site visits, review, core samples and reporting is a lump sum task.

Total Fee for Task –

\$19,200

After your review of this information, we welcome the opportunity to meet and discuss together at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Owen E. Gipson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Owen E. Gipson RA
Architect – Associate Principal

Copy:
Charlie Clary, FAIA

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
CITY OF PANAMA CITY BEACH AND DAG ARCHITECTS
RELATING TO
ROOF EVALUATION SERVICES**

THIS AGREEMENT is made and entered into this ____ day of _____, 2019, by and between the **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (“City”) and DAG Architects (“Consultant”).

PREMISES

1. SCOPE OF PROFESSIONAL SERVICES:

The scope of services has been agreed to by the parties, and is attached hereto and incorporated herein by reference as Exhibit A. The Consultant shall provide professional Services for the City in all phases of the project to which this Agreement applies as hereinafter provided, and shall do so within the budget established by the City and within the schedule set forth in Exhibit A. The Consultant shall perform any and all Professional Services in a timely, efficient and cost-effective manner and in accordance with the generally accepted standards of the applicable profession. The City retains the Consultant to diligently, competently and timely perform the “Professional Services” in connection with the project in accordance with the provisions of this Agreement, applicable state codes and municipal ordinances, and in accordance with the Request for Qualifications (RFQ), instruction to bidders, bid form, and any and all addenda, modifications and revisions thereto.

2. COMPENSATION AND PAYMENT:

A. Consultant’s compensation for the services described in the scope of work shall be as stated in Exhibit A. 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 Consultant shall be reimbursed for reasonable out-of-pocket expenses upon submission of adequate documentation. The Consultant 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 Consultant 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 Consultant shall perform additional work necessary or convenient to complete the services, and which are mentioned or referenced in this Agreement. The Consultant shall be entitled to additional compensation unless such work is required as a result of error, omission, or negligence by the Consultant. The additional

compensation shall be computed by the Consultant on a revised fee quotation proposal and submitted to the City for written approval. If the parties cannot agree, Consultant'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 Consultant in monthly installments as set forth elsewhere in this Agreement.

D. In the event that additional outside services are required due to unforeseen conditions, the Consultant 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 Consultant shall select a firm that is registered in the State of Florida.

3) If the proposal is approved in writing by the City, the Consultant shall enter into a contract with the firm for the furnishing of such services in accordance with the proposal.

4) The Consultant 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 Consultant for the cost of such services, which cost shall not exceed 1.10 times the amount of the proposal.

6) Services rendered by the Consultant 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 Consultant except as part of the multiplier stated in immediately preceding subsection 2.D.5.

E. At the end of each month during which work shall be outstanding, the Consultant shall submit an invoice for services rendered during that month with respect to the work performed, as follows:

1) Where a stipulated sum is specified, the City shall pay Consultant in monthly installments based upon the percentage of satisfactory completion. In support of payment, Consultant 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 Consultant 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. TERM and SCHEDULE:

A. The term of this Agreement shall commence on the date of execution of this Agreement by the City and continue through approval of the final reports by the City. It is also agreed that the City shall have an option for extension of this Agreement, as necessary to complete the services or to provide additional services.

B. The City shall give prompt written notice to the Consultant whenever the City observes or otherwise becomes aware of any development that affects the timing or delivery of the Consultant's Services. If the Consultant has been delayed in completing its Services through no fault or negligence of either the Consultant or any Specialty Consultant, and, as a result, will be unable complete timely performance fully and satisfactorily under the provisions of this Agreement, then the Consultant shall promptly notify the City. At the City's sole discretion, and only upon the previous submittal to the City of evidence of the causes of the delay, the City may grant the Consultant an extension of its Project schedule equal to the period the Consultant was actually and necessarily delayed, subject to the City's rights to change, terminate, or stop any or all of the Services at any time in accordance with this Agreement.

4. CITY'S RESPONSIBILITY:

The City shall furnish the Consultant with all existing data, plans, profiles, and other 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 Consultant, unless such data, plans, profiles, and other data are necessary for daily operations; then such forms of information shall be promptly duplicated by the Consultant and the originals returned to the City.

5. CITY'S DESIGNATED REPRESENTATIVE:

It is understood and agreed that the City designates the City Manager or his designated representative, Al Shortt, Utilities Director, 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 Consultant, and rendering in writing decisions pertaining thereto within a reasonable time so as not to materially delay the work of the Consultant.

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 Consultant 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 Consultant's compensation, shall not be binding unless mutually agreed upon by and between the City and the Consultant, and incorporated in written amendments to this Agreement.

7. TERMINATION:

A. The City may terminate this Agreement for cause upon written notice to Consultant if Consultant 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. Consultant 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 Consultant solely for the reasonable value of the work performed by the Consultant prior to the City's wrongful action, including reasonable overhead and profit on the work performed, less prior payments made. Under no circumstances shall Consultant be entitled to overhead and profit on work not performed.

B. City may terminate this Agreement at any time without cause upon written notice to Consultant. Should the City terminate this Agreement without cause, City shall pay Consultant for work performed through the date of Notice of Termination, including overhead and profit, and shall have no further responsibility to Consultant.

C. Termination must be by mutual agreement of the parties.

8. INDEMNIFICATION:

The Consultant 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 Consultant or any person employed or utilized by the Consultant in the performance of

professional services hereunder, to the fullest extent permitted by Section 725.08(1), *Florida Statutes*. The specific consideration given for the promises of the Consultant set forth in this paragraph is one dollar (\$1) in hand paid by the City to the Consultant, receipt whereof is hereby acknowledged and the adequacy of which the Consultant accepts as completely fulfilling the obligations of the City. The provisions of this Section shall survive termination of this Agreement.

9. INSURANCE:

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

1) **Worker's Compensation:** For all of its 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 Consultant 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 Consultant 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: "SHOULD 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.

10. NEGOTIATION DATA:

A. The Consultant 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 date of the Agreement.

The original contract price and any 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 Consultant warrants that he 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 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 Consultant any fee, commission, percentage, gift, or any other consideration, contingent 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.

11. 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 Consultant in connection with its services hereunder, and the intellectual property rights associated with all deliverables, 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 Consultant 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 Consultant. The City shall use reasonable efforts to notify Consultant if it uses the Consultant's project specific design documentation on any project other than the project described in the Scope of Work and Request for Statements of Qualification.

When transferring data in electronic media format, Consultant 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 Consultant 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. Consultant 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 Consultant's seal shall take precedence over the electronic documents.

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

12. WORK COMMENCEMENT/PROGRESS/DELAYS:

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

B. The Consultant 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 Consultant, and of the details thereof.

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 Consultant which delay the project schedule completion date, the City shall grant to the Consultant in writing an extension of time equal to such delays.

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

13. STANDARDS OF CONDUCT:

A. The Consultant 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 Consultant 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 Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

14. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:

The Consultant 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.

15. ASSIGNABILITY:

The Consultant 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 Consultant 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.

16. INDEPENDENT CONTRACTOR:

The Consultant is and shall remain an independent contractor and not an employee of the City.

17. 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.

18. 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.

19. 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.

20. 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.

21. COOPERATION:

Consultant acknowledges that the process of Consulting 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, city staff, 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.

22. MEDIATION:

City and Consultant 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.

23. 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 Consultant is acting on behalf of City as provided under Section 119.011(2), Consultant 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, MJBOSSERT@PCBGOV.COM, 110 S. ARNOLD ROAD, PANAMA CITY BEACH, FL 31413

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:

Mary Jan Bossert, City Clerk

DAG Architects

By: _____

WITNESS
PRINT NAME: _____

WITNESS
PRINT NAME: _____