



## RESOLUTION NO. 2022-36

### A RESOLUTION AUTHORIZING THE MAYOR TO RETAIN CIVIL SOUTHEAST, LLC TO PROVIDE ENGINEERING SERVICES FOR ALDOT PROJECT TAPUC-TA23(930) SIDEWALK IMPROVEMENTS


**WHEREAS**, the Alabama Department of Transportation (ALDOT) has approved funding through the Transportation Alternatives Program (TAP) for sidewalk improvements within the Town of Magnolia Springs. More specifically ALDOT Project TAPUC-TA23(930) Sidewalk Improvements along Old Marlow Rd., Gates Ave., School St., and Magnolia Ave.

**WHEREAS**, the Town of Magnolia Springs is required to hire an engineering firm to provide all required permitting and engineering design for this project.

**NOW, THEREFORE BE IT RESOLVED** that the Town of Magnolia Springs selects Civil Southeast, LLC to provide all required engineering design; and

**BE IT FURTHER RESOLVED** that the Town Council authorizes the Mayor and Clerk to execute the corresponding Engineering Design Agreement, pending ALDOT approval, authorizing Civil Southeast to begin work on these projects.

**APPROVED AND ADOPTED** on the 22<sup>nd</sup> day of November 2022.

  
\_\_\_\_\_  
Kim Koniar, Mayor

  
\_\_\_\_\_  
Hannah Driskell, Town Clerk



## AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT, made and entered into this 22<sup>nd</sup> day of November 2022, by and between the **Town of Magnolia Springs** hereinafter referred to as the OWNER, and **Civil Southeast, LLC**, hereinafter referred to as the ENGINEER.

WHEREAS, the OWNER desires to consultation performed relative to Professional Engineering Services on **ALDOT Project No. TAPUC-TA23(930), Sidewalk Improvements along Old Marlow Rd., Gates Ave., School St., and Magnolia Ave.**

WHEREAS, not having engaged any other engineers for the Project, the OWNER desires to retain the ENGINEER as its sole and exclusive engineering and consulting firm for the Project;

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the OWNER and Engineer do agree, each with the other, as follows:

### ARTICLE 1. BASIC SERVICES.

The Engineer shall provide the Owner the following basic professional engineering services and consultation:

- 1.1 The Engineer will conduct preliminary studies and investigations of the proposed work, prepare preliminary cost estimates, and make recommendations as to the general type and quantities of work which appear to be required.
- 1.2 The Engineer will accomplish the detailed design, prepare plans, specifications and contract documents for the proposed improvements in accordance with ALDOT requirements.
- 1.3 Upon completing all permitting and obtaining authorization from ALDOT, the Engineer will advertise for construction bids in accordance with ALDOT and Public Works Law and make a recommendation of award.

### ARTICLE 2. RESPONSIBILITIES OF THE OWNER.

The OWNER shall provide for the ENGINEER the following information and shall do the following:

- 2.1 The OWNER shall provide all criteria and full information as to the OWNER's requirements for the project.
- 2.2 The OWNER will assist the ENGINEER by placing at the ENGINEER's disposal all available *information pertinent to the project.*
- 2.3 The OWNER shall arrange for access to and make all provisions for the ENGINEER to enter upon public and private property and perform surveying, testing and other data collection as required for ENGINEER to perform services under this Agreement.

2.4 The OWNER shall designate in writing a person to act as the OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions and receive information.

2.5 The OWNER shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, as well as such legal services as the OWNER may require or the ENGINEER may reasonably request with regard to legal issues pertaining to the Project. It is expressly understood and agreed that the ENGINEER itself shall not furnish or render any legal opinions or legal interpretations as to matters of law or application of law.

### **ARTICLE 3. PERIOD OF SERVICE.**

3.1 Engineer's obligation to provide services as contained in Article I and attachments thereto, will extend for a reasonable period of time for the design, and ALDOT approval of the plans and contract documents.

3.2 Upon notice from the Owner, Engineer shall proceed with the performance of the services called for in the Design Phase, and to deliver all required documentation and plans for ALDOT approval.

3.3 The Design Phase shall terminate upon project award by the Owner.

### **ARTICLE 4. COMPENSATION.**

4.1 The OWNER agrees to pay the ENGINEER, in cash, compensation on a cost plus fixed fee basis for professional engineering services. An estimated breakout of the maximum professional engineering services cost is provided below:

- Labor Rates:
  - Civil Engineer III \$46.00-49.99/hour
  - Civil Engineer II \$35.00-45.99hour
  - Civil Engineer I \$21.00-34.99/hour
  - Clerical \$18.00-25.00/hour
  - Professional Land Surveyor \$45.00-47.99/hour
  - Survey Crew (3 Person Party) \$55.00-75.00/hour
- Overhead Rate (Safe Harbor): 110%
- *Mileage Rate: Current Federal Mileage Rate*
- Qualified Project Related Expenses: Cost + 10%
- Operating Margin (Profit): 10%

**Total Fee Billed shall not exceed: \$34,800.00**



4.2 The actual cost for work accomplished will include all costs related to salaries of employees for time directly chargeable to the project work and salary additives, such as the ENGINEER's expenses and overhead, to the extent they are properly allocable to the work of the project.

4.3 The ENGINEER will provide the necessary professional engineering services, and unless substantial change is made in the plans or scope of work, the maximum payment shall not exceed **\$34,800.00**.

4.4 Billable overtime, approved by the sponsor, is all time worked over Forty Hours each week or holidays observed by the ENGINEER.

a. The hourly overtime rate will be 1.50 times the hourly billable rate.

b. Hours worked on holidays observed by the ENGINEER will be billable at the hourly rate of 2 times the hourly billable rate.

#### **ARTICLE 5. RELATIONSHIP OF THE PARTIES.**

5.1 The parties intend that this Agreement create an independent contractor relationship between them. The ENGINEER is a professional corporation and is not an agent or employee of OWNER for any purpose. The ENGINEER cannot and will not represent that he has the authority to bind OWNER in any contractual manner. Nevertheless, with regard to the bidding and construction phases, it is understood that ENGINEER may serve as the OWNER's representative with full authority to participate therein as designated in Article 1, above. Moreover, OWNER agrees to defend and hold ENGINEER, its employees, directors, officers and agents, harmless from any and all claims, suits, damages and expenses, including but not limited to attorney's fees, resulting from or based upon ENGINEER's actions as OWNER's representative.

5.2 Neither party is to represent to others that the relationship between them is other than as stated above.

5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and the ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and the ENGINEER and not for the benefit of any other party.

5.4 The OWNER and the ENGINEER each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns (to the Extent permitted by Paragraph 5.5 below) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrations, legal representatives and said assigns of such other party, *in respect of all covenants, agreements, and obligations of this Agreement.*

5.5 Neither the OWNER nor the ENGINEER shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility

under this Agreement. Nothing contained in this paragraph shall prevent the ENGINEER from employing such independent professional associates, ENGINEERS, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance of services hereunder.

#### **ARTICLE 6. LIABILITY AND INDEMNITY.**

6.1 The ENGINEER will not be responsible for delays or obstacles attributable to acts of God, acts of third parties, weather, intervention of public authorities, work stoppages, changes in the applicable laws or regulations after the date of commencement of performance hereunder and any other acts or omissions or events which are beyond the control of the ENGINEER.

6.2 OWNER may not utilize ENGINEER's construction cost estimate after thirty calendar days from the date of delivery to OWNER without ENGINEER's written consent. Estimates of cost are made on the basis of the ENGINEER's experience, qualifications, and professional judgment, but since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee or warrant that proposals, bids or actual construction costs will not vary from estimates of probable costs prepared by ENGINEER. Approvals, recommendations, estimates and decisions by the ENGINEER are made on the basis of the ENGINEER's experience, qualifications, and professional judgment and are not to be construed as warranties or guarantees.

6.3 Notwithstanding any other provision of this Agreement, the Engineer's total liability to the Owner for any loss or damages from claims arising out of or in connection with this Agreement from any cause including the Engineer's strict liability, breach of contract, or professional negligence, errors and omissions (whether claimed in tort, contract, strict liability, nuisance, by statute or otherwise) shall not exceed the limits of the Engineer's liability insurance in effect at the time such claims are made. The Owner hereby releases the Engineer from any liability exceeding such amount. In no event shall either party to this Agreement be liable to the other for special, indirect, incidental or consequential damages, whether or not such damages were foreseeable at the time of the commencement of the work under this Agreement.

6.4 Any and all liability resulting from conditions not created or caused to be created by the Engineer shall be the liability of the Owner. Any and all liability that may arise from the construction, ownership and/or operation of the improvements is solely the responsibility of the Owner, and the Owner and Engineer agree to joint indemnity from such liability, claims, actions, loss or damage, including but not limited to attorney's fees, arising therefrom.

6.5 The OWNER shall make no claim for professional negligence, either directly or by way of a cross complaint against the ENGINEER unless the OWNER has first provided the ENGINEER with a written certification executed by an independent ENGINEER currently practicing in the same discipline as the ENGINEER and licensed in the State of Alabama. This certification shall: a) contain the name and license number of the certifier, b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for an ENGINEER performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided by the ENGINEER not less than thirty (30) calendar days prior to the presentation of



any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration.

#### **ARTICLE 7. OWNERSHIP AND USE OF DOCUMENTS.**

7.1 All documents are instruments of service in respect to the Services, and ENGINEER shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Services are completed.

7.2 Copies of documents that may be relied on by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

7.3 OWNER may make and retain copies of documents for information and reference in connection with the services by ENGINEER. Such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the services or on any other PROJECT. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's ENGINEERS. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's ENGINEERS from all claims, damages, and expenses including attorneys' fees arising out of or resulting therefrom.

7.4 In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.

#### **ARTICLE 8. TERMINATION.**

8.1 This Agreement shall be subject to termination by either party hereto, with or without cause, upon 20 days advance notice in writing. Payment due at such time shall be computed upon applicable terms of Article 4 and amount of work completed or in progress as of the termination date and ENGINEER's reasonable cost of winding down its services after termination.

#### **ARTICLE 9. MISCELLANEOUS.**

9.1 This Agreement represents the entire and integrated Agreement between the OWNER and ENGINEER and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the OWNER and the ENGINEER.

9.2 It is understood and agreed by the parties hereto, that any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

9.3 It is expressly understood and agreed that the indemnity and insurance obligations of this Agreement, as well as the ENGINEER's proprietary interest in its engineering drawings, and specifications, shall survive the termination of this Agreement under Article 8 above as well as the completion of services under this Agreement.

9.4 This Agreement is to be governed by the laws of the State of Alabama.

IN TESTIMONY to all of which said the **Town of Magnolia Springs** has caused this instrument to be executed by its **Mayor**, and its seal affixed, for the **Town of Magnolia Springs**; and said **Civil Southeast, LLC** has caused this instrument to be executed by its **Manager** on the date first written above.



Seal:

Attest:

**Town of Magnolia Springs**

  
\_\_\_\_\_  
Hannah Driskell  
Town Clerk

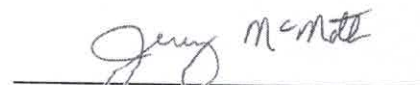
  
\_\_\_\_\_  
Honorable Kim Koniar  
Mayor

Seal:

Attest:

**Civil Southeast, LLC**

  
\_\_\_\_\_  
Alan Killen, PE  
Project Manager

  
\_\_\_\_\_  
Jeremy McMath, PE  
Manager

**AGREEMENT FOR DESIGN SERVICES  
SUPPLEMENTAL AGREEMENT**

**To: Town of Magnolia Springs**

**Project: TAPUC-TA23(930), Sidewalk Improvements along Old Marlow Rd., Gates Ave., School St., and Magnolia Ave.**

**Date:**

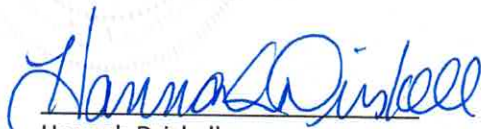
The following item shall be added to the contract dated November 22, 2022.

- 4.5 The Owner agrees to pay the Engineer, in cash, total compensation of **five thousand dollars & 00/100 (\$5,000.00)** for topographic survey to be paid in monthly installments as work progresses.
- 4.6 The Owner agrees to pay the Engineer, in cash, total compensation of **three thousand five hundred dollars & 00/100 (\$3,500.00)** for PCN Environmental Checklist Submission to be paid in monthly installments as work progresses.
- 4.7 The Owner agrees to pay the Engineer, in cash, total compensation of **two thousand five hundred dollars & 00/100 (\$2,500.00)** for ROW certification to be paid in monthly installments as work progresses.

IN TESTIMONY to all of which said the **Town of Magnolia Springs, Alabama** has caused this instrument to be executed by its **Mayor**, and its seal affixed, for the **Town of Magnolia Springs**; and said **Civil Southeast, LLC** has caused this instrument to be executed by its **Manager** on the date first written above.

Seal:

Attest:



Hannah Driskell  
Town Clerk

**Town of Magnolia Springs**



Honorable Kim Koniar  
Mayor

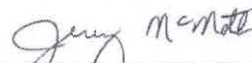
Seal:

Attest:



Alan Killen, PE  
Project Engineer

**Civil Southeast, LLC**



Jeremy McMath, PE  
Manager