

# ATTACHMENT 1

**THIS AGREEMENT**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between the Village of Estero, a municipal corporation of the State of Florida, whose address is 9401 Corkscrew Palms Circle #101, Estero, Florida 33928, hereinafter referred to as the “Village,” and Florida Gulf Coast University (FGCU) whose address is 10501 FGCU Boulevard South, Fort Myers, FL 33965-6565, hereinafter referred to as the “Consultant.”

## WITNESSETH

**WHEREAS**, the Village has determined that it is necessary to retain a Consultant to perform a research project entitled “FGCU Estero River Bacteria-Nutrient Source Identification”; and

**WHEREAS**, these professional services are exempt from being competitively bid in accordance with Ordinance 2015-06; and

**WHEREAS**, the Consultant is qualified, willing and able to provide and perform all such services in accordance with the terms and conditions of its Proposal dated June 14, 2019; and

**WHEREAS**, the Village, has determined that it would be in the best interest of the Village to award a contract to Consultant for the rendering of those services described in the Proposal.

**NOW, THEREFORE**, the Village and the Consultant, in consideration of the mutual covenants contained herein, do agree as follows:

## **ARTICLE 1.**

### **RECITALS & INCORPORATION OF DOCUMENTS**

1.1. The above-stated recitals are incorporated by this reference and made part of this Agreement.

1.2 Proposal submitted by Consultant dated June 14, 2019 is hereby specifically made part of this Agreement as if same had been set forth at length herein.

1.3 In the event of any conflict between the documents constituting this Agreement, the documents shall be given precedence in the following order:

- 1) This Agreement and any Exhibits or Amendments thereto;
- 2) Consultant’s Proposal Dated June 14, 2019.

**ARTICLE 2.**  
**CONSULTANT'S SCOPE OF SERVICES**

2.1. Consultant agrees to perform all the services and provide all the materials requested and described in the Proposal which is attached hereto as Exhibit A and incorporated herein by this reference, which are hereinafter collectively referred to as the "Scope of Services."

2.2. Consultant agrees to provide its services and materials in the times allowed for performance contained in the Scope of Services. The Consultant will make no claims for additional compensation or damages owing to suspensions, delays, or hindrances which arise during the performance of this Agreement. Such suspensions, delays or hindrances may only be compensated for by an extension of time as the Village may decide. However, such extension will not operate as a waiver of any other rights of the Village.

2.3. In the event that Village desires Consultant to perform any additional services related to tasks not specifically contained in the Scope of Services, the Village Manager is authorized to approve such services based on the costs contained in Exhibit A provided the total amounts expended to do not exceed the limitation of paragraph 3.1.

**ARTICLE 3.**  
**COMPENSATION AND PAYMENT OF CONSULTANT'S SERVICES**

3.1. Village will pay Consultant for those tasks listed in the Scope of Services actually performed by Consultant. The total payment to Consultant will not exceed \$48,193 for Consultant's services under this Agreement, performed in accordance with the Scope of Services and this Agreement.

3.2. Payment for services rendered by Consultant will be made as specified in Exhibit A. Services completed will be subject to review and approval by the Village Manager or his designee.

3.3 Payment for tasks will be as specified in Exhibit A attached hereto.

3.4. Consultant must submit all billings for payment of services rendered on a monthly basis to the Village Finance Department (accountspayable@estero-fl.gov) for processing. Billings will be detailed as to the nature of the services performed and must refer to the specific tasks listed in the Scope of Services that were actually performed by Consultant. When hourly billing is utilized, Consultant must report the number of hours on each task in 6-minute increments (tenths of an hour) in its invoices. Billings must include a summary of any amounts previously billed and any credits for amounts previously paid.

3.5. Consultant acknowledges that each billing must be reviewed and approved by the Village Manager or his designee. Should the Village Manager or his designee, determine that the billing is not commensurate with services performed, work accomplished or hours expended, Consultant must adjust billing accordingly. However, Consultant will be entitled to payment of any portion of a billing not in dispute.

3.6. Village will pay Consultant's monthly billings in accordance with Sections 218.70 through 218.80, Florida Statutes, known as the Local Government Prompt Payment Act.

3.7. It is expressly understood by the Village and the Consultant that funding for any successive fiscal years may be contingent upon appropriation of monies by the Village Council or other entities. In the event that funds are not available or appropriated, the Village reserve the right to terminate the Agreement without penalty or liability. Termination will occur (1) upon notice to the Consultant or automatically (2) on the last day of the then current fiscal year or (3) when the appropriation made for the then-current year or specific appropriation for the services covered by this Agreement is spent, whichever event occurs first.

#### **ARTICLE 4.** **CONSULTANT'S RESPONSIBILITIES**

4.1. Consultant will perform or furnish consulting and related services to a level of technical skill, ability, and diligence customarily provided by an experienced professional in their field of expertise when rendering the same services, and in accordance with sound principles and practices generally acknowledged by professionals in their field of expertise, as represented to the Consultant, both orally and in writing, to be possessed by Consultant, all in accordance with the standards contained elsewhere in this Agreement and in accordance with generally accepted standards of professional consulting practice and with the laws, statutes, ordinances, codes, rules and regulations governing Consultant's profession. The same standards of care will be required of any subconsultant or subcontractor engaged by Consultant.

4.2. Consultant will be solely responsible for providing their own business equipment, including any vehicles necessary for the performance of their work, and for paying all expenses incurred while performing the services set forth in this Agreement. Expenses to be borne by Consultant include, but are not limited to, license fees, memberships, and dues; entertainment; and any applicable insurance premiums. Consultant will be reimbursed for certain allowable expenses upon submission to the Village, including but not limited to, charges for travel, hotel, and meals (reimbursed pursuant to Section 112.061, Florida Statutes, air freight and courier charges, allocation of computer software and information services used in connection with the services performed pursuant to this Agreement.

4.3. Consultant will, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the negligent act, error or omission of Consultant or any subconsultant or subcontractor engaged by Consultant for one year after the completion of Consultant's services under this Agreement. The foregoing shall be construed as an independent duty to correct rather than a waiver of the Village's rights under any applicable statute of limitations. Village review of, approval of, acceptance of, or payment for any of Consultant's work product, services, or materials shall not be construed to operate as a waiver of any of the Village's rights under this Agreement, or cause of action Village may have arising out of the performance of this Agreement.

4.4. Consultant will, without additional compensation, correct and revise any minor deficiencies in its work product identified that can be addressed in process, even if the deficiencies would not be deemed to arise from a negligent act, error or omission of the Consultant. Minor deficiencies include but are not limited to changes in Americans with Disability Act requirements.

4.5. Consultant will be responsible for notifying the Village promptly whenever a delay is anticipated or experienced, including a delay in approval by any governmental agency having jurisdiction over any work task. The Village shall allow the Consultant to extend response times for valid, documented delays. The Village shall be the sole determiner of the validity of the delays.

#### **ARTICLE 5. OWNERSHIP AND USE OF DOCUMENTS**

5.1. All documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other documents and plans resulting from Consultant's services under this Agreement will become the property of and shall be delivered to the Village without restriction or limitation as to use regardless of the format of the document (paper or electronic). However, any use subsequent to or other than for the specific project for which such items were created, shall be at sole risk of the Village.

5.2. Consultant agrees that any software, computer systems and databases used for providing the documents necessary to this Agreement will be compatible with existing Village software and systems. It is anticipated that any software utilized will be run on windows based PC's and will consist of Microsoft Office 2013 (or newer) and Adobe Acrobat DC (or newer).

#### **ARTICLE 6. VILLAGE'S RESPONSIBILITIES**

6.1. The Village will perform the responsibilities contained in this Article 6 in a timely manner so as not to delay the services of Consultant.

6.2. The Village will furnish to Consultant, upon request of Consultant and at Village's expense, all existing studies, reports and other available data pertinent to the services to be performed under this Agreement which are within the Village's possession. However, Consultant will be required to evaluate all materials furnished hereunder using reasonable professional judgment before relying on such materials.

6.3. The Village will provide reasonable access and entry to all public property required by Consultant to perform the services described in this Agreement. All such access and entry shall be provided at the Village's expense. The Village will also use reasonable efforts to obtain permission for reasonable access and entry to any private property required by Consultant to perform the services described in this Agreement.

6.4. The Village will review all documents, plans, or other materials provided by Consultant in a timely manner so as to not delay the process of the Consultant.

**ARTICLE 7.**  
**TERM / TERMINATION**

7.1. The term of this Agreement will begin on the date and year first written above and shall be continued until superseded by a subsequent Village agreement, the monetary limit in 3.1 is reached, or unless otherwise terminated in accordance herewith.

7.2. The Village will have the right at any time upon thirty (30) calendar days written notice to the Consultant to terminate the services of the Consultant and, in that event, the Consultant must cease work and will deliver to the Village all documents, (including reports, designs, specifications, and all other data) prepared or obtained by the Consultant in connection with its services. The Village will, upon receipt of the aforesaid documents, pay to the Consultant, and the Consultant will accept as full payment for its services, fees for all tasks completed in accordance with Scopes of Services.

7.3. In the event that the Consultant has abandoned performance under this Agreement, then the Village may terminate this Agreement upon three (3) calendar day's written notice to the Consultant indicating its intention to terminate. The written notice will state the evidence indicating the Consultant's abandonment. Payment for services performed prior to the Consultant's abandonment will be as stated in Section 3 above.

**ARTICLE 8.**  
**NOTICES**

8.1. Any notice required or permitted to be sent herein shall be sent certified mail, return receipt requested to the parties at the addresses listed above to the designated contacts below:

Consultant: Florida Gulf Coast University

Village: Steve Sarkozy

8.2. Each party shall immediately notify the other of any changes in address or designated contact.

**ARTICLE 9.**  
**ASSIGNMENT**

9.1. This Agreement, or any interest herein, will not be assigned, transferred or otherwise encumbered, under any circumstances by Consultant without the prior written consent of the Village. Further, no portion of this Agreement may be performed by subcontractors or subconsultants without written notice to and approval of such action by the Village. The Village and Consultant each binds themselves, their agents, successors, assigns and legal representatives to the other party hereto, their agents, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in this Agreement any obligations incorporated herein.

**ARTICLE 10.**  
**EXTENT OF AGREEMENT / SEVERABILITY / MODIFICATION**

10.1. This Agreement represents the entire and integrated agreement between the Village and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral.

10.2. In the event any provision of this Agreement be held invalid and unenforceable, the remaining provisions will remain valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition or covenant will not be construed by the other party as a waiver of any subsequent breach.

10.3. No modification, amendment or alteration in the terms or conditions contained herein will be effective unless contained in a written document executed by both parties.

10.4. This is a nonexclusive contract. The Village has the right to enter into contracts with other consultants providing similar services.

**ARTICLE 11.**  
**GOVERNING LAW / VENUE**

11.1. This Agreement shall be governed and construed in accordance with Florida law. In the event any litigation arises between the parties in connection with this Agreement, venue for such litigation shall lie exclusively in Lee County, Florida.

**ARTICLE 12.**  
**INDEPENDENT CONTRACTOR STATUS**

12.1. Consultant is an independent contractor and is not an employee, servant, agent, partner or joint venturer of the Village.

12.2. Neither the Village nor any of its employees will have any control over the conduct of Consultant or any of Consultant's employees, except as herein set forth, and Consultant expressly warrants not to represent at any time or in any manner that Consultant or any of Consultant's agents, servants or employees are in any manner agents, servants or employees of the Village. It is understood and agreed that Consultant is, and will remain at all times remain, a wholly independent contractor and that Consultant's obligations to the Village are solely as prescribed by this Agreement.

**ARTICLE 13.**  
**AUDIT AND RECORDS REQUIREMENTS**

13.1. Consultant will maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which will be available and accessible at Consultant's local offices for the purpose of inspection, audit, and copying during normal business hours by the Village, or any of its authorized representatives. Such records must be retained for a minimum of five (5) years after

completion of the services. Prior to destruction of any records, the Consultant will notify the Village and deliver to the Village any records the Village requests. Consultant will require all subconsultants and subcontractors to comply with the provisions of this paragraph by insertion of the requirements hereof in a written contract agreement between Consultant and the subconsultant or subcontractor.

13.2 If the records are unavailable locally, it will be the Consultant's responsibility to insure that all required records are provided at the Consultant's expense including payment of travel and maintenance costs incurred by the Village's authorized representatives or designees in accessing records maintained out of the county. The direct costs of copying records, excluding any overhead cost, will be at the Village's expense.

13.3. Consultant must fully cooperate with all public records requests by providing the necessary records to the Village promptly upon notice unless the records are exempt from Section 24 (a) of Article I of the State Constitution and Chapter 119, Florida Statutes. Failure by Consultant to promptly respond to notices requesting records constitutes grounds for unilateral cancellation by the Village at any time, with no recourse available to Consultant. Records may be provided in the form or format in which they are kept including electronic files. Consultant's right to claim an exemption from disclosure will not be deemed failure to comply with this article.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE ESTERO VILLAGE CLERK (CUSTODIAN OF PUBLIC RECORDS) AT 239-221-5035, [hall@estero-fl.gov](mailto:hall@estero-fl.gov), OR VILLAGE HALL, 9401 CORKSCREW PALMS CIRCLE, ESTERO, FL 33928.**

#### **ARTICLE 14. INDEMNIFICATION**

14.1. For ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Consultant will pay on behalf of or indemnify and hold harmless the Village, its officials, officers, employees, agents and volunteers from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, including attorneys' fees and court costs (whether such fees and costs are incurred in negotiations, collection of attorneys' fees or at the trial level or on appeal), suits or liabilities, of whatever kind of nature, caused by any negligent or intentional act, error, omission, or default of Consultant or Consultant's officers, employees, agents, servants, volunteers or subcontractors or consultants, if any, caused by the performance or failure to perform under the terms of this Agreement.

14.2 Consultant must carry a commercial liability insurance policy in coverage amounts as determined by the Village Manager and naming the Village of Estero as additional insured.

**PURSUANT TO FS 558.0035, EMPLOYEES OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.**

**ARTICLE 15.  
EMPLOYEE RESTRICTIONS**

15.1. The Village of Estero will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act (“INA”)]. The Village shall consider employment by any contractor or subconsultant or subcontractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Consultant of the employment provisions contained in Section 274A(e) of the INA will be grounds for termination of this Agreement by the Village.

15.2. If an owner (except a stockholder in a publicly traded corporation) or an employee of the Consultant has been convicted of any offenses requiring registration as a sexual offender or sexual predator, regardless of the location of conviction, the Consultant will ensure that the offender’s or predator’s work on the project is consistent with the terms of his probation and registry requirements.

15.3. The Consultant will incorporate the terms of paragraphs 15.1 and 15.2 into all contracts with any subconsultants or subcontractors.

**ARTICLE 16.  
NO CONTINGENT FEES**

16.1. Consultant certifies that it has not employed or retained any company or person, other than a bona fide employee working solely for 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 Consultant any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, Village has the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.



**ARTICLE 17.**  
**TRUTH-IN-NEGOTIATION CERTIFICATE**

17.1. If applicable, in accordance with Section 287.055(4), Florida Statutes, signature of this Agreement by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which Village determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)

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

Florida Gulf Coast University

WITNESSES:

Signed By: \_\_\_\_\_

Signed by: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

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

Signed By: \_\_\_\_\_

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

VILLAGE OF ESTERO

By: \_\_\_\_\_

Steve Sarkozy, Village Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Kathy Hall, MMC, Village Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Burt Saunders, Village Attorney

Exhibit List:  
Exhibit A – FGCU’s Proposal Dated June 14, 2019

## EXHIBIT A

### **ESTERO RIVER BACTERIA-NUTRIENT SOURCE IDENTIFICATION PROJECT PER FGCU'S PROPOSAL DATED JUNE 14, 2019**

#### STATEMENT OF WORK

##### **A. PROJECT OVERVIEW**

As stated in FGCU'S Proposal dated June 14, 2019 attached as Exhibit A to this contract.

##### **B. SCOPE OF SERVICES**

As stated in FGCU'S Proposal dated June 14, 2019 attached as Exhibit A to this contract.

##### **C. SCHEDULE**

As stated in FGCU'S Proposal dated June 14, 2019 attached as Exhibit A to this contract.

##### **D. COMPENSATION**

As stated in FGCU'S Proposal dated June 14, 2019 attached as Exhibit A to this contract.