

THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

This THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (the "Third Amendment") made and entered into as of this 23rd day of October, 2018, by and between the City of Panama City Commission (the "Commission"), Nevin J. Zimmerman, as the appointed City Attorney ("Zimmerman") and Burke Blue, P.A., f/n/a Burke Blue Hutchison Walters & Smith, P.A. ("Burke-Blue") as the "Associated Firm" as that term is used in FRP No. PC 13-116;

WHEREAS, the parties entered into the Professional Services Agreement on April 9, 2013 (the "Agreement");

WHEREAS, the parties amended the Agreement by entering into the First Amendment to Professional Services Agreement and by replacing the hourly method of payment with a lump-sum retainer on March 11, 2014 except for loans, bond issues and Special Projects;

WHEREAS, the parties amended the Agreement by entering into the Second Amendment to Professional Services Agreement and the Police Services Supplement to Professional Services Agreement to expand the scope of legal services being provided and amending the lump sum retainers on October 24, 2017;

WHEREAS, Rick Scott, Governor of the State of Florida, on October 7, 2018 issued Executive Order 18-276 declaring a state of emergency in Bay County as a result of Tropical Storm Michael;

WHEREAS, the City Commission declared a state of emergency pursuant to Resolution No. 20181009.1 on October 9, 2018;

WHEREAS, on October 10, 2018, Hurricane Michael struck Bay County and the City of Panama City (the "City") as an almost Category 5 hurricane resulting in massive damages to private and public property and to the infrastructure in the City;

WHEREAS, the normal legal services provided for the Agreement will be altered in that a large portion of the legal services for many months shall be related to the impacts and after effects of Hurricane Michael;

WHEREAS, the parties agree to suspend the retainers and provide for payment of legal services at the previously negotiated discounted hourly rates during the pendency of the Hurricane in Exhibit A; and

WHEREAS, as provided in the Agreement, the parties agree to establish a "special project" for purposes of billing and tracking legal time and costs attributable to the impacts and after effects of Hurricane Michael.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants and agreements herein expressed, do agree as follows:

1. Commencing October 1, 2018 and continuing until the parties agree otherwise, the retainers will not be paid to Burke-Blue and for the legal services provided pursuant to the Agreement the Commission shall pay Burke Blue for the hourly fees of both Zimmerman and the other employees of Burke-Blue at the discounted hourly rates as determined by the Amended Rate Schedule attached hereto as Exhibit A and made a part hereof. Burke-Blue shall invoice the Commission a Monthly Bill.

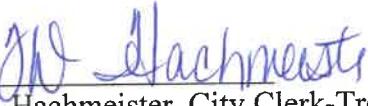
2. Pursuant to the Agreement, the Commission does hereby designate the Special Project of "Hurricane Michael," and Burke-Blue shall submit hourly invoices at the discounted hourly rates for work that is related to the impact and after effects of the Hurricane Michael event. The Hurricane Michael Special Project and terms applicable thereto are further described in Exhibit B attached hereto.

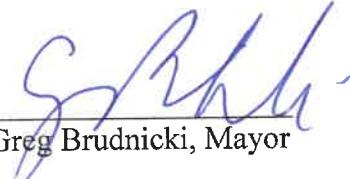
3. The Agreement shall be for a term of one year, and such term shall be automatically renewed on October 1 each year for another one year period unless terminated pursuant to paragraph 7 of the Agreement.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seals as of the date and year first above written.

CITY OF PANAMA CITY
CITY COMMISSION

ATTEST:


D. T. Hachmeister, City Clerk-Treasurer


Greg Brudnicki, Mayor

BURKE BLUE P.A.


Ward Hutchison, President

ATTEST:


Joy Master, Secretary

NEVIN J. ZIMMERMAN, as
appointed City Attorney

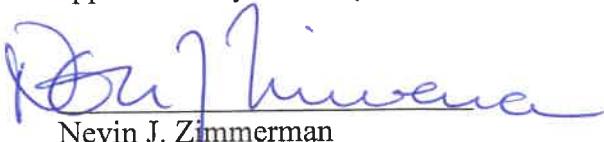

Nevin J. Zimmerman

EXHIBIT A
AMENDED DISCOUNTED GOVERNMENT RATES FEE SCHEDULE

The Fee Schedule attached to the Agreement shall be amended as follows:

Elizabeth J. Walters and Dustin N. Dailey shall be deleted as Burke-Blue attorneys.

Eric A. Krebs and Natalie A. McSwane shall be added as Burke-Blue attorneys at the following rates:

Eric A. Krebs - \$225 per hour

Natalie A. McSwane - \$200 per hour

EXHIBIT B
HURRICANE MICHAEL SPECIAL PROJECT

All terms of the Agreement are applicable to this Exhibit B Hurricane Michael Special Project. In addition to the terms of the Agreement, the terms herein apply to the Exhibit B Hurricane Michael Special Project.

Commencing October 7, 2018 Zimmerman and Burke-Blue shall provide legal services related to the impacts and after effects of Hurricane Michael for a period of one year. For all services and incidental costs required hereunder, Burke-Blue shall be paid on a time and material/expense basis for services provided herein, provided, however, that total payments to Burke-Blue pursuant to this Hurricane Michael Special Project shall not exceed \$500,000 without the prior written approval of the Commission. Burke-Blue exceeds the *shall not exceed* amount entirely at its own risk. Burke-Blue shall submit its bills in arrears on a monthly basis in a form approved by the City Clerk and the City Manager. The bills shall show or include: (i) the tasks performed; (ii) the time in quarter hours devoted to the tasks; (iii) the hourly rate or rates of the persons performing the tasks; and (iv) copies of receipts for reimbursable materials/expenses, if any.

Zimmerman and Burke-Blue agree to comply with the following Federal Contract Provisions:

1. Access of the State of Florida (i.e. its agencies), FEMA and Others to CDBG Documents Papers, and Books. The Contractor agrees to allow the departments and agencies of the State of Florida, FEMA, the Comptroller General of the United States, and any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.
2. Termination of Contract for Cause. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner any obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the CITY shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor shall entitle the Contractor's receipt of just and equitable compensation for any satisfactory work completed on such documents. Notwithstanding the above, the Contractor shall not be relieved of liability to the CITY for damage sustained to the CITY by virtue of any breach of the Contract by the Contractor. The CITY may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the CITY from the Contractor is determined.
3. Termination for Convenience of the City. The CITY may terminate this Contract any time by a notice in writing from the CITY to the Contractor. If the Contract is terminated by the CITY as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Work actually performed bear to the

total Work of the Contractor covered by this Contract, less payments of compensation previously made.

4. Records. All records required to be kept on the project shall be maintained for at least three (3) years after final payments and until all other pending matters under the grant for this project are closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

5. Health and Safety Standards. All parties participating in this project agree to comply with Sections 107 and 103 of the Contract Work Hours and Safety Standards Act. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

6. Environmental Compliance. Contracts, subcontracts, and subgrants of amounts in excess of \$100,000.00 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1957 (h)) Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11 738, and Environmental Protection Agency (EPA) regulations (40 CFR, 15), which prohibit the use under nonexempt Federal contracts, grants, or loans facilities included on the EPA List of Violating Facilities. The provisions shall require reporting of violations to the grantor agency and the U.S. EPA Assistant Administrator for Enforcement (EN-329).

7. Energy Efficiency. All participants in the projects shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

8. Changes. The CITY may, from time to time, request changes in the scope of the Work of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the CITY and the Contractor, shall be incorporated in written and executed amendments to this Contract.

9. Personnel. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the Work under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY. All the Work

required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such Work. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

10. Anti-Kickback Rules. Wages of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

11. Withholding of Wages. If in the performance of this Contract, there is any underpayment of wages by the Contractor or by any subcontractor thereunder, the CITY may withhold from the Contractor out of payment due to him an amount sufficient to pay to employees underpaid the difference between the wages required thereby to be paid and the wages actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the CITY for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

12. Claims and Disputes Pertaining to Wage Rates. Claims and disputes pertaining to wage rates or to classifications of professional staff or technicians performing work under this Contract shall be promptly reported in writing by the Contractor to the CITY for the latter's decision which shall be final with respect thereto.

13. Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees to comply with Executive Order 11246, and the regulations issued pursuant thereto (24 CFR 130 and 41 CFR Chapter 60), which provides that no person shall be discriminated against on the basis of race, color, religion, gender, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts. Contractors and subcontractors on Federal and Federally assisted construction contracts shall take affirmative action to ensure fair treatment in employments, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates or pay or other forms of compensation and selection for training apprenticeship.

14. Anti-Discrimination Clauses. The Contractor will comply with the following clauses:

- (A) Title VI of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (24 CFR 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the CITY receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the CITY, this assurance shall obligate the CITY, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;
- (B) Title VIII of the Civil Rights Act of 1968 (PL 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and taking action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services; and
- (C) Executive Order 11063 as amended by Executive Order 2259, on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance.
- (D) Section 109 of the Housing and Community Development Act of 1974, as amended which requires that no person in the United States shall on the grounds of race, color, national origin, or gender be excluded from participation in, be denied the benefits or be subjected to discrimination under, any program or activities funded in whole or in part with community development funds made available pursuant to the Act. Section 109 further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 796) shall also apply to any such program or activity.

16. Discrimination Because of Certain Labor Matters. No person employed on the work covered by this Contract shall be discharged or in any way discriminated against because he has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his employer.

17. Compliance with Local Laws. The Contractor shall comply with all applicable laws, ordinances, and codes of the State and local governments, and shall commit no trespass on any public or private property in performing any of the work embraced by this Contract.

18. Subcontracting. None of the Work covered by this Contract shall be subcontracted without prior written consent of the CITY. The Contractor shall be as fully responsible to the CITY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. The Contractor shall insert in each subcontract appropriate provisions requiring compliance with the labor standards provisions of this Contract.

19. Assignability. The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the CITY provided that claims for money due or to become due the Contractor from the CITY under this Contract 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.

20. Interest of Members of Local Public Agency and Others. The Contractor agrees to establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a family, business, or other tie. The Contractor will be aware of and avoid any violation of the laws of this State which prohibit municipal officers and employees from having or owning any interest or share, individually or as agent or employee of any person or corporation, either directly or indirectly, in any contract made or let by the governing authorities of such municipality for the construction or doing of any public work, or for the sale or purchase of any materials, supplies or property of any description, or for any other purpose whatsoever, or in any subcontract arising therefrom or connected therewith, or to receive, either directly or indirectly, any portion or share of any money or other thing paid for the construction or doing of any public work, or for the sale or purchase of any property, or upon any other contract made by the governing authorities of the municipality, or subcontract arising therefore or connected therewith.

The Contractor will also be aware of and avoid any violation of the laws of this State which prescribe a criminal penalty for any public officer who has an interest in any contract passed by the board of which he is a member during the time he was a member and for one year thereafter.

21. Interest of Certain Federal Officers. No member of or delegate to the Congress of the United States and no Resident Commissioner shall be admitted any share or part of this Contract or to any benefit to arise therefrom.

22. Interest of Contractor. The Contractor covenants that it presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of the Work hereunder. The Contractor further covenants that no person having any such interest shall be employed in the performance of this Contract.

23. Political Activity. The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

24. Davis-Bacon Act Requirements. The Contractor will comply with Section 110 of the Housing and Community Development Act of 1974, as amended, which requires that all laborers and mechanics employed by contractors or subcontractors on construction work assisted under the Act shall be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended 40 U.S.C. 276a-276-a5), and it will comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.). However, these requirements apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families.

25. Uniform Act Requirements. The Contractor will comply with all applicable requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) as specified in regulations issued by the Secretary of the Department of Housing and Urban Development and published in 24 CFR 570-I.

26. Lead-Based Paint Requirements. The Contractor will comply with Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 483 1), which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance in any form.

27. Compliance with Office of Management and Budget. The Contractor agrees to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget Circulars A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this contract.

28. Flood Insurance Purchase Requirements. The Contractor agrees to comply with all applicable flood insurance purchase requirements of Section 102(2) of the Flood Disaster Protection Act of 1973, (PL 93-234, 87 Stat. 975) approved December 31, 1976. Section 102 (a) requires, on and after March 2, 1975, the purchase of flood insurance in

communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase, "Federal financial assistance," includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance. It is understood that the Contractor does not own the Properties and, therefore, any required flood insurance is the Owner's responsibility to provide and maintain in force.

29. Historic Preservation. Contractor agrees to assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 111593, and the Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-I et seq.) by (a) consulting with the State Historic Preservation officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (CFR Part 600.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency and CITY to avoid or mitigate adverse effects upon such properties.

30. Program Monitoring. The Contractor agrees to assist and cooperate with the Federal grantor agency and CITY or their duly designated representatives in the monitoring of the project or projects to which this grant relates, and to provide in form and manner approved by CITY such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

31. Discrimination Due to Beliefs. No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

32. Confidential Findings. All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the CITY.

33. Third-Party Contracts. The CITY shall include in all contracts with parties receiving grant funds under this contract (each a "Participating Party") provisions requiring the following: (1) Each such Participating Party keeps and maintains books, records and other documents relating directly to the receipt and disbursement of such grant funds; and (2) Any duly authorized representative of the Florida Department of

Environmental Quality, the Florida Development Authority, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of such Participating Party until the completion of all close-out procedures respecting this grant and the final settlement and conclusion of all issues arising out of this grant.

34. Lobbying. The Contractor certifies, to the best of his or her knowledge and belief that:

- (1) No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and
- (2) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

35. DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

36. Compliance with Federal Law, Regulations, and Executive Orders.

The Contractor acknowledges that FEMA financial assistance will be used to fund the contract in whole or in part. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

37. No Obligation by Federal Government.

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

38. Program Fraud and False or Fraudulent Statements or Related Acts.

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.