

**CONTRACT**  
**FOR**  
**RFP #15-007 VILLAGE STORMWATER SYSTEM EVALUATION AND ANALYSIS**

This contract for services is entered into by and between the Town of Longboat Key, 501 Bay Isles Road, Longboat Key, FL 34228, a political subdivision of the State of Florida (hereinafter "Town") and DMK Associates, Inc., a State of Florida Corporation, whose address is 421 Commercial Court, Suite C, Venice, Florida 34292 (hereinafter "Consultant") as of the date appearing on the signature lines below.

**SECTION 1 – WORK**

Consultant shall complete all work as specified or indicated in the Town's Request for Proposal #15-007 Town of Longboat Key Village Stormwater System Evaluation and Analysis (hereinafter "RFP"), Consultant's Proposal submittal in response to the RFP, all Contract Documents as enumerated herein, and as otherwise directed by the Town. The work (hereinafter "Work") is generally described as professional engineering services on a continuing basis regarding a variety of evaluation and analysis services related to the Longboat Key Village Stormwater System, all as more fully stated in Exhibit "A" attached to this Contract.

**SECTION 2 – INVOICING AND PAYMENT**

The Town shall make payment to Consultant for all services performed by Consultant pursuant to the prices provided in the Fee Schedule attached hereto as Exhibit "B." The parties acknowledge that the Consultant, as part of its regular business practices, may modify its fee schedule on an annual basis each January; however, any modification to Consultant's fee schedule under this Contract must be set forth in a written amendment to Exhibit "B" of this Contract. Compensation payable to Consultant for services rendered and expenditures incurred in providing the services identified in Exhibit "A" shall be established specifically pursuant to written Work Assignments issued in accordance with this section. Work Assignments will be negotiated and issued by the Town Manager or an authorized designee. Each Work Assignment shall be signed by the Consultant and Town and shall constitute a supplemental agreement to this Contract, entered into under the terms and conditions of this Contract. A template for the Work Assignments to be used under this Contract is attached hereto as Exhibit "C."

Consultant shall submit a written invoice for services rendered based on each specific Work Assignment. Town shall review and approve the invoice prior to processing. Invoices will be paid in accordance with the State of Florida Prompt Payment Act as provided for in Chapter 218, Florida Statutes (F.S.). Total compensation to Consultant for services and reimbursable expenses shall not exceed the amount provided in the specific Work Assignment unless otherwise agreed to by the parties in writing.

**SECTION 3 – CONSULTANT'S REPRESENTATIONS**

In order to induce Town to enter into this Contract, Consultant makes the following representations, upon which the Town has actually and justifiably relied:

3.1 That Consultant has examined and carefully studied all Contract Documents, and that Consultant has the experience, expertise, and resources to perform all required Work as

specified within the times stated in this Contract, the Contract Documents, or any Work Assignment hereunder.

3.2 That Consultant has visited the site(s) and has at least a fair representative sample of the Work area(s) and become familiar with and is satisfied as to the general and local site conditions that may affect cost, progress, performance or furnishing of the Work to be performed pursuant to this Contract, the Contract Documents, or any Work Assignment hereunder.

3.3 That Consultant is familiar with and can and shall comply with all federal, state, and local laws and regulations, if any, that may affect cost, progress, performance, and furnishing of the Work to be performed pursuant to this Contract, the Contract Documents, or any Work Assignment hereunder.

3.4 Consultant acknowledges that the Town does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents, if any, with respect to physical conditions at or contiguous to the Work site(s).

3.5 That Consultant is aware of the general nature of work to be performed by Town and others at the Work site(s).

3.6 That Consultant has correlated the information known to Consultant, information and observations obtained from visits to the Work site(s), specifications, and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

3.7 That Consultant has given Town written notice of all conflicts, errors, ambiguities or discrepancies that Consultant has discovered in the Contract Documents and the written resolution thereof by Town is acceptable to Consultant, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work to be performed pursuant to this Contract, the Contract Documents, or any Work Assignment hereunder.

#### **SECTION 4 - CONTRACT DOCUMENTS**

The Contract Documents, which comprise the entire agreement between Town and Consultant concerning the scope and nature of the Work, and its performance, consist of the following which are incorporated by reference:

4.1 This Contract;

4.2 Certificates of Insurance, with endorsements, Notice of Award, and Notice to Proceed;

4.3 The following, which may be delivered or issued after the Effective Date of the Contract, and are not attached hereto: all written Amendments, Addenda, Work Assignments, and any other documents amending, modifying, or supplementing the Contract Documents; and

4.4 The RFP and Consultant's proposal to the RFP.

## **SECTION 5 – INSURANCE**

Consultant shall, at its sole cost and expense, procure and maintain throughout the term of this contract, Comprehensive General Liability and Worker's Compensation insurance, including Employer Liability insurance, with minimum policy limits of **\$500,000.00** Combined Single Limits, or to the extent and in such amounts as required and authorized by Florida law, and will provide endorsed certificates of insurance generated and executed by a licensed insurance broker, brokerage or similar licensed insurance professional evidencing such coverage, and naming the Town as a named, additional insured, as well as furnishing the Town with a certified copy, or copies, of said insurance policies. Certificates of insurance and certified copies of these insurance policies must accompany this signed contract. Said insurance coverages procured by the Consultant as required herein shall be considered, and proposer agrees that said insurance coverages it procures as required herein shall be considered, as primary insurance over and above any other insurance, or self-insurance, available to the Town, and that any other insurance, or self-insurance available to the Town shall be considered secondary to, or in excess of, the insurance coverage(s) procured by the Consultant as required herein.

Nothing herein shall be construed to extend the Town's liability beyond that provided in Section 768.28, F.S.

## **SECTION 6 – TERM OF CONTRACT**

The term of this Contract will be for two (2) years with an option for an additional one (1)-year renewal from the date of execution. Each Work Assignment is not to exceed one hundred and eighty (180) days from the date of Notice To Proceed.

## **SECTION 7 – TERMINATION OF CONTRACT**

7.1 Termination for Cause: In the event the Consultant shall default or otherwise violate any of the terms, obligations, restrictions or conditions of this Contract, the Town shall give the Consultant written notice of the default and that such default shall be corrected within five (5) business days of the date of the written notice. In the event the Consultant fails to correct the condition(s) of the default within the aforementioned timeframe, the Town shall have all legal remedies available to it, including but not limited to, termination of this Contract for cause. Unless the default is corrected within five (5) business days, or within a timeframe agreed to by the Town, in such instance, the Town may terminate the Contract for cause by giving notice of termination to the Consultant, and the Consultant shall immediately cease working for the Town and only be paid for all work properly performed to the date of termination.

7.2 Termination for Convenience of Town: The Town for any reason may terminate this Contract at any time by giving at least thirty (30) days written notice to the Consultant. Notwithstanding, the Town may terminate this Contract immediately upon any lapse in the insurance coverage to be retained by the Consultant, or failure to fulfill any of the insurance requirements as provided herein. In this event, Consultant shall be entitled to compensation for any satisfactory work completed prior to termination in accordance with this Contract.

7.3 Termination for Convenience of Consultant: This Contract may be terminated by the Consultant by either: (a) mutual consent of both parties; or (b) upon ninety (90) days written notice delivered by certified mail, return receipt requested to the Town.

7.4 Effect of Termination: In the event this Contract is terminated for any reason, finished or unfinished documents, data, studies, correspondence, reports and other products prepared by or for Consultant under this Contract shall be made available to and for the exclusive use of the Town at no additional cost to the Town.

## **SECTION 8 – INDEMNIFICATION AND LIABILITY**

8.1 Consultant shall defend, indemnify, and hold harmless the Town and all of the Town's officers, agents, and employees from and against all claims, liability, loss and expense, including reasonable costs, collection expenses, attorneys' fees, and court costs which may arise because of the negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing), of Consultant, its officers, agents or employees in performance or non-performance of its obligations under the Contract. Consultant recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the Town when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by the Town in support of these indemnification, legal defense, and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of this Contract. Compliance with any insurance requirements required elsewhere within this Contract shall not relieve Consultant of its liability and obligation to defend, hold harmless, and indemnify the Town as set forth in this Section of the Contract.

8.2 Nothing herein shall be construed to extend the Town's liability beyond that provided in Section 768.28, F.S.

## **SECTION 9 – NOTICE**

All notices required under this Contract shall be sent by email or certified mail, return receipt requested, and if sent to the Town, shall be mailed to:

Juan Florensa, Director of Public Works  
Town of Longboat Key  
600 General Harris Street  
Longboat Key, FL 34228-3196  
E-mail: [jflorensa@longboatkey.org](mailto:jflorensa@longboatkey.org)

With a copy to:

Dave Bullock, Town Manager  
Town of Longboat Key  
501 Bay Isles Road  
Longboat Key, FL 34228-3196  
E-mail: [dbullock@longboatkey.org](mailto:dbullock@longboatkey.org)

and

Maggie Mooney-Portale, Esq.  
Town Attorney  
6853 Energy Court  
Lakewood Ranch, Florida 34240  
E-mail: [mmooney@swflgovlaw.com](mailto:mmooney@swflgovlaw.com)

To

CONSULTANT:

Karl W. Kokomoor  
DMK Associates, Inc.  
421 Commercial Court  
Suite C  
Venice, Florida 34292  
E-mail: [Kkokomoor@dmkassoc.com](mailto:Kkokomoor@dmkassoc.com)

## **SECTION 10 – MISCELLANEOUS**

10.1 No assignment by either party to this Contract of any rights under or interests in this Contract and the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to any assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract and the Contract Documents.

10.2 Consultant binds itself, its partners, successors, assigns, and legal representatives to the Town in respect of all covenants, contracts, and obligations contained in this Contract and the Contract Documents. No employees, agents, or representatives of the Town are personally or individually bound by this Contract.

10.3 The laws of the State of Florida shall govern all provisions of this Contract. In the event the parties to this Contract cannot resolve a difference with regard to any matter arising herefrom, the disputed matter will be referred to court-ordered mediation pursuant to Section 44.102, F.S. If no agreement is reached, any party may file a civil action and/or pursue all available remedies whether at law or equity. Venue for any dispute shall be Sarasota County, Florida.

10.4 This Contract shall not be modified or amended except in writing with the same degree of formality with which this Contract is executed.

10.5 A waiver of any breach of any provision of this Contract shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provisions.

10.6 Any provision or part of this Contract or the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Town and Consultant, who agree that this Contract and the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

## **SECTION 11 – PUBLIC RECORDS**

Pursuant to applicable Florida law, the Consultant's records associated with the Work may be subject to Florida's public records laws, Section 119.01, F.S., et seq, as amended from time to time. The Consultant shall comply with all public records obligations set forth in such laws, including those obligations to keep, maintain, provide access to, and maintain any applicable exemptions to public records, and transfer all such public records to the Town at the conclusion of the Contract, as provided for in Section 119.0701, F.S.



IN WITNESS WHERE OF, the parties hereto have made and executed this Contract as of the day and year last written below. Town and Consultant have signed this Contract in two originals in counterpart. One counterpart each has been delivered to the Town's Financial Specialist and the Consultant. All portions of the Contract Documents have been signed, initialed or identified by Town and Consultant.

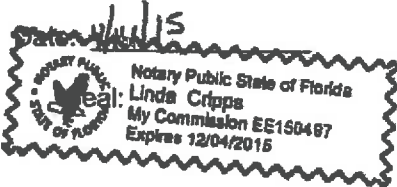
**ATTEST:**

As to DMK Associates, Inc

Linda Cripps  
Signature

Linda Cripps  
(Print or Type Name)

Business Services  
(Print or Type Title)



**ATTEST:**

As to Town of Longboat Key, Florida

By: Trish Granger  
Trish Granger, Town Clerk

Date: 4-15-15

Seal:

Review of Contract as to Form

By: Maggie Mooney-Portale  
Maggie Mooney-Portale, Esq., Town Attorney

**CONSULTANT**

DMK Associates, Inc.

By: Kreg E. Maher

Its VICE PRESIDENT  
(Title of Authorized Representative)

KREG E. MAHER  
(Print or Type Name)

VICE PRESIDENT  
(Print or Type Title)

Date: 4-14-15

**TOWN**

Town of Longboat Key, Florida

By: Dave Bullock  
Dave Bullock, Town Manager

Date: 4-15-15

## EXHIBIT A

### Scope of Work

The Town of Longboat Key has retained Consultant to conduct an evaluation and assessment of the current stormwater system for the Longboat Key Village ("Village") to determine the level of service provided by the existing system and make recommendations to improve the performance of the overall drainage system for the Village.

The following scope of work is anticipated:

- Collect survey data for the drainage basin, as needed to accurately model the storm water system.
- Create a storm water model of the existing drainage system using Advanced Interconnected Pond Routing Model (ADICPR) software and identify problem areas.
- Compare the existing conditions today to the conditions established under the previous Longboat Key Village Drainage Study conducted in October of 2000 including:
  - Reported data from the ADICPR hydrologic modeling results.
  - Data and maps created to identify flooded areas against a 10 year, 24 hour rainfall event with a coinciding 1.5 ft. tide.
  - Evaluate the condition of the existing system including Tide-Flex™ valves. (e.g., blockage, debris, barnacles, etc.)
  - Evaluate the effectiveness Tide-Flex™ valves and whether the head pressure required to open the valves negates the benefits.
- Estimate peak stage resulting from the 5 year-24 hour design storm at the upstream end of outfalls for comparison with road elevations to determine Level of Service for flood control.
- Obtain mean high tide elevations from available tide gauge stations in the immediate vicinity and where available adjacent local tide data and historical high water elevation information.
- Estimate the 1-year tidal still water elevation for the hydraulic boundary conditions in comparison with each outfalls invert elevations and adjacent indicator elevations of roadway crowns, seawalls, swales, berms, and mangrove fringe as available.
- Based on best available data, provide recommended solutions and alternatives.
- Evaluate the impact of Sea Level Rise, sea level change, and considerations based on nearest NOAA Tide Gauge station(s) with sufficient long term tidal data. Determine potential low, medium and high ranges of sea level increases for year 2035 and year 2065 planning forecasts. Compare results in tabular form with existing boundary conditions and with outfall and tide indicator evaluations.



## EXHIBIT A (CONTINUED)

### Scope of Work

Provide a schedule to meet with Town staff at appropriate times in order to prepare a comprehensive report on findings, alternatives and recommendations including an evaluation matrix for ranking of alternatives based on cost/benefits, assessment, and regulatory permitting.

Evaluate funding options with Town staff as appropriate to long range considerations and recommendations of improvements and or capital projects such as;

- Special Taxing District
- Stormwater Maintenance / Improvement Tax
- Matching Grant Funds from various sources such as:
  - Southwest Florida Water Management District
  - Flood Mitigation Grant Programs
  - Hazard Mitigation Grant Programs
  - Water Quality Grant Programs



**EXHIBIT B**

**DMK ASSOCIATES, INC.  
CONSOLIDATED HOURLY RATE SCHEDULE**

**Effective January 2015**

**FEE SCHEDULE**

Principal/Expert Testimony  
Sr. Project Manager  
Project Manager/Sr. Project Engineer  
Project Engineer/Sr. Surveyor  
Engineer/Designer  
Sr. CAD Technician IV  
Sr. Inspector  
Sr. Party Chief/Inspector/Field Tech  
Survey Field Crew with Equipment  
Administrative IV

**HOURLY FEE**

\$190.00  
\$150.00  
\$135.00  
\$125.00  
\$100.00  
\$ 90.00  
\$ 90.00  
\$ 80.00  
\$170.00  
\$ 60.00

**FEE SCHEDULE**

Expenses other than field & office supplies

**HOURLY FEE**

Cost + 10%

**Photo Copies:**

8 1/2" x 11"

Color Copies

\$ .25 each

\$1.00 each

Mileage

\$ .50 per mile

## EXHIBIT C

### RFP # 15-007 – VILLAGE STORMWATER SYSTEM EVALUATION AND ANALYSIS

#### WORK ASSIGNMENT No. 15-007-X

Pursuant to the Town of Longboat Key, Florida, Contract to provide professional engineering services related to the Longboat Key Village Stormwater System under RFP #15-007 entered into on (DATE OF CONTRACT), by and between the Town of Longboat Key, hereinafter referred to as the "Town," and DMK Associates, Inc., hereinafter referred to as the "Consultant," a determination has been made by the Town that there is a need for the performance of or rendering of services by the Consultant of a certain "Work Assignment" under the purview of said Contract, and the Consultant is hereby authorized to perform or render the particular services of work described as follows:

TITLE OF THE PROJECT: \_\_\_\_\_

#### PHASES AND/OR TASKS OF PROFESSIONAL SERVICES AUTHORIZED:

Contractor shall perform tasks as more specifically detailed in Exhibit "A" as follows:

<u>Task No.</u>	<u>Title</u>
_____	
_____	
_____	

As set forth in Exhibit "B" Compensation to the Consultant for rendering all of the above identified tasks shall not exceed (Written Dollar Amount (\$XXX.00)). Compensation for the individual task amounts is set forth as follows:

Task No. _____	\$
Task No. _____	\$
Task No. _____	\$

The Town may authorize, in writing, in advance, adjustments in the compensation for particular tasks established above, provided such adjustments do not exceed the maximum compensation authorized for this Work Assignment.

Partial compensation may be requested on a monthly basis for unit prices and actual hours incurred but not to exceed the percentage of the task completed.

Work Assignment is not to exceed one hundred and eighty (180) days from the date of Notice To Proceed.

The parties hereto have caused this Work Assignment No.15-007-X for the required services.

**ATTEST:**

As to DMK Associates, Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Title)

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

Seal:

**CONSULTANT**

DMK Associates, Inc.

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

Its \_\_\_\_\_  
(Title of Authorized Representative)

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Title)

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

RECOMMENDED AND APPROVED BY THE TOWN MANAGER BASED ON RFP # 15-007 – VILLAGE STORMWATER SYSTEM EVALUATION AND ANALYSIS, CONTRACT EXECUTED ON (DATE).

**ATTEST:**

As to Town of Longboat Key, Florida

By: \_\_\_\_\_  
Trish Granger, Town Clerk

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

Seal:

**TOWN**

Town of Longboat Key, Florida

By: \_\_\_\_\_  
David R. Bullock, Town Manager

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

Review of Work Assignment as to Form

By: \_\_\_\_\_  
Maggie Mooney-Portale, Esq., Town Attorney