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## Professional Services Agreement

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THIS AMENDED AGREEMENT, entered into on the \_\_\_\_th day of \_\_\_\_\_, 2025, by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and Gray Matter Systems, LLC, hereinafter referred to as the "CONSULTANT".

### BACKGROUND RECITALS:

The COUNTY selected CONSULTANT to perform and provide SCADA (ICS) System Design, Support and Technical Implementation Services ("Services"), based on a proposal submitted in response to Request for Proposals 2025000.

The COUNTY and the CONSULTANT, in consideration of their mutual covenants, herein agree with respect to the performance of professional consulting services by the CONSULTANT, and the payment for those services by the COUNTY, as set forth in this Agreement.

The CONSULTANT shall provide the COUNTY with consulting services and such other related services as defined in the scope of work, provided as Exhibit 1.

The COUNTY and CONSULTANT have further agreed to amend the scope of work of the original Agreement signed on \_September 24, 2024\_ to include further related services required to ensure safety and security of COUNTY infrastructure and are entering this Amended Agreement pursuant to the same. The updated scope of work is attached hereto.

NOW THEREFORE, in accordance with the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. COUNTY OBLIGATIONS

The COUNTY will provide the CONSULTANT with a copy of any preliminary data or reports available as required in connection with the work to be performed under this Agreement, together with all available documents in the possession of the COUNTY pertinent to the Services. The CONSULTANT shall satisfy itself as to accuracy of any data provided. The CONSULTANT is responsible for bringing to the COUNTY's attention, for the County's resolution, material inconsistencies or errors in such data that come to the CONSULTANT'S attention.

The COUNTY shall arrange for access to, and make provisions for the CONSULTANT to enter upon, public and private property (where required) as necessary for the CONSULTANT to perform its Services, upon timely written request of CONSULTANT to COUNTY.

The CONSULTANT shall not be considered in default for a failure to perform if such failure arises out of causes reasonably beyond the CONSULTANT's control and through no fault or negligence of the CONSULTANT. The parties acknowledge that adverse weather conditions, acts of God, or other unforeseen circumstances of a similar nature, may necessitate modifications to this Agreement. If such conditions and circumstances do in fact occur, then the COUNTY and CONSULTANT shall mutually agree, in writing, to the modifications to be made to this Agreement.

#### 2. RESPONSIBILITIES OF THE CONSULTANT

The CONSULTANT agrees to perform all necessary Services in connection with the work set forth in Exhibit 1.

The CONSULTANT agrees to complete the work within the time frame specified.

The CONSULTANT will maintain an adequate staff of qualified personnel.

The CONSULTANT will comply with all present and future federal, state, and local laws, rules, regulations, policies, codes, and guidelines applicable to the Services performed under this Agreement.

The CONSULTANT shall during the entire term of this Agreement, procure and keep in full force, effect, and good standing any and all necessary licenses, registrations, certificates, and any and all other authorizations as are required by local, state, or federal law, in order for the CONSULTANT to render its Services as described in this Agreement. The CONSULTANT shall also require all sub-consultants to comply by contract with the provisions of this section.

The CONSULTANT will cooperate fully with the COUNTY in order that all phases of the work may be properly scheduled and coordinated.

The CONSULTANT will cooperate and coordinate with other COUNTY CONSULTANTS, as directed by the COUNTY.

The CONSULTANT shall report the status of the Services under this Agreement to the County Project Manager upon request, and hold all drawings, calculations and related work open to the inspection of the County Project Manager or his authorized agent at any time, upon reasonable request.

All documents, reports, maps, contract documents, and other data developed by the CONSULTANT for the purpose of this Agreement, are, and shall remain, the property of the COUNTY. The foregoing items will be created, maintained, updated, and provided in the format specified by the COUNTY. When all work contemplated under this Agreement is complete, and upon final payment, all of the above data shall be delivered to the County Project Manager.

The CONSULTANT shall not assign or transfer any work under this Agreement without the prior written consent of the COUNTY.

CONSULTANT is registered with and will use the Department of Homeland Security's E-Verify system ([www.e-verify.gov](http://www.e-verify.gov)) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S. CONSULTANT is also responsible for obtaining proof of E-Verify registration and utilization for all subconsultants.

CONSULTANT will comply with all the requirements as imposed by the Americans with Disabilities Act of 1990 ("ADA"), the regulations of the Federal government issued thereunder, and the assurance by the Contractor pursuant thereto.

CONSULTANT does not meet any of the criteria in Section 287.138, Florida Statutes, relating to Foreign Entity Ownership, that would exclude it from eligibility to enter an agreement which may give access to an individual's personal identifying information.

### 3. TERM; DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for a period of three years, after the date of execution thereof, or upon completion of all project phases as defined by the COUNTY, whichever occurs earlier, unless otherwise terminated by mutual consent of the parties hereto, or terminated pursuant to Section 8 "Termination". The agreement may be renewed for two one-year periods, upon mutual consent of the parties.

#### 4. COMPENSATION

The COUNTY shall pay to the CONSULTANT a mutually agreed upon maximum amount not-to-exceed professional fee for each completed task, on a deliverable basis, all as set forth in Exhibit 1. Invoices shall be submitted to the County Project Manager, in detail sufficient for proper prepayment and post payment audit. Upon submittal of a proper invoice the County Project Manager will determine if the tasks or portions thereof have been satisfactorily completed. Upon a determination of satisfactory completion, the County Project Manager will authorize payment to be made. All payments for services shall be made to the CONSULTANT by the COUNTY in accordance with the Florida Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.).

No additional payment will be due to the CONSULTANT for administrative copies, printing, per diem, meals and lodgings, taxi fares and miscellaneous travel-connected expenses for CONSULTANT's personnel.

The COUNTY may at any time notify the CONSULTANT of requested changes to the Services, and thereupon the COUNTY and the CONSULTANT shall execute a mutually agreeable amendment to this agreement. Should this amendment result in the reduction in services, the CONSULTANT shall be paid for the Services already performed and also for the Services remaining to be done and not reduced or eliminated, upon submission of invoices as set forth in this Agreement.

The COUNTY may, at any time and for any reason, direct the CONSULTANT to suspend Services, in whole or in part under this Agreement. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The CONSULTANT shall resume its Services upon the date specified, or upon such other date as the COUNTY may thereafter specify in writing. Where the COUNTY has suspended the Services under this Agreement for a period in excess of six (6) months, the compensation of CONSULTANT for such suspended Services may be subject to modification. The period during which the Services are stopped by the COUNTY shall be added to the time of performance of this Agreement.

#### 5. ADDITIONAL WORK

If services in addition to the Services provided hereunder are required or desired by the County in connection with the Project, the COUNTY may, at the sole option of the COUNTY: separately obtain same outside of this Agreement; or request the CONSULTANT to provide, either directly by the CONSULTANT or by a sub consultant, such additional services by a written amendment to this Agreement.

#### 6. OWNERSHIP AND REUSE OF DOCUMENTS

**Ownership and Copyright:** Ownership and copyright of all reports, tracings, plans, electronic files, specifications, field books, survey information, maps, contract documents, and other data first developed by the CONSULTANT pursuant to this Agreement, shall be vested in the COUNTY. Said materials shall be made available to the COUNTY by the CONSULTANT at any time during normal business hours upon reasonable request of the COUNTY. On or before the tenth day after all work contemplated under this Agreement or individual Work Order is complete, all of the above materials shall be delivered to the County Project Manager.

**Reuse of Documents:** All documents, including but not limited to reports, drawings and specifications, prepared or performed by the CONSULTANT pursuant to this Agreement, are related exclusively to the

services described herein. They are not intended or represented to be suitable for reuse by the COUNTY or others on extensions of this project or on any other project. The COUNTY's reuse of any document or drawing shall be at the COUNTY's own risk. The COUNTY shall not hold the CONSULTANT liable for any misuse by others.

## 7. INSURANCE AND INDEMNIFICATION

During the performance of the work covered by this Agreement, the CONSULTANT shall provide the COUNTY with evidence that the CONSULTANT has obtained and maintains the insurance listed in the Agreement.

CONSULTANT shall maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees. The cost of such insurance shall be included in the CONSULTANT's fees.

### Minimum Scope of Insurance

- A. Worker's Compensation as required by the State of Florida. Employers Liability of \$100,000 each accident, \$500,000 disease policy limit, and \$100,000 disease each employee.
- B. General Liability \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include premises/operations, products/completed operations, contractual liability, and independent contractors. COUNTY shall be named an "Additional Insured" on the certificate of insurance.
- C. Auto Liability \$500,000 combined single limit per accident for bodily injury and property damage. Coverage shall include owned vehicles, hired vehicles, and non-owned vehicles.
- D. Professional Liability \$1,000,000 per claim, \$2,000,000 aggregate combined single limit.

CONSULTANT's insurance coverage shall be primary.

All above insurance policies shall be placed with insurers with a Best's rating of no less than A-VII. The insurer chosen shall also be licensed to do business in Florida.

The insurance policies procured, with the exception of the Professional Liability, shall be occurrence forms, not claims made policies.

The insurance companies chosen shall provide certificates of insurance prior to signing of contracts, to the Indian River County Risk Management Department.

The CONSULTANT shall ensure any subconsultants to maintain the insurance as detailed herein.

The Consultant shall indemnify and hold harmless the County and its commissioners, officers, employees and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the contract.

Pursuant to Section 558.0035 Florida Statutes, the Consultant's Corporation is the responsible party for the professional services it agrees to provide under this agreement. No individual professional employee, director, officer, or principal shall be individually liable for negligence arising out of this contract.

Additionally, County and Consultant waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement.

## 8. TERMINATION

This Agreement may be terminated: (a) by the COUNTY, for any reason, upon thirty (30) days' prior written notice to the CONSULTANT; or (b) by the CONSULTANT, for any reason, upon thirty (30) days' prior written notice to the COUNTY; or (c) by the mutual Agreement of the parties; or d) as may otherwise be provided below. In the event of the termination of this Agreement, any liability of one party to the other arising out of any Services rendered, or for any act or event occurring prior to the termination, shall not be terminated or released.

In the event of termination by the COUNTY, the COUNTY's sole obligation to the CONSULTANT shall be payment for those portions of satisfactorily completed work previously authorized. Such payment shall be determined on the basis of the percentage of work complete, as estimated by the CONSULTANT and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or other obligation to the CONSULTANT, elect to employ other persons to perform the same or similar services.

The obligation to provide services under this Agreement may be terminated by either party upon seven (7) days prior written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.

In the event that the CONSULTANT merges with another company, becomes a subsidiary of, or makes any other substantial change in structure, the COUNTY reserves the right to terminate this Agreement in accordance with its terms.

In the event of termination of this Agreement, the CONSULTANT agrees to surrender any and all documents first prepared by the CONSULTANT for the COUNTY in connection with this Agreement.

The COUNTY may terminate this Agreement for refusal by the CONSULTANT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 Florida Statutes and made or received by the CONSULTANT in conjunction with this Agreement.

The COUNTY may terminate this Agreement in whole or in part if the CONSULTANT submits a false invoice to the COUNTY.

CONSULTANT certifies that it and those related entities of CONSULTANT as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. OWNER may terminate this Contract if CONSULTANT, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

CONSULTANT certifies that it and those related entities of CONSULTANT as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria. COUNTY may terminate this agreement if CONSULTANT is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

## 9. MISCELLANEOUS PROVISIONS

Independent Contractor. It is specifically understood and acknowledged by the parties hereto that the CONSULTANT or employees or sub-consultants of the CONSULTANT are in no way to be considered employees of the COUNTY, but are independent contractors performing solely under the terms of the Agreement and not otherwise.

Merger; Modification. This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings of any nature whatsoever concerning the subject matter of the Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior or contemporaneous representations or agreements, whether oral or written. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by the CONSULTANT and the COUNTY.

Governing Law; Venue. This Agreement, including all attachments hereto, shall be construed according to the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

Remedies; No Waiver. All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity. Each right, power and remedy of the parties provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The failure of either party to insist upon compliance by the other party with any obligation, or exercise any remedy, does not waive the right to so in the event of a continuing or subsequent delinquency or default. A party's waiver of one or more defaults does not constitute a waiver of any other delinquency or default. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own costs.

Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

Availability of Funds. The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Indian River County.

No Pledge of Credit. The CONSULTANT shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

Survival. Except as otherwise expressly provided herein, each obligation in this Agreement to be performed by CONSULTANT shall survive the termination or expiration of this Agreement.

Construction. The headings of the sections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such sections. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the parties or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's-length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy and all of which shall constitute but one and the same instrument.

10. Public Records Compliance

Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Consultant shall comply with Florida's Public Records Law. Specifically, the Consultant shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Consultant or keep and maintain public records required by the County to perform the service. If the Consultant transfers all public records to the County upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

**B. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**(772) 226-1424  
publicrecords@indianriver.gov  
Indian River County Office of the County Attorney  
1801 27th Street  
Vero Beach, FL 32960**

C. Failure of the Consultant to comply with these requirements shall be a material breach of this Agreement.

IN WITNESS WHEREOF, OWNER and CONSULTANT have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONSULTANT. All portions of the Contract Documents have been signed or identified by OWNER and CONSULTANT or on their behalf.

This Agreement will be effective on \_\_\_\_\_, 20\_\_\_\_.

OWNER:

INDIAN RIVER COUNTY

By:

\_\_\_\_\_  
Susan Adams, Chairman

By:

\_\_\_\_\_  
John A. Titkanich, Jr., County Administrator

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

By:

\_\_\_\_\_  
Christopher Hicks, Assistant County Attorney

Ryan L. Butler, Clerk of Court and Comptroller

Attest:

\_\_\_\_\_  
Deputy Clerk

(SEAL)

Designated Representative:

Name, title

address

phone

email

CONTRACTOR:

COMPANY NAME

By:

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

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

(Corporate Seal)

(If CONTRACTOR is a corporation or partnership,  
attach evidence of authority to sign)

Attest:

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

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

Designated Representative:

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

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

\_\_\_\_\_  
Address:

\_\_\_\_\_  
Phone:



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**Exhibit 1 – Scope of Services and Not to Exceed Fee**

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