

May 13, 2022

Proposal No. HACIX21003P

Mr. James Keene, Public Infrastructure Director
City of Haines City
426 Claude Holmes Sr. Avenue
Haines City, Florida 33844

RE: PROJECT AGREEMENT 21-01 TO RETAINER AGREEMENT – 6TH STREET WATER LINE IMPROVEMENTS

Dear Mr. Keene:

We are pleased to submit two (2) copies of this updated Agreement to the City to provide consulting engineering services for the referenced Project. This Agreement describes our scope of services to assist the City with performing design, bidding, and construction engineering services for this important Project.

Upon review and approval, please sign and return one (1) executed copy of this Agreement to our office.

Please call me if you have any questions. We sincerely appreciate the opportunity to assist the City of Haines City with this important Project.

Sincerely
Pennoni



Steven L. Elias, P.E.
Municipal Division Manager



Roger L. Homann
Project Manager

PROJECT AGREEMENT 21-01

by and Between

CITY OF HAINES CITY – and – PENNONI ASSOCIATES

Project

6TH STREET WATER LINE IMPROVEMENTS

- 1.0 GENERAL:** This is Project Agreement 21-01 under the Retainer Agreement between the City of Haines City (City, Client, or Owner) and Pennoni Associates Inc. (Engineer or Pennoni) for continuing professional engineering services dated 25 March 2021. Except as provided for herein, the provisions of the Retainer Agreement between the City and Engineer shall apply to this Project Agreement.
- 2.0 EMPLOYMENT:** The City hereby retains the continuing professional engineering services of Engineer, in consideration of the mutual covenants contained herein, and agrees in respect to the performance of professional engineering services by Engineer and the payment for those services by City as set forth herein.
- 3.0 PROJECT BACKGROUND AND DESCRIPTION:** The City desires to replace approximately 1,100' of undersized 1.5" and 2" galvanized water lines within the 6th Street right-of-way with a new 6" water line to improve the level of service for local residents. As depicted in Attachment A, the general area of the proposed improvements will include the right-of-way of 6th Street between Claude Holmes Senior Avenue (north end of project) and Lily Avenue East (south end of project). Based on a site visit on May 28, 2021, with City staff, the scope of work herein for this Project was based on the following assumptions:
- Approximately 1,100 ' of new 6" water line, valves, and hydrants;
 - Replace water service lines to existing meters, with meter hook-up by the City;
 - Water line installation and road reconstruction in the western (south-bound) travel lane;
 - Asphalt overlay between the existing curbs along the existing edges of pavement;
 - City will be responsible for abandoning the existing water lines;
 - Curbing, roadway grading, and drainage modifications are not to be addressed;
 - Design, permitting, bidding, and construction engineering services are to be provided by Pennoni.
- 4.0 PURPOSE:** The purpose of this Agreement is to authorize Pennoni to provide the services described in Section 5.0 herein for the fee described in Section 6.0 herein.

5.0 SCOPE OF WORK: Pennoni will provide, or obtain from others, professional engineering design services for this Project. Pennoni's services will include serving as the City's engineering representative for the Project, providing customary professional civil engineering and consulting services. Pennoni makes no warranties, express or implied, under this Agreement or otherwise, in connection with Pennoni's services. The following sections describe Pennoni's scope of work for this Project.

5.1 Preliminary Engineering Phase

5.1.1 Meet with City staff to verify Project objectives including but not limited to the Project pipeline alignment and connection points, upon which concurrence will be the basis of Pennoni's survey and design.

5.1.2 Prepare a topographic survey that shows road right-of-way lines, visible improvements, flagged water lines (by City) and known utilities, flagged water meter locations (to be flagged by City), and spot elevations with interpolated 1 ft. contours that represent the general ground surface within the limits of the Project as defined in Attachment A.

5.1.3 Coordinate with a geotechnical engineering subconsultant to conduct shallow soil borings within the Project area (3 total) to determine site soil, seasonal high-water table conditions, and existing roadway construction profile characteristics in the Project area and provide a geotechnical recommendation for construction of the water line and roadway repair.

5.1.4 Evaluate survey and rights-of-way data with City staff to confirm the proposed route is practical and appears to be feasible to be constructed within existing rights-of-way.

5.2 Design Phase

5.2.1 Prepare Construction Documents: Pennoni will prepare Bidding and Construction Level Documents for this Project. The Construction Documents will consist of the Construction Plans and a Project Manual, which will include the Technical Specifications, Bid Proposal, Construction Contract, and other 'Front End Type' documents, in accordance with the City's procurement requirements (digital copy of City's latest front end contract documents to be provided). It is assumed that a general Maintenance of Traffic (MOT) Plan(s) from the FDOT Standard Index will be used for this Project. If a Project-specific MOT plan is required by any jurisdictional agency, this will be prepared as an Additional Service.

5.2.2 Coordinate with Utility Owners (e.g., gas, electric, telephone, cable TV): Pennoni will as part of our limited site utility research, provide apparent utility providers with a set of draft Plans showing the City's proposed improvements and request them to sketch the approximate locations of their utilities and give comments regarding potential conflicts.

Due to information source and project timing limitations, there is no assurance that all existing utilities and proposed future utility line locations will be accurately defined in their depth and extent within the vicinity of the Project, which will require the contractor to verify more precisely the location of existing utilities prior to construction.

NOTE: Please be advised that state law in association with Sunshine State One Call of Florida allows utility companies to charge service fees for providing utility location information inside public rights-of-way and/or easements. These fees cover services such as meetings with engineers, site visits to flag utilities in the field, reviewing and marking up plans to depict the location of their facilities, etc., which are necessary to facilitate the design and construction of improvements within rights-of-way and/or easements. As an Associate Member of the Sunshine State One Call of Florida, and as your engineering consultant, we may incur these costs associated with your Project, and if so, we will include them on our invoices to you as a direct reimbursable cost.

- 5.2.3** City Reviews: At the 30% and 90% completion milestones, submit one (1) set of drawings and Project Manual (90% milestone) to the City for review and comment and meet with the City to review and discuss the submittal for technical and legal sufficiency review/acceptance.
 - 5.2.4** Opinion of Probable Cost: At the 90% completion milestone, prepare an opinion of probable construction cost and submit it to the City.
 - 5.2.5** Final Submittal: Submit final plans and specifications to the City staff, which incorporate technical and legal input provided by the City.
- 5.3 Permitting Phase:**
- 5.3.1** FDEP Construction Permit: Prepare and submit an FDEP Notice of Intent to use the General Permit for Construction of Water Main Extensions for PWS for submittal to the Florida Department of Health in Polk County and respond to one (1) Request for Additional Information in support of the permit request.
- 5.4 Bidding Phase:** Pennoni will provide assistance to the City in obtaining, receiving, and evaluating bids and awarding and executing the Construction Contract as described below.
- 5.4.1** Pre-Bid Conference: Conduct a Pre-Bid Conference to review and answer questions from prospective bidders regarding the Construction Documents and to tour the Project Site as needed.
 - 5.4.2** Respond to Questions: Provide written responses to questions from bidders.

- 5.4.3 Addenda: Prepare and issue Addenda to the Construction Documents, if required, which will address the questions raised at the Pre-Bid Conference and respond to other issues and questions.
 - 5.4.4 Bid Review: Review bids submitted to the City, tabulate the bids, check the low bidders' references, and submit a bid award letter of recommendation for the lowest, responsible bidder.
 - 5.4.5 Assist with Completing Construction Contract: After the City awards the bid, assist the City with preparing and executing the Construction Contract.
- 5.5 **Exclusions**: All other services not explicitly described in Items 5.1 - 5.6 above and based on the assumptions described herein will be performed as an Additional Service upon request and written approval by the City, including but not limited to the following:
- Subcontracted environmental specialty consultants;
 - Threatened and endangered species and other environmental survey and evaluation studies;
 - System-wide hydraulic evaluation or impact assessment of the City's Water system;
 - Full site surveys, boundary surveys, or wetland surveys;
 - Underground utility and lateral locate services to determine and map the precise vertical and horizontal location of existing underground utilities beyond record drawings made available by the City and other utility providers;
 - Right-of-way or easement acquisition assistance or preparing legal description documents to support these efforts ;
 - Additional geotechnical studies beyond what is described in Section 5.1;
 - Construction Services;
 - Any special agency field testing or study requirements for permitting (geotechnical, SUE, shoring, etc.); and
 - All other services not explicitly described in Section 5.0.

6.0 PENNONI'S COMPENSATION

- 6.1 Our lump sum fees, excluding reimbursable costs, to provide the above-described services are given below.

Preliminary Engineering Phase	\$12,500
Permitting Phase	\$4,500
Design Phase	\$33,000
Bidding Phase	\$8,500
Total.....	\$58,500

6.2 Should the Client elect to expand the Scope of Work to include work tasks not covered in this agreement, Pennoni will perform the requested additional work tasks based on: (A) A mutually agreed upon fixed fee; or (B) The time we spend and the costs we incur to perform the work in accordance with our current Schedule of Hourly Rates and Reimbursable Costs (Exhibit 2).

6.3 It is understood and agreed that cost tradeoffs among the various cost categories and work tasks are allowable, so long as the total estimated cost of all work tasks is not exceeded without the City's written approval.

7.0 CITY'S RESPONSIBILITIES: The City shall do the following in a timely manner so as to assist Pennoni in its work and not delay the performance of services by Pennoni.

7.1 Designate a City representative with respect to the services to be rendered under this Supplement who will have complete authority to transmit instructions, receive information, and interpret and define City's policies and decisions with respect to Pennoni's services for this Project.

7.2 Promptly review, comment on, and return Pennoni's submittals.

7.3 Payment of all permit application and review fees and other costs not included in this proposal are the responsibility of the City.

7.4 Promptly advise Pennoni when the City becomes aware of any defect or deficiency in Pennoni's services.

7.5 Furnish Pennoni with all information as to City requirements, including any special or extraordinary considerations for the Project, and make available existing pertinent data as identified in the Scope of Work as necessary (maps, as-built drawings, etc.).

7.6 Provide access to all City sites and facilities related to the Project.

7.7 Lead coordination of all negotiations and conduct all meetings related to communicating the Project scope and connecting customers to the proposed infrastructure.

7.8 Provide review(s) of Pennoni construction documents for technical and legal sufficiency.

8.0 OTHER MATTERS

8.1 Our attached Standard General Conditions (Attachment B), and other provisions described in the referenced Retainer Agreement between City and Engineer shall apply to this Project Agreement as applicable. References to the Pennoni/ Consultant/ Engineer regarding Limitation of Liability also pertain to the Project's Engineer of Record.

- 8.2** The obligation to provide services under this Project Agreement may be terminated by either party upon seven days written notice, in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, Pennoni will be paid for all services rendered.
- 8.3** Because Pennoni has no control over the cost of labor, materials, equipment or services furnished by others, or over methods of determining prices, or over competitive bidding or market conditions, any and all opinions as to costs rendered hereunder, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified professional, familiar with the construction industry. Pennoni cannot and does not guarantee that proposals, bids, or actual costs will not vary from opinions of probable cost prepared by it. If at any time the City wishes greater assurance as to the amount of any cost, the City shall employ an independent cost estimator to make such determination.
- 8.4** This proposal may be void if not executed within 45 days.
- 8.5** In the performance of its work, Pennoni will rely on readily available and historic information (plans, as-built drawings, manuals, specifications, reports, etc.) provided by the City and by others without research to verify the accuracy of said information.
- 8.6** PURSUANT TO 558.0035 F.S., AN AGENT OR INDIVIDUAL EMPLOYEE OR AGENT OF PENNONI ASSOCIATES, INC CANNOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF THIS PROFESSIONAL SERVICES CONTRACT OR THE PERFORMANCE OF PROFESSIONAL SERVICES HEREUNDER. BY SIGNING THIS AGREEMENT, YOU HAVE ACCEPTED THIS LIMITATION OF LIABILITY.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the

_____ of _____ 2022.
(Day) (Month)

CITY OF HAINES CITY

Attest, City Clerk

Mayor, City of Haines City

PENNONI ASSOCIATES INC.



BY: _____
Brian Diehl, P.E., Regional Vice President

DATE: 5/13/22

ATTACHMENT A – Project Area Map



ATTACHMENT B – STANDARD GENERAL CONDITIONS



PENNONI ASSOCIATES INC.
GENERAL TERMS & CONDITIONS
[PROJECT No.]

1. Unless withdrawn sooner, proposals are valid for thirty (30) days.
2. The technical and pricing information in proposals is the confidential and proprietary property of Pennoni Associates Inc. ("Pennoni") or any Pennoni subsidiary or affiliate. Client agrees not to use or to disclose to third parties any technical or pricing information without Pennoni's written consent.
3. The agreement created by the Client's acceptance of a proposal and these Terms & Conditions is hereinafter referred to as the "Agreement." If a proposal is submitted to Client and Client fails to return a signed copy of the proposal but knowingly allows Pennoni to proceed with the services, then Client shall be deemed to have accepted the terms of the proposal and these General Terms & Conditions. If there is a conflict or inconsistency between any express term or condition in the proposal and these General Terms & Conditions, then the proposal shall take precedence. The proposal and these General Terms & Conditions constitute the entire Agreement, and supersede any previous agreement or understanding.
4. Payment is due upon receipt of invoices as submitted. If Client chooses to make any payment via major credit card, Client agrees to pay a 3% surcharge or 1.03 times the total amount invoiced. Client agrees to pay interest at the rate of 1½ percent per month on invoices that are more than 30 days past due. If an invoice is 30 or more days past due, then Pennoni may suspend services and refuse to release work on this Agreement or any other agreement between Client and Pennoni until Client has paid all amounts due. Unless Pennoni receives written notice of Client's dispute of an invoice within 30 days of the invoice date, the invoice will be presumed correct. If payment is not made in accordance with the Agreement, then Client agrees to pay reasonable costs and attorney's fees incurred by Pennoni to collect payment.
5. All drawings, sketches, specifications and other documents ("Documents") in any form, including electronic, prepared by Pennoni are instruments of Pennoni's services, and as such are and shall remain Pennoni's property. Upon payment in accordance with the Agreement, Client shall have the right to use and reproduce the Documents solely for the purposes of constructing, remediating, using or maintaining the project contemplated by the Agreement ("Project"). The Documents are prepared for use on this Project only, and are not appropriate for use on other projects, any additions or alterations of the Project, or completion of the Project by others. Client shall not use the Documents in violation of this paragraph without Pennoni's express written consent; and such use is at the Client's sole risk. Client agrees to indemnify, defend and hold harmless Pennoni from any claims, damages, losses, liabilities and expenses arising from such prohibited use.
6. The proposed fees and schedule constitute Pennoni's best estimate of the charges and time required to complete the Project. As the Project progresses, facts uncovered may dictate revisions in scope, schedule or fee. The hourly rate schedule for services provided on a time and material basis will be subject to increases annually.
7. Fee and schedule commitments will be subject to change for delays caused by Client's failure to provide specified facilities or information, or for delays caused by third parties, unpredictable occurrences or force majeure.
8. Where the method of payment is based on time and materials, Client agrees that the following will apply: The minimum time segment for charging work is one-quarter hour, except the minimum time segment for charging of field survey work is four (4) hours. Client reimbursable expenses include travel and living expenses of personnel when away from the home office on business connected with the Project; subcontractor and subconsultant costs; identifiable communications, mailing and reproduction costs; identifiable drafting and stenographic supplies; and expendable materials and supplies purchased specifically for the Project. A ten (10) percent administrative and handling charge will be added to client reimbursable expenses.
9. Client's termination of this Agreement will not be effective unless Client gives Pennoni seven (7) days prior written notice with accompanying reasons and details, and affords Pennoni an opportunity to respond. Where the method of payment is "Lump Sum," Client agrees that the final invoice will be based on services performed to the effective date of cancellation, plus an equitable adjustment to provide for costs Pennoni incurred for commitments made prior to cancellation. Where the method of payment is time and materials, Client agrees that the final invoice will include all services and direct expenses up to the effective date of cancellation plus an equitable adjustment to provide for costs Pennoni incurred for commitments made prior to cancellation.
10. Pennoni will maintain at its own expense Workman's Compensation insurance, Commercial General Liability insurance, and Professional Liability insurance.
11. Neither the Client nor Pennoni shall assign this Agreement without the written consent of the other.

12. Pennoni does not represent or warrant that any permit or approval will be issued by any governmental or regulatory body. Pennoni will endeavor to prepare applications for such permit or approval in conformance with applicable requirements; but, in view of the complexity of and the frequent changes in applicable rules and regulations and interpretations by the authorities, Pennoni cannot guarantee that any such application will be considered complete or will conform to all applicable requirements.
13. Pennoni will perform its work in accordance with generally accepted professional standards. THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED. This Agreement is solely for the benefit of the Client and its successors. There is no third-party beneficiary of this Agreement.
14. CLIENT AND PENNONI HAVE CONSIDERED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, AS WELL AS PENNONI'S TOTAL FEE FOR SERVICES. CLIENT AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, PENNONI'S TOTAL AGGREGATE LIABILITY (INCLUDING THE LIABILITY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS AND CONSULTANTS) TO THE CLIENT (AND ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT) FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES OR DAMAGES ARISING OUT OF THIS AGREEMENT FROM ANY CAUSE OR CAUSES IS LIMITED TO THE TOTAL FEE RECEIVED BY PENNONI UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. SUCH CAUSES INCLUDE, BUT ARE NOT LIMITED TO, PENNONI'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, OR BREACH OF CONTRACT OR WARRANTY.

IN THE EVENT THE CLIENT IS UNABLE TO ACCEPT THE ABOVE LIMITATION OF LIABILITY, PENNONI AGREES TO INCREASE THE LIMITATION TO \$1,000,000 UPON ITS RECEIPT, PRIOR TO PERFORMING ANY SERVICES, OF CLIENT'S WRITTEN AGREEMENT TO PAY AN ADDITIONAL SUM OF NOT LESS THAN 10% OF THE TOTAL FEE UNDER THIS AGREEMENT OR \$1,000, WHICHEVER IS GREATER.

15. Client shall make no claim against Pennoni unless the Client first provides a written certification, executed by an independent design professional, specifying those acts or omissions which the independent design professional contends is a violation of generally accepted professional standards and upon which the claim will be premised. The independent design professional must be licensed to practice in the state where the Project is located and in the discipline related to the claim. Client agrees that the independent design professional's certification is a condition precedent to the Client's right to institute any judicial proceeding.
16. If required under the scope of services, Pennoni shall visit the Project site to become generally familiar with the progress and quality of the work for which Pennoni prepared contract documents, and Pennoni shall not make exhaustive or continuous onsite inspections. Pennoni's services do not include supervision or direction of the contractor's work. Observation by Pennoni field representatives shall not excuse the contractor for defects or omissions in its work. Pennoni shall not control construction means, methods, techniques, sequences, or procedures, and the contractor is solely responsible for all work on the Project, including safety of all persons and property.
17. If Client does not retain Pennoni to render construction phase services, then Client waives any claim it may have against Pennoni and agrees to indemnify, defend, and hold harmless Pennoni from any loss or liability, including attorneys fees and other defense costs, arising out of or related to the interpretation of Pennoni's plans and specifications, the review of shop drawings, the evaluation of contractor's request for change orders, or the failure to detect and correct obvious errors or omissions in Pennoni's plans and specifications.
18. Unless and until a court determines that Pennoni's preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, specifications and/or Pennoni's giving or failure to give instructions is the primary cause of any damage, claim, loss or expenses, Client shall indemnify, defend and hold harmless Pennoni and its officers, employees and consultants from and against all damages, claims, losses or expenses, including reasonable attorneys fees and other costs of defense, arising out of this Agreement. In the event the Client is required to defend Pennoni under this paragraph, Pennoni shall have the right to select its attorneys.
19. Client agrees to pay reasonable expert witness fees if Pennoni or any of its employees is subpoenaed to testify as a fact or opinion witness in any court proceeding, arbitration, or mediation to which the Client is a party.
20. Unless otherwise provided in this proposal, Pennoni shall have no responsibility for the discovery, presence, handling, removal, or disposal of hazardous materials or underground structures at the Project site.
21. Client and Pennoni waive consequential damages arising out of this Agreement.
22. This Agreement shall be governed by the laws of the State of Florida.
23. Both Pennoni and Client agree to waive the right to subrogation for covered losses and each shall obtain similar waivers from Owner, subcontractors, property and casualty insurers, and any other party involved in this Project.