

## Grants & Contracts - Transmittal Memo

**DATE:** August 26, 2019

**FROM:** Procurement Division, Contracts

**TO:** Cathy Reed, Kathy Bruning

**CONTRACT #:** 11343

**VENDOR:** Terry L. Zinn

**DESCRIPTION:** #11343 Terry L. Zinn professional services for appointment as Code Enforcement Special Magistrate, RFQ 19-24

**APPROVED BY:** County Manager

**APPROVAL DATE:** August 22, 2019

**RECEIVED ON:** August 26, 2019

**TERM START:** August 22, 2019

**TERM END:** February 22, 2022

**AMOUNT:** NTE \$50,000.00

**RFP/BID #:** 19-24

**GMW:** N/A

**POR #  
(ENCUMBERANCE):** N/A

**ACTIONS REQUIRED:** Please forward a copy to the vendor & retain a copy for your files.

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN ALACHUA COUNTY  
AND TERRY L. ZINN**

This Agreement is entered into this 22 day of August, 2019 between ALACHUA COUNTY; a political subdivision and Charter County of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County" and **Terry L. Zinn, P.A.** with a business address of **27715 NW 107<sup>th</sup> Street, Alachua, FL 32615-3504**, hereinafter referred to as "Professional". Collectively hereinafter, the County and Professional are referred to as the "Parties."

**WITNESSETH**

**WHEREAS**, in accordance §162 Florida State Statute and Chapter 24, Codes Enforcement, of the Alachua County Code of Ordinances the County issued Request for Qualifications (RFQ) #19-24 seeking qualified Professionals to be considered for appointment as a Code Enforcement Special Magistrate ("Special Magistrate"), in Alachua County, Florida; and

**WHEREAS**, after on February 26, 2019, after evaluating and considering all timely responses to RFQ #19-24, the Alachua County Board of County Commissioners appointed the Professional as a Special Magistrate,

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

**1. Term.**

1.1. This Agreement is effective on the date executed by both parties and continues until the 22 day of February 2022 unless earlier terminated as provided herein.

1.2. In the event the County shall order work under this Agreement to commence under the terms of this Agreement which shall not be scheduled for completion under the Term of the Agreement set herein, then this Agreement shall remain in effect until the work assignment so ordered is completed or this Agreement is terminated as provided for herein. This shall not preclude the County from entering into another agreement with another Professional for other services described herein at any time during this agreement. This Agreement is a non-exclusive agreement for professional services as a Codes Enforcement Special Magistrate.

1.3. The County's performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the Alachua County Board of County Commissioners ("Board"). The Parties hereto understand that this Agreement is not a commitment of future appropriations. Therefore, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes, and that the failure of the Board to do so shall not constitute a breach or default of this Agreement.

2. **Representations.** By executing this Agreement, the Professional makes the following express representations to the County:

2.1. The Professional is professionally qualified to act as the Special Magistrate for the County, is licensed to practice law, and is a five-year member in good standing with the Florida Bar. Professional shall notify County immediately of any change in standing with the Florida Bar.

3. **Duties of the Professional.** The Professional shall have and perform the following duties, obligations, and responsibilities to the County:

3.1. Serve as the Special Magistrate for the County performing those duties in accordance with §162, Florida Statutes, and Chapter 24, Codes Enforcement, of the Alachua County Code of Ordinances. Duties include those responsibilities and standards contained in Chapter 24 of the Alachua County Code, including:

3.1.1. Conducting hearings

3.1.2. Reviewing evidence

3.1.3. Ruling on motions

3.1.4. Rendering orders that contain findings of fact, conclusions of law and order within 10 calendar days from the conclusion of the hearing. If the 10<sup>th</sup> day is a weekend or holiday, the order shall be rendered on the next business day. Provide order to the County within 24 hours of rendering.

3.2. Adhere to the Rules of Professional Conduct and the Rules Regulating the Florida Bar.

Be available for hearing within 21 calendar days of notice. If the Professional is not available to hold a hearing the County shall be notified immediately, so that another Special Magistrate may be assigned.

4. **Conflict of Interest:**

4.1. If the Professional has a conflict of interest the County shall be notified immediately so that another Special Magistrate may be assigned.

4.2. At any point during the proceedings the Professional may recuse themselves based on a conflict of interest under Chapter 112, Florida Statutes, or to assure a fair proceeding free from potential bias or prejudice.

5. **Duties of the County.** The County shall have and perform the following duties, obligations, and responsibilities to the Professional, including those responsibilities provided in Chapter 24 of the Alachua County Code:

5.1. Promptly notify the Professional when a hearing is requested. After notification, the County will notify the Respondents of the Hearing.

5.2.Scheduling hearings.

5.3.Generate and mail notices of hearing and, if required, orders

5.4. Serve subpoenas issued by the Professional in connection with duties arising out of this Agreement

5.5.Provide the hearing facility for the conduct of hearings by the Professional

5.6.The County makes no promise as to the number of service requests nor that the Professional will perform any services for the County under this Agreement. The County reserves the right to contract with other parties for the services contemplated by this Agreement, when it is determined by the County to be in the best interest of the County to do so.

6. **Method of Payment.** For its assumption and performance of the duties, obligations, and responsibilities set forth herein, the Professional shall be paid in accordance with this section.

6.1. The Professional shall be paid for those services required by this Agreement not to exceed the sum of \$50,000.00 , annually allocated in the following manner:

Services	Price
Hearing Time	\$150.00 / hour
Non-Hearing Time	\$150.00 / hour for Legal Services
Non-Legal Secretarial Services when previously authorized by the County in writing	\$50.00 / hour

6.2. No additional reimbursable expense will be paid under this Agreement.

6.3. As a condition precedent for any payment, the Professional shall submit an invoice to the County requesting payment for services properly rendered and expenses due. The Professional's invoice shall describe with reasonable particularity each service rendered, the date thereof, *[the time expended, if billed by hour,]* and the person(s) rendering such service. The Professional's invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought as the County may require. If payment is requested for services rendered by Professional, the invoice shall additionally reflect the allocations as provided and shall state the percentage of completion as to each such allocation. Each invoice shall constitute the Professional's representation to the County that the services indicated in the invoice have reached the level stated, have served a public purpose, have been properly and timely performed as required herein, that the expenses included in the invoice have been reasonably incurred in accordance with this Agreement, that all obligations of the Professional covered by prior invoices have been paid in full, and that the amount requested is currently

due and owing, there being no reason known to the Professional that payment of any portion thereof should be withheld. Submission of the Professional's invoice for final payment shall further constitute the Professional's representation to the County that, upon receipt by the Professional of the amount invoiced, all obligations of the Professional to others, including its consultants, incurred in connection with the services reflected in the invoice, will be paid in full. The Professional shall submit invoices to the County at the following address:

Dept: Growth Management  
Attn. Legal Secretary  
10 SW 2nd Ave  
Gainesville, Florida, 32601

6.4. In the event that the County becomes credibly informed that any representations of the Professional relating to payment are wholly or partially inaccurate, the County may withhold payment of sums then or in the future otherwise due to the Professional until the inaccuracy, and the cause thereof, is corrected to the County's reasonable satisfaction.

6.5. The County shall make payment to the Professional, of all sums properly invoiced under the provisions of this paragraph, in accordance with the provisions of Chapter 218, Part VII (Local Government Prompt Payment Act), Florida Statutes. Payments shall be made to the following address:

Professional  
Terry L. Zinn, P.A.  
27715 NW 107<sup>th</sup> Street,  
Alachua, FL 32615-3504

7. **Notice.** Except as otherwise provided in this Agreement, all notices to be provided under this Agreement from either party to the other party must be by one of the following methods: (i) in writing and sent by certified mail, return receipt requested, (ii) by personal delivery with receipt, or (iii) via electronic mail. All notices shall be deemed two (2) business days after mailing, unless deliver is by personal delivery, in which case delivery shall be deemed to occur upon actual receipt by the other party. For purposes of all notices, Professional's and County's representatives are:

Dept: Growth Management  
Attn. Legal Secretary  
10 SW 2d Ave  
Gainesville, Florida, 32601

Professional  
Terry L. Zinn, P.A.  
27715 NW 107<sup>th</sup> Street,  
Alachua, FL 32615-3504

A copy of any notice, request or approval to the County must also be sent to:

J.K. "Jess" Irby, Esq  
Clerk of the Court  
12 SE 1<sup>st</sup> Street  
Gainesville, FL 32602  
Attn: Finance and Accounting

And to

Procurement Division  
12 SE 1<sup>st</sup> Street  
Gainesville, Florida 32601  
Attn: Contracts

**8. Default and Termination.**

- 8.1. The failure of the Professional to comply with any provision of this Agreement will place the Professional in default. Prior to terminating the Agreement, the County will notify the Professional in writing. This notification will make specific reference to the provision which gave rise to the default. The County will give the Professional seven calendar days to cure the default. The County Manager, or designee, is authorized to provide written notice of default on behalf of the County, and if the default situation is not corrected within the allotted time the County Manager is authorized to provide final termination notice on behalf of the County to the Professional.
- 8.2. The County may also terminate the Agreement without cause by providing written notice to the Professional (hereinafter, "Termination for Convenience"). The County Manager, or designee, is authorized to provide written notice of Termination for Convenience on behalf of the County. Upon such notice, Professional will immediately discontinue all Work affected (unless the notice directs otherwise) and deliver to the County all data, drawings, specifications, reports, estimate, summaries, and such other information and materials as may have been accumulated by the Professional in performing this Agreement, whether completed or in process. In the event of such Termination for Convenience, Professional's recovery against County shall be limited to that portion of the Annual Contract Price earned through the date of termination, but Professional shall not be entitled to any other or further recovery against County, including, but not limited to, damages, consequential or special damages, or any anticipated fees or profit on portions of the Work not performed.
- 8.3. If funds to finance this Agreement become unavailable, the County may terminate the Agreement with no less than 24 hours' notice in writing to the Professional. The County will be the final authority as to the availability of funds. The County will pay the Professional for all Work completed prior to delivery of notice of termination. In the event of such Termination, Professional's recovery against County shall be limited to that portion of the Professional's hourly rate earned through the date of termination, but Professional shall not be entitled to any other or further recovery against County, including, but not limited to, damages, consequential or special damages, or any anticipated fees or profit on portions of the Work not performed.

## **9. Project Records.**

### **9.1. General Provisions:**

9.1.1. Any document submitted to the County may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per §119.011(11), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law.

9.1.2. In accordance with §119.0701, Florida Statutes, the Professional, *when acting on behalf of the County*, as provided under 119.011(2), Florida Statutes, shall keep and maintain public records as required by law and retain them as provided by the General Record Schedule established by the Department of State. 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 unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law. Additionally, the Professional or Professional shall provide the public records at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

9.1.3. Professional shall 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 this Agreement and following completion of this Agreement if the Professional does not transfer the records to the County.

### **9.2. Confidential Information:**

9.2.1. During the term of this Agreement or license, the Professional may claim that some or all of Professional's information, including, but not limited to, software documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by Professional in accordance with §812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Record Act. Professional shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the County shall use its best efforts to maintain the confidentiality of the information properly identified by the Professional as "Confidential Information" or "CI."

9.2.2. The County shall promptly notify the Professional in writing of any request received by the County for disclosure of Professional's Confidential Information and the Professional may assert any exemption from disclosure available under applicable law or seek a protective order against disclosure from a court of competent jurisdiction. Professional shall protect, defend, indemnify, and hold the County, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of Confidential Information. Professional shall investigate, handle, respond to, and defend, using counsel agreeable to the County, at Professional's sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent.

Professional shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion of this Agreement or license, the provisions of this paragraph shall continue to survive. Professional releases County from claims or damages related to disclosure by County.

**9.3. Project Completion:** Upon completion of, or in the event this Agreement is terminated, the Professional, *when acting on behalf of the County* as provided under §119.011(2), Florida Statutes, shall transfer, at no cost, to the County all public records in possession of the Professional or keep and maintain public records required by the County to perform the service. If the Professional transfers all public records to the County upon completion or termination of the agreement, it must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Professional keeps and maintains public records upon the completion or termination of the agreement all applicable, requirements for retaining public records shall be met. All records stored electronically shall be provided to the County, upon request from the Counties custodian of public records, in a format that is compatible with the information technology systems of the County.

**9.4. Compliance** A Professional who fails to provide the public records to the County within a reasonable time may be subject to penalties under §119.10, Florida Statutes.

**IF THE PROFESSIONAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROFESSIONAL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY REPRESENTATIVE AT PUBLIC RECORDS 12 SE 1<sup>ST</sup> STREET, SEOND FLOOR, GAINESVILLE, FL 32601, PHONE (352) 264-6906, OR EMAIL [publicrecordsrequest@alachuacounty.us](mailto:publicrecordsrequest@alachuacounty.us).**

**10. Ownership of Deliverables.** All project deliverables and documents are the sole property of the County and may be used by the County for any purpose.

**11. Insurance.** The Professional will procure and maintain insurance throughout the entire term of this Agreement of the types and in the minimum amounts detailed in **Exhibit "1."** A copy of a current Certificate of Insurance (COI) showing coverage of the type and in the amounts required is attached hereto as **Exhibit "1-A"**.

**12. Permits and Licenses.** The Professional will obtain, retain, and pay for all necessary permits, permit application fees, licenses or any fees required.

**13. Laws & Regulations.** The Professional will comply with all laws, ordinances, and regulations applicable to the work required by this Agreement. The Professional is presumed to be familiar with all state and local laws, ordinances, code rules and regulations that may in any way affect the work outlined in this Agreement. If the Professional is not familiar with state and local laws, ordinances, code rules and regulations, the Professional remains liable for any violation and all subsequent damages or fines.

#### **14. Indemnification**

14.1. To the maximum extent permitted by Florida law, the Professional shall indemnify and



hold harmless the County and its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, caused by the negligence, recklessness, or intentional wrongful misconduct of the Professional or anyone employed or utilized by the Professional in the performance of this Agreement. Professional agrees that indemnification of the County shall extend to any and all Work performed by the Professional, employees, agents, servants or assigns.

14.2. The Professional obligation to indemnify under this Article will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations

14.3. This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of Professional insurance coverage. This indemnification provision shall survive the termination of the Agreement between the County and the Professional.

14.4. In any and all claims against the County or any of its agents or employees by any employee of the Professional, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Professional under workers' compensation acts, disability benefit acts or employee benefit acts.

14.5. Nothing contained herein shall constitute a waiver by the County of sovereign immunity or the provisions or limits of liability of §768.28, Florida Statutes.

**15. Assignment of Interest.** Neither party will assign or transfer any interest in this Agreement without prior written consent of the other party.

**16. Successors and Assigns.** The County and Professional each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement.

**17. Independent Professional or Consultant.** In the performance of this Agreement, the Professional is acting in the capacity of an independent Professional or Consultant and not as an agent, employee, partner, joint venturer, or associate of the County. The Professional is solely responsible for the means, method, technique, sequence, and procedure utilized by the Professional in the full performance of the Agreement.

**18. Collusion.** By signing this Agreement, the Professional declares that this Agreement is made without any previous understanding, agreement, or connections with any persons, professionals or corporations and that this Agreement is fair, and made in good faith without any outside control, collusion, or fraud.

**19. Conflict of Interest.** The Professional warrants that neither it nor any of its employees have any financial or personal interest that conflicts with the execution of this Agreement. The Professional shall notify the County of any conflict of interest due to any other clients, contracts, or property interests.

20. **Third Party Beneficiaries.** This Agreement does not create any relationship with, or any rights in favor of, any third party.
21. **Severability.** If any provision of this Agreement is declared void by a court of law, all other provisions will remain in full force and effect
22. **Non Waiver.** The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right.
23. **Governing Law and Venue.** This Agreement is governed in accordance with the laws of the State of Florida. Venue shall be in Alachua County.
24. **Attachments.** All exhibits attached to this Agreement are incorporated into and made part of this Agreement by reference.
25. **Amendments.** The parties may amend this Agreement only by mutual written agreement of the parties, executed with the same formalities as this Agreement.
26. **Captions and Section Headings.** Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.
27. **Counterparts.** This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. Receipt via fax or email with pdf attachment by a party or its designated legal counsel of an executed counterpart of this Amendment shall constitute valid and sufficient delivery in order to complete execution and delivery of this Amendment and bind the parties to the terms hereof.
28. **Construction.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this Agreement.
29. **Entire Agreement.** This Agreement constitutes the entire Agreement and supersedes all prior written or oral agreements, understandings, or representations.

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**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

**ALACHUA COUNTY, FLORIDA**


By:   
Michele Lieberman, County Manager

Date: 8/22/19


**APPROVED AS TO FORM**

  
Alachua County Attorney's Office

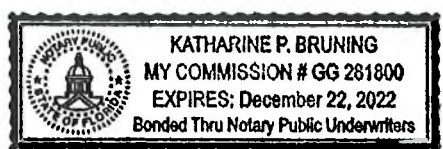
**ATTEST**

By:   
Print: Katharine P. Bruning  
Title: Notary Public

**PROFESSIONAL**

By:   
Print: Terry L. Zinn  
Title: President Terry L. Zinn, P. A.  
Date: July 10, 2019

**IF THE CONTRACTOR IS NOT A NATURAL PERSON, PLEASE PROVIDE A CERTIFICATE OF INCUMBANCY AND AUTHORITY, OR A CORPORATE RESOLUTION, LISTING THOSE AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF YOUR ORGANIZATION. IF ARE A NATURAL PERSON, THEN YOUR SIGNATURE MUST BE NOTARIZED**



## **EXHIBIT 1: Insurance Requirements**

### **TYPE “B” INSURANCE REQUIREMENTS “Professional or Consulting Services”**

Contractor shall procure and maintain for the duration of the contract 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 contractor, his agents, representatives, employees or subcontractors.

#### **I. PROFESSIONAL LIABILITY or ERRORS AND OMISSIONS LIABILITY (E&O).**

Professional (E&O) Liability must be afforded for not less than \$100,000.00 each claim, \$300,000.00 policy aggregate

#### **II. OTHER INSURANCE PROVISIONS.**

A The policies are to contain, or be endorsed to contain, the following provisions:

1 The Contractor’s insurance coverage shall be considered primary insurance as respects the County, its officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officials, employees or volunteers shall be excess of Contractor’s insurance and shall be non-contributory.

B All Coverages

1 The Contractor shall provide a Certificate of Insurance to the County with a notice of cancellation. The certificate shall indicate if cover is provided under a “claims made” or “per occurrence” form. If any cover is provided under claims made from the certificate will show a retroactive date, which should be the same date of the contract (original if contact is renewed) or prior.

#### **III. SUBCONTRACTORS**

Contractors shall include all subcontractors as insured under its policies. All subcontractors shall be subject to the requirements stated herein.

**CERTIFICATE HOLDER:**

**Alachua County Board of County Commissioners**

**EXHIBIT 1-A: Certificate of Insurance**