



**September 20, 2019**

**Ms. Leslie Gahagan  
City of Foley, Alabama  
23030 Wolf Bay Drive  
Foley, Alabama 36535**

**Subject: Maintenance Plan Template Development Proposal  
City of Foley  
23030 Wolf Bay Drive  
Foley, Baldwin County, Alabama  
Payne Environmental Proposal No: 19P-044-00**

**Dear Ms. Gahagan:**

Payne Environmental Services (Payne Environmental) appreciates the opportunity to present this proposal for the Development of a Stormwater Drainage System Maintenance Plan Template for subdivisions in the City of Foley.

**Scope of Services**

The scope of services includes the preparation of a Stormwater Drainage System Maintenance Plan Template that can be distributed to subdivisions in the City of Foley. The template plan will cover maintenance requirements for the stormwater drainage system within boundaries of subdivisions. The template plan will specify in simple terms the recommended practices, procedures, and schedules for stormwater drainage system maintenance.

The template plan will address stormwater drainage system features most likely to be represented in subdivisions within the City of Foley. If a particular subdivision has system features not represented in the template plan, we recommend directing them to contact a Professional Engineer to address their particular issues. Use of the template plan is not intended to certify that any subdivision's drainage system features are in accordance with code, only to provide guidance in maintaining them. If any subdivision is unsure whether their drainage system features are currently functioning to code, we recommend they be directed to contact a Professional Engineer to evaluate their system.

**Compensation**

Professional fees for development of a Maintenance Plan Template for the City of Foley are proposed on a “lump sum” fee basis for **\$3500**. If unforeseen conditions warrant additional effort over that anticipated, such would be contingent upon prior Client approval.

**Authorization**

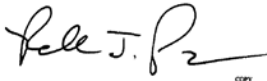
We appreciate the opportunity to work with the City of Foley and look forward to the commencement of services. Attached to this proposal are standard “General Terms and Conditions” incorporated with this agreement and to be made a part of this agreement. Should this agreement satisfactorily meet your needs, please return written authorization as provided below. If you need further information or have any questions at all, please do not hesitate to contact us.

Sincerely,

**PAYNE ENVIRONMENTAL SERVICES**



Veronica Klocinski, BA  
Business Development



Randle T. Payne, REM, V.P.  
Environmental Services Division Manager

Attachment: General Terms and Conditions

Accepted and Authorized by:

\_\_\_\_\_  
City of Foley

\_\_\_\_\_  
Date

## GENERAL TERMS AND CONDITIONS

### 1. SCOPE OF WORK

**Payne Environmental Services (PAYNE)** shall perform the services defined in this contract and shall invoice the Client at those rates shown on the proposal, current standard fee schedule or contract agreement, as applicable. Any estimate of cost to the Client, as stated in this contract, shall not be considered as a fixed price, but only as an estimate (unless otherwise specifically stated in this contract). **PAYNE** will provide additional services under the contract, as requested by the Client, and invoice the Client for those additional services at standard rates. The rates shown will be valid for ninety (90) days unless otherwise stated in the proposal.

### 2. RIGHT OF ENTRY

The client will provide for right of entry of **PAYNE** personnel and all necessary equipment, in order to complete the work.

While **PAYNE** will take all reasonable precautions to minimize any damage to the property, the Client understands that in the normal course of work, some damage may occur, the correction of which is not a part of this agreement.

### 3. SAMPLES

**PAYNE** will retain all samples collected for 30 days. Further storage or transfer of samples can be made at the Client's expense, upon written request. All samples will be returned or disposed after 30 days, unless otherwise arranged. All arrangements for additional storage must be completed before project commencement.

### 4. UTILITIES

In the execution of its work, **PAYNE** will take all reasonable precautions to avoid damage or injury to surface or subsurface (subterranean) structures or utilities.

The owner agrees to hold **PAYNE** harmless for any damages to surface or subterranean structures or utilities that are not called to **PAYNE'S** attention and correctly shown on the plans furnished.

### 5. INVOICES

**PAYNE** will submit invoices to Client monthly and a final bill upon completion of services. Invoices will show charges for different personnel and expense classification. A more detailed separation of charges and back-up data will be provided, at the Client's request.

Payment is due upon presentation of the invoice and is past due thirty (30) days from invoice date. Client agrees to pay a finance charge of one and one-half percent (1 and ½ %) per month, or the maximum rate allowed by law, on past due accounts.

If **PAYNE** personnel are called or subpoenaed for depositions, examination, or court appearances in any dispute arising out of the Project, **PAYNE** shall be reimbursed on a time and material basis in accordance with **PAYNE'S** then current, standard billing rates for such matters, including all out-of-pocket costs incurred in connection with such matters.

### **6. STANDARD OF CARE**

Service performed by **PAYNE** under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other warranty, express or implied, is made.

Client recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, or explorations are made by **PAYNE** and that the data interpretations and recommendations of **PAYNE'S** personnel are based solely on the information available to them. **PAYNE** will be responsible for those data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

### **7. OWNERSHIP OF DOCUMENTS**

All reports, boring logs, field data, field notes, laboratory test data, calculations, plans, estimates, and other documents prepared by **PAYNE**, as instruments of service, shall remain the property of **PAYNE**.

Client agrees that all reports and other work furnished to the Client or his agents, which are not paid for, will be returned upon demand and will not be used by the Client for any purpose whatsoever.

**PAYNE** will retain all pertinent records relating to the services performed for a period of five years following submission of the report, during which period the records will be made available to the Client, at all reasonable times.

All documents are for the exclusive use and benefit of the Client only. Others who use the documents do so at their own peril. **PAYNE** consents that its information and reports may be furnished to and used by others participating in the financing and/or development of the project (and for reports involving real property transactions, other parties of the transaction), but only in the same manner and extent as if such others were the addressees and the Client. The terms, conditions, and limitations of liability contained in the Agreement shall apply to others to whom Client furnishes such information and reports. No one else is authorized to rely, in any way, on any information or reports issued pursuant to this Agreement.

### **8. LIMITATION OF LIABILITY**

The owner agrees to limit **PAYNE's** liability to the owner and all construction contractors and subcontractors on the project arising from professional acts, errors, or omissions, such that the total aggregate liability of **PAYNE** to all those named shall not exceed \$50,000 or **PAYNE's** total fee for the services rendered on this project, whichever is greater. The owner further agrees to require of the contractor and his subcontractors an identical limitation of liability to **PAYNE**, which liability may arise on account of **PAYNE'S** professional acts, errors, or omissions. Neither the contractor nor any of his subcontractors assumes any liability for damages to others, which may arise on account of **PAYNE's** professional acts, errors, or omissions.

### **9. DISPUTES**

In the event that a dispute should arise relating to the performance of the services to be provided under this Agreement, and should that dispute result in litigation, it is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred in the defense or prosecution of the claim, including staff time, court costs, attorney's fees, and other claim-related expenses. Any lawsuit or prosecution related to services performed or rendered under this contract must be commenced in Mobile County, Alabama.

### **10. INSURANCE**

**PAYNE** represents and warrants that it and its agents, staff, and consultants employed by it are protected by worker's compensation insurance, to the extent required by state law, and that it has such coverage under public liability and property damage insurance policies, which **PAYNE** deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, **PAYNE** agrees to indemnify and save Client harmless from and against any loss, damage, or liability arising from any negligent acts by **PAYNE**, its agents, staff, and consultants employed by it. **PAYNE** shall not be responsible for any loss, damage, or liability arising from any acts by Client, its agents, staff, and other consultants employed by Client.

### **11. TERMINATION**

This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, **PAYNE** shall be paid for services performed to the termination notice date plus reasonable termination expenses.

In the event of termination, or suspension for more than three (3) months, prior to completion of all reports contemplated by this Agreement, **PAYNE** may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of **PAYNE** in completing such analyses, records and reports.

### **12. ASSIGNS**

Neither the Client nor **PAYNE** may delegate, assign, sublet or transfer his duties or interest in this Agreement without the written consent of the other party.

### **13. RIGHT TO STOP WORK**

Stopping project work is an extreme action, which should be taken only by the owner after giving serious consideration to the effects of such an order. Under no circumstances will **PAYNE** take the initiative in issuing this order. **PAYNE** will only provide data and recommendations.

**14. SAMPLING OR TEST LOCATIONS**

Unless otherwise stated, the fees in this proposal do not include costs associated with surveying of any site for accurate horizontal and vertical locations of samples collected. Field tests or boring locations described in our report or shown on sketches are based upon information furnished by others or estimates made in the field by our representatives. Such dimensions, depths, or elevations should be considered as approximations, unless otherwise stated. If the Client specified sample or boring location, we reserve the right to deviate a reasonable distance from the location specified. **PAYNE** reserves the right to terminate this contract if site conditions prevent drilling at or near the designated boring locations and these conditions were not revealed to **PAYNE** prior to submitting this proposal. If, in order to complete the borings to their designated depths, a re-drilling is necessitated by encountering impenetrable subsurface objects, this will be charged to Client at appropriate rates based on market value at the time of occurrence.

**15. FIELD MONITORING AND INSPECTION**

Client agrees that **PAYNE** will be executed to make on-site observations appropriate to the site conditions. The words “supervision”, “inspection”, or “reconnaissance” are used to mean periodic observation of site conditions by **PAYNE** to verify substantial compliance with plans, assessments, and regulatory requirements included in this contract. Continuous monitoring by our employees does not mean or imply that **PAYNE** is observing all materials and conditions at all times.

**16. SAFETY**

Should **PAYNE** provide observations or monitoring services at the jobsite during construction, Client agrees that, in accordance with the generally accepted construction practice, the contractor will be solely and completely responsible for working conditions on the jobsite, including the safety of all persons and property during the performance of the work, and for compliance with OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. Any monitoring of the contractor’s procedures conducted by **PAYNE** does not include review of the adequacy of the contractor’s safety measures in, on, adjacent to, or near the construction site.

**17. HAZARDOUS SUBSTANCES**

Client agrees to advise **PAYNE**, prior to beginning work, of any hazardous substances on or near the site. In the event that samples obtained during our work contain substances hazardous to health, safety, or the environment, these samples remain the property of the Client. Likewise, any equipment contaminated during our services, which cannot be reasonably decontaminated, shall become the property and responsibility of the Client. Such samples and/or equipment will be delivered to the Client. Client agrees to pay transportation costs for samples and equipment and the fair market value of contaminated equipment.