

**MASTER CONTINUING PROFESSIONAL CONSULTING AGREEMENT FOR  
ARCHITECTURAL, ENGINEERING, PLANNING, AND VARIOUS CONSULTING  
PROFESSIONAL SERVICES BETWEEN THE TOWN OF DUNDEE, FLORIDA AND  
CONSULTANT**

THIS MASTER CONTINUING PROFESSIONAL CONSULTING AGREEMENT FOR ARCHITECTURAL, ENGINEERING, PLANNING, AND VARIOUS CONSULTING PROFESSIONAL SERVICES (hereafter the "Agreement") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (hereafter the "Effective Date"), by and between The Town of Dundee, Florida, a Florida municipal corporation (hereafter the "TOWN"), and Dewberry Engineers, Inc, A New York Corporation (hereafter the "CONSULTANT").

**FACTUAL RECITALS**

**WHEREAS**, the TOWN as required by Florida Law advertised a Request for Qualifications 23-01 ("RFQ 23-01") for the provision of architectural, engineering, planning, and various professional consulting services; and

**WHEREAS**, the TOWN desires to retain the CONSULTANT to furnish certain architectural, engineering, planning and various professional consulting services presented herein in connection with the provision of municipal services by the TOWN to areas within the Corporate TOWN Limits and to unincorporated area(s) in Polk County; and

**WHEREAS**, the TOWN has recognized a need for architectural, engineering, planning and various professional consulting services on both a continuing and special project basis with regard to RFQ 23-01, sections:

2.2.1 Services Related to Utility Systems:

- Potable Water Treatment, Transmission and Distribution;
- Sanitary Sewer Treatment, Transmission and Collection;
- Geographic Mapping of Utilities and Infrastructure;
- Reclaimed Water Treatment, Transmission and Distribution;
- Route Surveys for Utility Projects;
- Surveying for Wastewater Treatment Plant (WWTP) Projects;
- Surveying for Water Treatment Plant (WTP) Projects;
- GeoDesign and Green Infrastructure Systems;

2.2.2 Services Related to Transportation System:

- Roads and Drainage;
- Bridges;
- Urban Transportation;
- Traffic Signage;
- Traffic Studies;
- Traffic Signals;
- Advanced Traffic Management System;
- Alternate Means of Transportation;
- Trails and Greenways;

2.2.3 Services Related to Solid Waste:

Solid Waste Operation Planning;  
Route Studies;  
Waste Stream Studies;  
2.2.4 Services Related to Parks and Recreation:

Architecture Services Related to Parks and Facilities Design;  
Landscape Architecture;

2.2.5 Services Related to General Consulting Services:

Architectural Services to a Project (including Landscaping);  
Geographic Information Systems (GIS);  
Boundary and Topographic Surveying;  
Legal Descriptions and As-built Surveys;  
Asset Management in Conjunction with Mapping and Inventory;  
Mapping of Municipal Boundaries;  
Geotechnical – Soils Analysis and Testing;  
Environmental – Wetland and Endangered Species;  
Floodplain Management;  
Hydrologic Investigations;  
Stormwater Planning and Modeling;  
Land Use Planning;  
Policy Analysis;  
Project Outreach and Communication;  
Development of Artistic Renderings and Conceptual Layouts.

Any other associated municipal functions within the TOWN's service area(s) as further described in the TOWN's Scope of Work set forth in RFQ 23-01 which Scope of Work is attached hereto as **Exhibit "A"**, and as may be specified in subsequent TASK ORDER Authorizations, hereinafter called the "TASK ORDER(s)"; and

**WHEREAS**, the TOWN selected the CONSULTANT in strict accordance with Chapter 287.055 Florida Statutes, also known as the *Consultant's Competitive Negotiations Act* (hereafter the "Act") and found the CONSULTANT to possess the qualifications necessary to satisfactorily perform the work herein contemplated; and

**WHEREAS**, the CONSULTANT, having examined the scope of the architectural, engineering, planning, and various professional consulting services required for the services to be performed under this Agreement and/or any proposed TASK ORDER(s) issued hereunder, and having expressed its desire and willingness to provide such services, and having presented its qualifications to the TOWN in support of its expressed desires; and

**WHEREAS**, as a result of the aforementioned mutual understanding, the TOWN desires to enter into this Agreement with the CONSULTANT; and

**WHEREAS**, the CONSULTANT has agreed to provide professional architectural, engineering, planning, and various professional consulting services to the TOWN upon the terms and conditions hereinafter set forth; and

**WHEREAS**, it is intended that funds, if available, will be provided in the TOWN's budgets as needed to pay the costs of the architectural, engineering, planning, and various professional consulting services; and

**WHEREAS**, it is in the best interests and will promote the health, safety and welfare of all citizens and residents of the TOWN for the TOWN and CONSULTANT to enter into this Agreement for architectural, engineering, planning, and various professional consulting services.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, the exchange of which is both acknowledged and deemed sufficient by the parties as binding, and *subject always* to availability of funding as determined by the TOWN's annual appropriations process, the TOWN agrees to retain the CONSULTANT and the CONSULTANT agrees to perform the agreed upon consulting work, both for a continuing nature and special project basis, as described in RFQ 23-01, and upon the following terms and conditions:

### **ARTICLE I. INCORPORATION OF RECITALS; DEFINITIONS**

The foregoing recitals are incorporated herein by the parties as true and correct statements which form the factual basis for entry into this Agreement between the TOWN and CONSULTANT.

Term(s) used in this Agreement and/or any TASK ORDER(S) shall possess the meanings, interpretations and/or definitions assigned herein, provided however, that where one (1) of the following listed terms is used in this Agreement, such term(s) shall possess the corresponding meaning, as follows:

*"Applicable Law"* means the Town of Dundee Charter, Town of Dundee Code of Ordinances, Town of Dundee Land Development Code, and any and all applicable statutes, laws, rules, regulations, charter provisions, ordinances and resolutions of the United States of America, State of Florida, Polk County, Town of Dundee, and any and all other public authority which may be applicable.

*"Town"* means the Town of Dundee, Florida, a Florida municipal corporation, and/or its authorized representative vested with home rule authority pursuant to the Municipal Home Rule Powers Act, Chapter 166 of the Florida Statutes, and Article VIII, §2 of the Florida Constitution; and the TOWN is therefore vested with governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, including the general exercise of any power for municipal purposes.

*"Town Code"* means the Town of Dundee Code of Ordinances and Town of Dundee Land Development Code.

*"Town Commission"* means the duly elected Town of Dundee Town Commission and/or governing body of the Town of Dundee.

*"Town Representative"* means the Town Manager, or her/his designated appointee, who is authorized to act on behalf of the TOWN in the administration of this Agreement. The Town Representative does not have the authority to waive or modify any condition or term of this Agreement.

*"Day(s)"* means calendar day unless specifically stated otherwise.

*"Calendar Day(s)"* means all days in a 365-day calendar year.

*"Business Day(s)"* means each calendar day which is not a Saturday, Sunday or a recognized holiday by the Town of Dundee, Florida.

*"Contract Documents"* means the RFQ 23-01; Terms and Conditions; Contract; Bond; Performance Bond; Maintenance Bond; Contract Bond; Special Provisions; Specifications; Technical Specifications; Proposal and Bid Form; Engineering Plans and/or Drawings; Addenda issued before, during and after the bidding period for the RFQ 23-01; Change Orders issued after the Agreement is let; and any other document incorporated by reference and/or annexed hereto.

*"Effective Date"* means, for purposes of calculating time periods and the commencement of the term of this Agreement, the date on which this Agreement is approved by the Town Commission at a duly noticed public meeting.

*"Indemnification"* means, for purposes of this Agreement, CONSULTANT shall hold harmless, indemnify, and defend the TOWN, its elected officials, appointed officers, and employees,

representatives, or agents, against any claims, action, loss, damage, injury, liability, tax, assessment, cost or expense of whatever kind (including, but not by way of limitation, attorneys' fees and court costs (in bankruptcy, trial and appellate matters in any judicial and/or administrative tribunal) arising out of and/or incidental to the CONSULTANT performance of this Agreement. Other specific references to the CONSULTANT duty to indemnify the TOWN and hold it harmless, which may be set forth herein, shall be construed as in addition to, and not as a limitation of the requirements of this section. The TOWN shall be entitled to recover its reasonable attorneys' fees, including trial and appellate, and court costs in the event judicial and/or administrative enforcement of this CONSULTANT indemnity is required.

“Term” means the duration of this Agreement which shall commence on the Effective Date and shall expire and/or terminate in accordance with the provisions set forth in **ARTICLE II** of this Agreement.

## **ARTICLE II. DESCRIPTION OF PROJECT AND TERM OF AGREEMENT**

It being the intent of this Agreement to provide a general basis for performing architectural, engineering, planning, and various professional consulting services, as yet not fully defined. Any service, project, job and/or task(s) shall be performed in strict compliance with the terms, conditions and covenants set forth by this Agreement and/or any TASK ORDER(S) issued hereunder; and, prior to the commencement of any service, project, job and/or task(s) by the CONSULTANT, the TOWN and CONSULTANT shall mutually agree in writing as to the starting date, scope of services and/or work, deliverables, time for completion, and any other term(s) and/or condition(s), which are not set forth in this Agreement, as related to a specific service, project, job and/or task(s) (hereafter referred to as the “TASK ORDER”). This Agreement shall continue in full force and effect for a period of **five (5) years** beginning on the Effective Date or until terminated in accordance with **Article XVIII** of this Agreement.

At the discretion of the Town Manager, this Agreement may be extended for an additional five (5), one (1) year term(s) for a total of ten (10) successive years without re-advertising under the Act. The above time periods may also be extended at the discretion of the Town Manager to complete any TASK ORDER(S) already in progress. For purposes of this Agreement, the phrase *in progress* shall be interpreted to mean that a TASK ORDER has been issued by the TOWN and accepted by the CONSULTANT.

## **ARTICLE III. BASIC SERVICES OF THE CONSULTANT**

This Agreement provides the general terms, obligations and conditions which shall control all work identified and/or described in this Agreement and/or any TASK ORDER(S) issued hereunder. The CONSULTANT, when so authorized by the TOWN, agrees to provide and perform such professional architectural, engineering, planning, and various professional consulting services as the TOWN may require, from time to time, including but not limited to, providing professional architectural, engineering, planning, and various professional consulting consultation and advice as set forth in the Scope of Work for RFQ 23-01 which Scope of Work is attached hereto as **Exhibit “A”** and incorporated herein by reference.

The CONSULTANT shall perform any and all services in a timely, efficient, and cost-effective manner and in accordance with the generally accepted standards of professional consultants. Unless modified in writing by both parties, the services to be performed by the CONSULTANT shall not be construed to exceed those services specifically described in each TASK ORDER.

The requested services may include, but shall not be limited to, the following:

### **Item 1. General Consulting Services**

- 1.1** The TOWN shall, from time to time, in its sole and absolute discretion, authorize the CONSULTANT in writing to provide services by means of a TASK ORDER under the terms of this Agreement. A

TASK ORDER shall, by mutual agreement of the parties hereto, set forth (1) the scope of services, (2) the time period(s) for performance, (3) method and amount of compensation, (4) the provisions of Articles I and II of this Agreement which are applicable, (5) the deliverables, if any (which are the items to be provided to the TOWN as a result of the services), and (6) the services, information, and data that can be provided by the TOWN to CONSULTANT.

- 1.2 The TOWN does not guarantee, warrant, or represent that any number and/or any particular type of services will be assigned to the CONSULTANT under the terms of this Agreement and/or under any TASK ORDER(S) issued hereunder. Furthermore, the purpose of this Agreement is not to authorize a specific TASK ORDER, but to set forth certain duties, obligations, rights, and responsibilities that may be incorporated by reference into any TASK ORDER(S) that may be mutually agreed to by the parties. The TOWN shall have the sole discretion to select the service(s), if any, which may be assigned to the CONSULTANT.
- 1.3 All references to drawings shall mean both traditionally drafted as well as computer-based, and all submissions of drawings will include paper, mylar, and computer file versions as appropriate.
- 1.4 When so authorized and instructed by the TOWN, a representative of the CONSULTANT shall attend meetings of the TOWN to advise and assist in matters within the scope of the CONSULTANT's profession as well as to clarify and help define the TOWN's requirements for a particular project within the scope of this Agreement.
- 1.5 The CONSULTANT shall provide minor reports and opinions of probable cost which do not contemplate the full professional services required under **ARTICLE III**, items 2 through 6, and which do not occupy a substantial amount of time of the CONSULTANT's representative delegated to serve the TOWN.
- 1.6 The CONSULTANT shall be available for office consultation at the CONSULTANT's place of business in Florida and maintain liaison with TOWN officials.
- 1.7 The CONSULTANT shall provide services as required by fiscal and legal advisors to bond financing, except when these services are provided under **ARTICLE IV**, Items 2 through 7.
- 1.8 The CONSULTANT shall provide services as CONSULTANT or engineer as may be required under bond indentures, except when services are provided under **ARTICLE IV**, Items 2 through 7.

## **Item 2. Studies and Reports**

Upon written authorization to proceed from the TOWN with a preliminary study and report to determine the feasibility of a proposed TASK ORDER, the CONSULTANT shall:

- 2.1 Consult with the TOWN to clarify and define the TOWN's requirements under the TASK ORDER.
- 2.2 Obtain from the TOWN, or its designated representative, available reports, records, property maps, drawings, opinions of probable cost, financial data, field survey notes, and other data that may be reasonably available at the time of authorization to proceed.
- 2.3 Advise the TOWN as to the necessity of the TOWN's providing or its need for obtaining any other services reasonably required in the CONSULTANT's judgment from others.
- 2.4 Provide special analysis of the TOWN's needs, preliminary studies, regional planning reports, feasibility investigations, evaluations, comparative studies, appraisals, rate studies, operational-management services, or any other program as authorized by the TOWN.

- 2.5 Provide a general economic analysis of the TOWN's requirements applicable to various alternatives, which includes a broad estimate of construction cost and method of financing.
- 2.6 Prepare a Preliminary Report with findings and recommendations.
- 2.7 Furnish three (3) printed copies and one (1) electronic, if requested, of the Preliminary Report to the TOWN.

### **Item 3. Preliminary Design Plans**

After written authorization to proceed with the Preliminary Design Phase, the CONSULTANT shall:

- 3.1 On the basis of the data and information obtained under **Item 2**, or for any defined TASK ORDER(S), prepare preliminary engineering data including basis of design, sketches, drawings, maps, opinions of probable cost, time of completion and outline specifications to develop and establish the scope of the proposed construction.
- 3.2 Make a personal examination of the proposed Project site, and as may reasonably be discoverable, note site conditions and impediments that pertain to or might adversely affect the timely, efficient, and economical completion of any phase of the Project or the Project as a whole. The CONSULTANT shall promptly report any adverse site conditions to the TOWN.
- 3.3 Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
- 3.4 At a minimum, provide the TOWN with a 50% and 90% complete document(s) for preliminary review during the development and submission of the Preliminary Design Phase report. In addition, CONSULTANT will meet with the TOWN to discuss preliminary submittal reviews by the TOWN.
- 3.5 Provide services to investigate existing conditions of facilities or to verify the accuracy of drawings or other information furnished by the TOWN or others to the CONSULTANT. Such verification services shall be set forth in the applicable TASK ORDER(S).
- 3.6 Advise the TOWN if additional data or services are necessary for preliminary design and assist the TOWN in obtaining such data and services.
- 3.7 Based on the information contained in the preliminary design documents, submit a revised Total Project Cost estimate to the TOWN.
- 3.8 Make on-site field investigations as necessary to become familiar with the conditions affecting the TASK ORDER(S).
- 3.9 Furnish five (5) printed copies and one (1) electronic copy, if requested, of the Preliminary Design Documents.
- 3.10 Assist the TOWN in obtaining preliminary approval of the proposed work from any Local, State or Federal Agency having jurisdiction over the TASK ORDER(S).

### **Item 4. Final Design Phase**

After written authorization to proceed with the Final Design Phase, the CONSULTANT shall:

- 4.1 On the basis of the preliminary design documents for a defined TASK ORDER(S), prepare and furnish the *Contract Documents*.
- 4.2 Advise the TOWN of additional services of others, if required, and arrange for, and furnish if authorized, all necessary additional tests, borings, soils investigations for the TASK ORDER(S). (The actual cost of said tests, borings, etc. shall be paid for by the TOWN).
- 4.3 Complete work on the TASK ORDER(S) within the time allowed by maintaining an adequate staff of engineers, draftsmen, and other employees on the work. The CONSULTANT is not responsible for delays caused by factors beyond the CONSULTANT's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the TOWN to furnish timely information or approve or disapprove of the CONSULTANT's services of work product promptly, or delays caused by faulty performance by the TOWN or by contractors of any level. When such delays beyond the CONSULTANT's reasonable control occur, the TOWN agrees the CONSULTANT is not responsible for damages, nor shall the CONSULTANT be deemed to be in default of this Agreement.
- 4.4 Comply with all Federal, State and Local laws or ordinances applicable to this work.
- 4.5 Prepare the necessary application forms and supporting documents for the approval of the TASK ORDER(S) and assist the TOWN in acquiring the approval from Local, State and Federal Regulatory Agencies. The CONSULTANT shall also assist the TOWN in obtaining such approvals by submitting, participating, and/or leading in negotiations with appropriate authorities, and the TASK ORDER(S) shall define the CONSULTANT's role in this regard.
- 4.6 Cooperate fully with the TOWN in order that all phases of the work may be properly scheduled and coordinated. At this Final Design Phase, the CONSULTANT will furnish the TOWN a construction time schedule for the completion of the TASK ORDER(S).
- 4.7 Request information and verification of location of utility facilities in the vicinity of the proposed work. Upon approval of the final plans, send letter with applicable sheets of the plans to each utility company having installations in the area of the work, notifying them of any relocations required. Send copies of all such letters to utilities to the TOWN for reference and file.
- 4.8 Report the status of TASK ORDER(S) to the Town Manager or her/his designee upon request, and hold the drawings, calculations, and related work open to the inspection of the Town Manager or her/his authorized agent or designee at any time.
- 4.9 Submit to the TOWN five (5) sets of check prints and the *Contract Documents* at 30%, 60%, and 90% completion for each TASK ORDER for review and approval and advise the TOWN in writing with each submittal of the estimated project construction cost.
- 4.10 Submit to the TOWN a final draft of the *Contract Documents*, including all revisions and/or modifications. Upon approval, assemble and bind the *Contract Documents* and deliver five (5) sets to the TOWN. Additional copies required shall be furnished at actual cost of reproduction if requested by the TOWN. It is understood and agreed that the CONSULTANT assumes no responsibility for the legal review of such documents. **Consultant shall provide an electronic copy of all contract documents.**

- 4.11 Advise the TOWN of any adjustments in the cost of the PROJECT caused by changes in scope, design requirements or construction costs; and furnish final cost estimate for the subject project, based on the approved drawings and specifications.

#### **Item 5. Bidding or Negotiating Phase**

After written authorization to proceed with the Bidding or Negotiating Phase, the CONSULTANT shall:

- 5.1 Assist the TOWN in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment, and services; and, when authorized in the applicable TASK ORDER(S), attend pre-bid conferences.
- 5.2 Prepare any addenda with accompanying drawings or other material as required by TOWN and furnish a copy for each set of *Contract Documents* at actual cost of reproduction. Distribution will be made by the TOWN.
- 5.3 Consult with and advise the TOWN as to the acceptability of the prime Contractor as well as Subcontractors, suppliers, and other persons and organizations proposed by the prime Contractor(s) for those portions of the work where determination of such acceptability is required by the bidding documents. In addition, advise in the selection of a qualified list of general contractors for the subject project.
- 5.4 Assist the TOWN in obtaining, receiving, tabulating and evaluating bids or negotiating proposals and preparing construction contracts, materials, equipment and services.
- 5.5 Review bids received and submit to the Town Manager or her/his designee CONSULTANT's recommendation as to action to be taken upon the bids.

#### **Item 6. Construction Phase**

The Construction Phase for each PROJECT will commence on the date of execution of the first construction contract and will terminate upon written approval of final payment by the CONSULTANT to all the Contractor(s) for each PROJECT. The CONSULTANT agrees, upon written authorization, to furnish general services during the Construction Phase, including resident inspection of the work, as follows:

- 6.1 Consult with and advise the TOWN and act as its representative as provided in the TOWN's Standard Construction Contract Documents (Construction Contract Documents). The TOWN shall have sole discretion as to the form of these *Contract Documents*, or as to how they are to be amended pursuant to any Project, or as to how they may otherwise be amended from time to time.
- 6.2 Pre-Construction Meeting. Prepare for and attend a pre-construction meeting conducted by the TOWN with representatives of the Contractor(s), subcontractor(s), utility companies, etc., for each Project as determined necessary by the TOWN.
- 6.3 Consult with the TOWN concerning the acceptability of subcontractors and other persons and organizations proposed by the general contractor for portions of the work.
- 6.4 Furnish to contractors, at contractor's expense, as many copies as necessary of the completed construction drawings and specifications for construction purposes at cost of reproduction.



- 6.4.1** In addition, the CONSULTANT may provide, if requested by the TOWN in a TASK ORDER(S), the services of a Construction Manager and/or Field Representative (and assistants as agreed) at the site to assist the CONSULTANT and to provide more continuous observation of such work. Based on information obtained during such visits and on such observations, the CONSULTANT shall determine in general if such work is proceeding in accordance with the Construction Contract Documents, Drawings and Specifications, and the CONSULTANT shall inform the TOWN on the progress of the work.
- 6.4.2** If authorized in the TASK ORDER(S), the Construction Manager and/or Field Representative (and any assistants) will be the CONSULTANT's agent or employee and under the CONSULTANT's supervision. The duties and responsibilities of the Construction Manager and/or Field Representative (and assistants) are set forth in the Construction Contract Documents, or as may otherwise be agreed in a TASK ORDER. Daily Reports generated by the Construction Manager and/or Field Representative(s) shall be in a form acceptable to the TOWN, and shall be submitted to the TOWN on a weekly basis throughout the construction phase of the Project (from Notice to Proceed through Final Acceptance of the work).
- 6.4.3** The purpose of the CONSULTANT's visits to and representation by the Construction Manager and/or Field Representative (and assistants, if any) at the site will be to enable the CONSULTANT to better carry out the duties and responsibilities assigned to and undertaken by the CONSULTANT during the Construction Phase and, in addition, by exercise of the CONSULTANT's efforts as an experienced and qualified design professional, to provide confidence for the TOWN that the completed work of the Contractor(s) will conform to the Construction Contract Documents, Drawings, and Specifications and that the integrity of the design concept as reflected in the aforesaid documents has been implemented and preserved by the Contractor(s). The CONSULTANT shall not, however, during such visits or as a result of such observations of the Contractor(s) work in progress, supervise, direct, or have control over the Contractor(s) work, nor shall the CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by the Contractor(s), for safety precautions and programs incident to the work of the Contractor(s), or for any failure of the Contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to the Contractor(s) furnishing and performing their work. Accordingly, the CONSULTANT can neither guarantee the performance of the construction contract by the Contractor(s), nor assume responsibility for the Contractor(s) failure to furnish and perform their work in accordance with the Construction Contract Documents, Drawings and Specifications.
- 6.4.4 Defective Work.** During such visits and on the basis of such observations, the CONSULTANT shall keep the TOWN informed of the progress of the work, shall endeavor to guard the TOWN against defects and deficiencies in such work, and may disapprove of or reject the Contractor(s) work while it is in progress if the CONSULTANT believes that such work will not produce a completed Project that conforms generally to the Construction Contract Documents, Drawings, and Specifications or that it will prejudice the integrity of the design concept of the Project as reflected in the Construction Contract Documents, Drawings, and Specifications. The CONSULTANT shall advise the TOWN in a timely manner of defect(s) in the

Contractors or Subcontractors work and of the action taken to have the defect(s) corrected.

- 6.5 Advise and consult with the TOWN and act as the CONSULTANT as provided in the *Contract Documents* covering the construction of the subject project and work described in the TASK ORDER.
- 6.6 Make weekly visits **and as needed** to the site by a qualified representative of the CONSULTANT to observe the work. The CONSULTANT shall have authority, as the TOWN's representative, to require special inspection or testing of the work and shall receive and review all certificates of inspections, testings, and approvals required by laws, rules, regulations, ordinances, codes, orders and terms of the Drawings and Specifications (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Drawings and Specifications) and, in addition, the CONSULTANT shall have authority, as the TOWN's representative, to act as initial interpreter of the requirements of the Drawings and Specifications.
- 6.7 Review and approve shop and equipment drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, results of tests and inspections, and other data which any Contractor is required to submit, and receive and review maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the *Contract Documents*. The CONSULTANT may be allowed to use its shop drawing stamp during review provided the format and language of the shop drawing stamp is approved by the TOWN prior to use. Furthermore, the CONSULTANT agrees that it shall devise a separate tracking system for Shop Drawings previously disapproved or for which corrections, modifications, or changes are necessary. The tracking system shall be both timely and efficient, and shall account for the status and party responsible to correct all previously submitted Shop Drawings until their complete approval and acceptance. The tracking system shall include, but not be limited to, the following CONSULTANT activities: subsequent to any Contractors being ordered to start construction work, the CONSULTANT shall transmit to the TOWN, if required by TASK ORDER at such frequency as defined therein, a list of Shop Drawings anticipated for such construction contract, the names of the Shop Drawings, their due dates (in accordance with Shop Drawing schedules submitted by the Contractor(s)) required from the Contractor(s); their dates of issue, receipt, checking, return for correction, resubmission, and approval; and any information that will clearly provide the TOWN with the progress of project shop drawings; provided, however, that in any event all Shop Drawings that have been submitted to the CONSULTANT (whether for approval or re-approval) shall be reviewed and returned by the CONSULTANT within twenty-eight (28) Days of submission.
- 6.8 Prepare routine change orders as required. The CONSULTANT shall evaluate and determine the acceptability of substitute materials and equipment proposed by the Contractor(s).
- 6.9 Review, verify, approve, and certify Contractor's monthly estimates and final estimates and payments. The CONSULTANT shall also periodically review the Record Drawings as prepared by the Contractor(s) and verify the accuracy and completeness thereof, prior to recommendation to the TOWN of the release of progress payments for the work in question.
- 6.10 Conduct a site visit, in company with the TOWN to determine if a TASK ORDER is substantially complete and a final site visit to determine if a TASK ORDER has been completed in accordance with the *Contract Documents* and the Contractor(s) has fulfilled all of his

obligations there-under so that the CONSULTANT may approve, in writing, final payment to the Contractor(s). The CONSULTANT shall certify a completed TASK ORDER to all regulatory agencies upon completion. Advise and consult with the TOWN as to interpretations of the Contract Documents in any disputes between the TOWN and the prime Contractor and any other entity involved on working on the project at the direction of the prime Contractor.

- 6.11** Furnish the TOWN five (5) sets of reproducible revised Contract Drawings showing the work as constructed. Record Drawings shall be based on the marked-up prints, drawings, and other data furnished by the Contractor(s)' field engineering and inspection personnel and which the CONSULTANT considers significant.
- 6.12 Track Progress of Contractor.** If providing Construction Manager and/or Field Representative Services, the CONSULTANT shall track the progress of the Contractor(s) and submit a written report to the TOWN, at the 30%, 60% and 90% stages of the construction (as identified by the Contractor(s) original approved schedule) or as defined in the TASK ORDER, documenting the progress of the Contractor relative to the original approved schedule.
- 6.13 Minimize Claims.** The CONSULTANT shall endeavor to minimize the potential areas for Contractor claims by initiating timely, thorough, and complete communication among the TOWN and the design and construction contract principals; other local, state, or federal parties (when directed by the TOWN); or private entities that may also be involved. Upon identification of a potential Contractor claim, the CONSULTANT shall immediately notify the TOWN of all data relevant to the potential Contractor claims, and of which the CONSULTANT is aware.
- 6.14 Resolve Construction-Related Difficulties.** The CONSULTANT shall report to the TOWN the status of all significant construction-related system operational and system quality concerns, as well as the actions taken by the CONSULTANT to encourage effective communication and timely resolution thereof. Once a problem area is identified, the CONSULTANT shall keep a detailed log on the item in question and pursue the timely resolution of that item.
- 6.15 Contractor(s) Completion Documents.** The CONSULTANT shall receive and review maintenance operating instructions, schedules, guarantees, bonds, and certificates of inspection, tests and approvals which are to be assembled by the Contractor(s) in accordance with the Construction Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests, and approvals, the results certified will indicate compliance with the Construction Contract Documents, Drawings, and Specifications); and shall transmit them to the TOWN with written comments.
- 6.16 Time of Essence.** CONSULTANT shall achieve Final Completion within an agreed time period determined and agreed upon by both parties from the date appearing in the Notice To Proceed form for the specified project. CONSULTANT agrees to begin each project in conformity with the provisions set forth and to prosecute it with all due diligence so as to complete the entire Work and Project by the time limits set forth in the agreed project schedule for the specified project. As to such assignments that have deadlines, time will be of the essence unless stated otherwise in the assignment and a liquidated damages clause may be included in the assignment.

## ARTICLE IV. RESPONSIBILITIES OF TOWN

In addition to payment for the Services performed under this Agreement, TOWN shall:

**Item 1.** Assist and cooperate with CONSULTANT to a reasonable extent and provide readily available information as identified by CONSULTANT to facilitate CONSULTANT's performance under this Agreement.

**Item 2.** Designate in writing a person to act as the TOWN's representative with respect to the work to be performed under this Agreement (hereafter the "TOWN Representative"). The CONSULTANT may rely upon the fact that the TOWN's Representative has complete authority to transmit instructions, receive information, interpret and define TOWN's policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this Agreement. The TOWN Representative shall also (1) communicate the TOWN's policies and decisions to the CONSULTANT regarding the Services; (2) determine whether the CONSULTANT is fulfilling its duties, responsibilities, and obligations hereunder, and (3) determine the merits of any allegation by the CONSULTANT respecting the TOWN's nonperformance of any obligations under this Agreement and/or any TASK ORDER(S) issued hereunder. All determinations made by the TOWN Representative, as outlined above, shall be final and binding upon the CONSULTANT in regard to further administrative review, but shall not be binding upon the CONSULTANT or TOWN in regard to appeals to a court of competent jurisdiction.

**Item 3.** Furnish CONSULTANT with reasonably available technical and other data in TOWN's possession including, but not limited to, data, maps, surveys, drawings, soils or geotechnical and other types of reports, and any other information required by, or useful to, CONSULTANT as may be identified by CONSULTANT to TOWN in performance of its Services under this Agreement. CONSULTANT shall take care to review information supplied for accuracy, but be reasonably entitled to rely upon the information supplied by TOWN.

**Item 4.** Notify CONSULTANT of any known or potential health or safety hazards existing at or near project or work sites.

**Item 5.** Provide access to and/or obtain permission for CONSULTANT to enter upon all TOWN properties, and provide assistance with access to properties not owned by the TOWN as required to perform and complete the Services.

**Item 6.** If CONSULTANT's scope of work includes services during construction, TOWN will require the construction contractor to indemnify and hold harmless CONSULTANT, its officers, employees, agents, and CONSULTANTS against claims, suits, demands, liabilities, losses, damages, and costs, including reasonable attorneys' fees and all other costs of defense, arising out of the performance of the work of the contractor, breach of contract, or willful misconduct of the contractor or its subcontractors, employees, and agents.

TOWN will require the contractor to name CONSULTANT, its directors, officers and employees as additional insureds on the contractor's general liability insurance and/or Owner's and Contractor's Protective Policy (OCP), and any builder's risk, or other property insurance purchased by TOWN or the contractor to protect work in progress or any materials, supplies, or equipment purchased for installation therein.

TOWN will furnish contractor's certificates of insurance evidencing that CONSULTANT, its officers, employees, agents, and CONSULTANTS are named as additional insureds on contractor's general liability

and property insurance applicable to the Project. Contractor's policies shall be primary and any such insurance carried by the CONSULTANT shall be excess and noncontributory.

The certificates shall provide that CONSULTANT be given 30 Days' written notice prior to any cancellation thereof.

**Item 7.** Provide all legal services, including review of *Contract Documents*, accounting, and insurance consulting services as may be required for each TASK ORDER, and such auditing services as the TOWN may require to ascertain how or for what purpose the Contractor has used the money paid to him under the construction agreement.

#### **ARTICLE V. AMERICANS WITH DISABILITIES ACT**

Any other provision of this Agreement to the contrary notwithstanding, unless otherwise specified in this Agreement and/or any TASK ORDER(S) issued hereunder, the TOWN shall have sole responsibility as between TOWN and CONSULTANT for compliance with the Americans With Disabilities Act ("ADA") 42 U.S.C. 12101 et seq. and any state and/or federal regulations as related thereto.

#### **ARTICLE VI. COMPENSATION**

For the Services described in each TASK ORDER, TOWN agrees to pay, and CONSULTANT agrees to accept the total compensation in accordance with compensation terms included in the TASK ORDER. CONSULTANT may re-allocate compensation between tasks, provided total compensation is not exceeded without written approval (e- mail is sufficient) of TOWN Representative. For each defined service, or separately authorized TASK ORDER, a mutually acceptable fee shall be negotiated when the scope of such proposed authorization has been defined. In the event that a specific fee is not established, the hourly rate schedule contained in Exhibit "B" attached hereto shall control. The rate schedule shall be revised annually and furnished to the TOWN prior to its effective date. The revised hourly rate schedule shall take effect unless written notice is received from the TOWN Representative that the revised rates are not accepted. Provided further that CONSULTANT agrees that the rates on its hourly rate schedule shall not be increased above three percent (3%) of existing accepted rates per calendar year during the term of this Agreement. Compensation shall be billed monthly in summary form. For other than lump-sum contracts, the TOWN shall only be obligated to pay for those Services that the CONSULTANT can demonstrate are reasonable, provable, and within the scope of services of any TASK ORDER(S).

#### **ARTICLE VII. DIRECT AND REIMBURSABLE EXPENSES**

The TOWN shall reimburse the CONSULTANT for certain direct out-of-pocket expenses (see itemized list below). Such direct charges shall be submitted to the TOWN on a timely basis at actual cost, verified by appropriate written bills, invoices, statements, etc. Reimbursable expenses shall not exceed \$3,000.00 except when authorized in advance in writing by TOWN or included in the TASK ORDER.

##### **Item 1. Travel and Subsistence**

The actual cost of travel and subsistence expense(s) incurred while performing authorized TOWN business. Travel performed in the CONSULTANT's vehicle shall be at the calculation rate authorized by the TOWN for its employees from time to time pursuant to TOWN ordinance(s) and/or Florida Law. Air travel, if required, shall be reimbursed at the economy class fare.

## **Item 2. Printing and Reproduction**

The reasonable costs of reproduction of reports, plans, and specifications except as otherwise provided in this Agreement and/or any TASK ORDER(s) issued hereunder, plus the hourly cost of the CONSULTANT's staff incurred for administration.

## **Item 3. Services of Others**

For services of others when included in the TASK ORDER, the actual cost of such services plus the hourly cost of the CONSULTANT's staff incurred for administration.

## **Item 4. Miscellaneous**

Such other miscellaneous direct charges as may be approved by the TOWN Manager or TOWN's Representative, plus the hourly cost of the CONSULTANT's staff incurred for administration.

# **ARTICLE VIII. PAYMENTS**

## **Item 1. Payment for Authorized Services**

Payment for authorized Services rendered, including direct and reimbursable costs, shall be payable in approximate proportion to the degree and/or percentage of completion of the work as estimated by the CONSULTANT, subject to approval of the Town's Representative. Payment shall be made within forty-five (45) Calendar Days of receipt of invoice as provided by Section 218.74, Florida Statutes.

## **Item 2. Payment Withheld**

When the TOWN has reasonable ground for belief, or information to believe that: (1) the CONSULTANT will be unable to perform the Services set forth under this Agreement and/or any TASK ORDER(S) issued hereunder; or (2) a meritorious claim exists against the CONSULTANT or the TOWN arising out of the CONSULTANT's negligence or the CONSULTANT's breach of any provision of this Agreement or any TASK ORDER(S) issued hereunder; then the TOWN may withhold payment otherwise due and payable to the CONSULTANT; provided, however, that the TOWN shall not unreasonably withhold other payment(s) that may not otherwise be in dispute. Any payment so withheld may be retained by the TOWN for such period as it deems advisable, in its sole and absolute discretion, to protect the TOWN against any loss or deprivation that the TOWN may incur pursuant to this Subsection or as may be determined by a court of competent jurisdiction.

This provision is intended solely for the benefit of the TOWN and no person shall have any right against the TOWN and/or its employees and officials by reason of the TOWN's withholding of payment(s). Interest [one percent (1%) simple interest, per month] shall only be payable by the TOWN on any amounts withheld under this provision if the TOWN has acted without justification. This provision is not intended to limit or in any way prejudice any other right the TOWN may have in this regard or any right or defense that the CONSULTANT might choose to exercise against the TOWN.

## **Item 3. Termination**

Upon the termination of this Agreement and/or any TASK ORDER(S) issued hereunder, the CONSULTANT shall prepare a final and complete payment statement for all Services and reimbursable expenses incurred since the posting of the last payment statement and through the date of termination. The final payment statement shall be subject to all of the provisions described in **Article XXVII** of this Agreement.

#### **Item 4. Final Payment**

The acceptance by the CONSULTANT, its successors, or assigns, of any final payment due upon the termination of this Agreement or any TASK ORDER(S) issued hereunder, shall constitute a full and complete release of the TOWN from any and all claims or demands regarding further compensation for authorized services rendered prior to such final payment that the CONSULTANT, its successors, or assigns have or may have against the TOWN under the provisions of this Agreement and/or any TASK ORDER(S) issued hereunder, unless otherwise previously and properly filed pursuant to the provisions of this Agreement in a court of competent jurisdiction and/or as may be determined by the TOWN. This Subsection does not affect any other portion of this Agreement and/or any TASK ORDER(S) issued hereunder, that extends obligations of the parties beyond final payment.

Under present Florida Law, the TOWN is exempt from sales taxes imposed upon professional services when the TOWN purchases such services directly. The CONSULTANT agrees to pay actual taxes (exclusive of multiplier) imposed and/or assessed as a result of the provision of any Services provided under this Agreement and/or TASK ORDER(S) issued hereunder. The TOWN and the CONSULTANT agree that this Subsection may be modified by a duly executed amendment in the event of future changes to Florida Law that affect the parties, terms, or conditions of this Agreement.

### **ARTICLE IX. SCHEDULE OF WORK**

The TOWN shall have the sole rights to determine on which unit(s) or section(s) of the services to be performed under this Agreement and/or any TASK ORDER(S) issued hereunder that the CONSULTANT shall proceed and in what order. Authorization by the TOWN, through the TOWN Manager, his designee or Town Representative, in writing through the issuance of a TASK ORDER, shall cover in detail the scope, timing and intent of the proposed professional consulting services. The TASK ORDER shall specify the timing of the Services to be performed and provide additional direction on when written approval is necessary to continue with additional tasks.

### **ARTICLE X. RESPONSIBILITY OF CONSULTANT**

#### **Item 1. Standard of Care Professional Services**

Subject to the limitations prescribed and/or identified in the agreed scope of work as related to the degree of care, amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement and/or any TASK ORDER(S) issued hereunder, CONSULTANT shall perform its Services in accordance with generally accepted standards and practices customarily utilized by competent professional consulting firms in effect at the time CONSULTANT'S Services are rendered.

#### **Item 2. Reliance upon Information Provided by Others**

If CONSULTANT's performance of any TASK ORDER(S) and/or Services hereunder requires CONSULTANT to rely on information provided by other parties (excepting CONSULTANT's subcontractors), CONSULTANT shall not be required to independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so in writing by TOWN. The CONSULTANT shall be responsible for advising the TOWN when the validity, completeness or accuracy of information is of concern.

#### **Item 3. CONSULTANT's Opinion of Costs**

TOWN acknowledges that construction cost estimates, financial analyses and feasibility projections are

subject to many influences including, but not limited to, price of labor and materials, unknown or latent conditions of existing equipment or structures, and time or quality of performance by third parties. TOWN acknowledges that such influences may not be precisely forecasted and are beyond the control of CONSULTANT and that actual costs incurred may vary substantially from the estimates prepared by CONSULTANT. CONSULTANT does not warrant or guarantee the accuracy of construction or development cost estimates.

#### **Item 4. Construction Phase Services**

- 4.1 CONSULTANT's Activities at Construction Site.** The presence of CONSULTANT's personnel at a construction site, whether as on-site representative, resident engineer, construction manager, or otherwise, does not make CONSULTANT responsible for those duties that belong to TOWN and/or construction contractors or others, and does not relieve construction contractors or others of their obligations, duties, and responsibilities, including, but not limited to, construction methods, means, techniques, sequences, and procedures necessary for completing all portions of the construction work in accordance with the contract documents, any health or safety programs and precautions required by such construction work, and any compliance with applicable laws and regulations. Any inspection or observation of the contractor's work is solely for the purpose of determining that the work is generally proceeding in conformance with the intent of the project specifications and contract documents. CONSULTANT makes no warranty or guarantee with respect to the performance of a contractor. CONSULTANT has no authority to exercise control over any construction contractor in connection with their work or health or safety programs and precautions. Except to protect CONSULTANT's own personnel and except as may be expressly required elsewhere in the scope of services, CONSULTANT has no duty to inspect, observe, correct, or report on health or safety deficiencies of the construction contractor.
- 4.2 Shop Drawing and Submittal Review.** If required by TASK ORDER(S) issued hereunder, CONSULTANT shall review shop drawings or other contractor submittals for general conformance with the intent of the contract documents. CONSULTANT shall not be required to verify dimensions, to engineer contractor's shop drawings or submittals, nor to coordinate shop drawings or other submittals with other shop drawings or submittals provided by contractor.
- 4.3 Record Drawings.** Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. CONSULTANT is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

#### **ARTICLE XI. AUDIT RIGHTS**

The TOWN reserves the right to audit the records of the CONSULTANT related to compensation issues associated with an authorized TASK ORDER at any time during the execution of the TASK ORDER and for a period of one (1) year after final payment is made to the CONSULTANT. Failure of the CONSULTANT to maintain sufficient auditable records shall authorize the TOWN to determine, at its sole and conclusive discretion, the time and cost expended from information maintained by the CONSULTANT relevant to the services performed under this Agreement and any TASK ORDER(S) issued hereunder. The CONSULTANT's staff will be compensated on an hourly rate basis for assisting the TOWN in its audit process and the TOWN shall pay for the reasonable cost of reproducing such records in accordance with the provisions of **Article VII**, Item 2 of this Agreement.



## **ARTICLE XII. ASSIGNMENT**

The CONSULTANT shall not sublet, assign, or transfer this Agreement and/or any TASK ORDER(S) issued hereunder and/or any interest and/or work under this Agreement and/or any TASK ORDER(S) issued hereunder without the written consent of the TOWN.

## **ARTICLE XIII. SPECIAL PROJECTS**

Periodically, the TOWN may require professional consulting services on special projects which are funded, in whole or in part, by various State or Federal agencies as well as TOWN bond issues. The TOWN, by virtue of its strict compliance with the Act, reserves the right to either authorize the CONSULTANT to proceed, by the issuance of a TASK ORDER, with such a special project without further competitive negotiations, or the TOWN may, at its discretion, reinstate competitive negotiations under the Act to select a consultant for that individual special project. Any additional requirements imposed and/or prescribed by such State or Federal agencies, when performing professional consulting services on and/or for special projects, shall also be acknowledged and satisfied.

## **ARTICLE XIV. CONSULTANT'S WORK PRODUCT**

### **Item 1. Scope**

CONSULTANT's work product, which is prepared solely for the purposes of this Agreement and/or any TASK ORDER(S) issued hereunder, including, but not limited to, drawings, test results, recommendations and technical reports, whether in hard copy or electronic form, shall become the property of TOWN when CONSULTANT has been fully compensated as set forth herein. CONSULTANT may keep copies of all work products for its records. Pursuant to Florida Law, all correspondence(s) between the TOWN and CONSULTANT are public records and subject to public records requests.

CONSULTANT and TOWN recognize that CONSULTANT's work product submitted in performance of this Agreement is intended only for the Services performed under this Agreement and/or any TASK ORDER(S) issued hereunder. TOWN's alteration of CONSULTANT's work product or its use by TOWN for any other purpose shall be at TOWN's sole risk, and TOWN shall hold harmless and indemnify CONSULTANT against all losses, damages, costs and expense, including reasonable attorneys' fees, arising out of or related to any such alteration or unauthorized use.

### **Item 2. Electronic Copies**

If requested, solely as an aid and accommodation to TOWN, CONSULTANT may provide copies of its work product documents in computer-readable media ("electronic copies" more specifically "CADD Files"). CONSULTANT will maintain the original copy, which shall serve as the official, archived record of the electronic documents. TOWN agrees to hold harmless, indemnify and defend CONSULTANT from any claims arising out of or relating to any unauthorized change or alteration by the TOWN of electronic copies.

If requested, solely as an aid and accommodation to TOWN, CONSULTANT shall provide copies of its work product documents in computer-readable media ("electronic copies," more specifically "CADD Files"). These documents will duplicate the documents provided as work product, but will not bear the signature and professional seals of the registered professionals responsible for the work. TOWN is cautioned that the accuracy of electronic copies and CADD documents may be compromised by electronic media degradation, errors in format translation, file corruption, printing errors and incompatibilities, operator inexperience and file modification. CONSULTANT will maintain the original copy, which shall serve as the official, archived record of the electronic and CADD documents. TOWN agrees to hold harmless,

indemnify and defend CONSULTANT from any claims arising out of or relating to any unauthorized change or alteration of electronic copies and CADD documents.

### **Item 3. Limitation on Indemnity**

To the extent this Agreement calls for the TOWN to indemnify CONSULTANT, the TOWN does not intend to waive any sovereign immunity. Further regardless of whether any such obligations which are the subject of any indemnification by the TOWN hereunder are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the TOWN and any indemnification provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to Section 768.28, Florida Statutes, as amended from time to time, as between the TOWN and CONSULTANT.

## **ARTICLE XV. INDEMNIFICATION AND INSURANCE**

### **Item 1. Indemnification and Repair of Damage**

**1.1 CONSULTANT'S INDEMNIFICATION OF TOWN.** The CONSULTANT shall indemnify and hold harmless the TOWN, its elected officials, officers, agents, and employees, from and against any and all claims, costs, losses, and damages (including but not limited to all reasonable fees and charges of attorneys, and other professionals, and all court or other dispute resolution costs), liabilities, expenditures, or causes of action of any kind (including, but not limited to, negligent, reckless, or intentionally wrongful acts or omissions of the CONSULTANT and any person or organization directly or indirectly employed and/or utilized by the CONSULTANT to perform or furnish any work or anyone for whose acts any of them may be liable), 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 this Agreement and/or pursuant to any TASK ORDER(S) issued hereunder. Such indemnification shall specifically include, but not be limited to, claims, damages, losses, liabilities and expenses to the extent caused by:

- (a) Any negligent, reckless, or intentionally wrongful act, omission or default of the CONSULTANT and/or persons it employees and/or utilizes and/or any combination thereof in the performance of this Agreement and/or any Task Orders issued hereunder;
- (b) Any and all bodily injuries, sickness, disease or death;
- (c) Injury to or destruction of tangible property, including, but not limited to, the loss of use resulting therefrom;
- (d) Other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with this Agreement and/or any TASK ORDER(S) and/or special project(s) performed thereunder; and/or
- (e) The violation of any federal, state, county or Town laws, by-laws, ordinances or regulations by the CONSULTANT or persons employed and/or utilized by CONSULTANT.

CONSULTANT deems and acknowledges that \$500.00 of the amount paid to CONSULTANT under this Agreement is in consideration, for this and all other indemnifications given by CONSULTANT. For purposes of compliance with Florida law, CONSULTANT acknowledges that this provision shall be deemed a part of the project specifications or the bid documents and is given

subject to the provisions of Section 725.08 of the Florida Statutes.

- 1.1.1** CONSULTANT also agrees to indemnify, and hold harmless the TOWN, its elected officials, officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description (including reasonable attorney's fees and charges incurred in any court and/or dispute resolution process) that may be brought against the TOWN, its elected officials, officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation to the extent same is 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 this Agreement and/or any TASK ORDER(S) issued hereunder.
- 1.1.2** In the event of any claims or suits which fall within either of the foregoing indemnities, payment of any amount due pursuant thereto shall, after receipt of written notice by CONSULTANT from the TOWN that such amount is due, be made by CONSULTANT prior to the TOWN being required to pay same, or in the alternative, the TOWN, at the TOWN's option, may make payment of an amount so due and the CONSULTANT shall promptly reimburse the TOWN for same, together with interest thereon at the rate of 12% per annum simple interest from the day of the TOWN's payment.
- 1.1.3** If CONSULTANT, after receipt of written notice from the TOWN fails to make any payment due hereunder to the TOWN, CONSULTANT shall pay any reasonable attorney's fees or costs incurred by the TOWN in securing any such payment from CONSULTANT.
- 1.1.4** Nothing contained herein is intended nor shall it be construed to waive the TOWN's Sovereign immunity and/or its limits of liability set forth in Section 768.28 of the Florida Statutes, as amended from time to time, regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist in the TOWN's favor.
- 1.1.5** PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

## **1.2 NO DAMAGES FOR DELAY BY TOWN**

CONSULTANT shall not be entitled to an increase in the contract price or payment or compensation of any kind from TOWN for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency or extended overhead, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CONSULTANT for hindrances or delays due solely to fraud, bad faith or active malicious interference on the part of TOWN. Otherwise, CONSULTANT shall be entitled only to extensions of the contract time as the sole and exclusive remedy for excusable events of delay.

**1.2.1** If the CONSULTANT submits a schedule or expresses an intention to complete the Services to be provided under this Agreement TASK ORDER(S) issued hereunder required by any required milestone or completion date, the TOWN shall not be liable to the CONSULTANT for any costs incurred, lost profits, extended overhead, expenses, or other damages of any kind because of delay or hindrance, regardless of whether such delay or hindrance was caused by the TOWN or its agents, should CONSULTANT be unable to complete the work before such milestone or completion date as is described within the schedule.

**1.2.2** On any particular TASK ORDER the TOWN shall have the right to include a provision for liquidated damages as a result of any delay.

## **Item 2. INSURANCE**

### **2.1 Insurance in General**

CONSULTANT shall, at its own expense, procure and maintain throughout the term of this Agreement and/or any TASK ORDERS issued hereunder, with an insurer or insurers acceptable to the TOWN, the types and amounts of insurance conforming to the minimum requirements set forth herein. As evidence of compliance with the insurance required herein, CONSULTANT shall furnish the TOWN with:

(a) a fully completed satisfactory Certificate of Insurance evidencing all coverage required. Also, a copy of the actual notice of cancellation endorsement(s) as issued on the policy(ies) and a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of the TOWN and the TOWN's members, officials, officers and employees as additional insureds in the Commercial General Liability coverage;

(b) the original of the policy(ies); and/or

(c) other evidence satisfactory to the TOWN.

Until such coverage is no longer required by this Agreement, CONSULTANT shall provide the TOWN with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

## **2.2 Types of Insurance and Limits of Liability**

### **2.2.1 Workers' Compensation/Employers' Liability**

Such insurance shall be no more restrictive than that provided by the Standard Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The policy must be endorsed to provide the TOWN with thirty (30) days written notice of cancellation. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

- Part One: "Statutory"
- Part Two: \$500,000 Each Accident  
\$500,000 Disease – Policy Limit  
\$500,000 Disease – Each Employee

### **2.2.2 Commercial General Liability Insurance**

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those required by ISO or the state of Florida or those described below. The policy must be endorsed to provide the TOWN with thirty (30) Days written notice of cancellation. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- Mold, fungus, or bacteria
- Terrorism
- Sexual molestation

The TOWN and the TOWN's members, officials, officers and employees shall be included as "Additional Insureds" on a form no more restrictive than the latest edition of ISO Form CG 20 10 (Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization Endorsement).

The limits are to be applicable only to work performed under the Contract and shall be those that would be provided with the attachment of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement (ISO Form CG 25 01) to a Commercial General Liability policy subject to the following minimum limits (inclusive of amounts provided by an umbrella or excess policy):

- \$1,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal and Advertising Injury
- \$1,000,000 Each Occurrence

### **2.2.3 Automobile Liability Insurance**

Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office, without any restrictive endorsements, including coverage for liability contractually assumed. The policy shall cover all owned, non-owned, and hired autos used in connection with the performance of the work and must be endorsed to provide the TOWN with thirty (30) days written notice of cancellation. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000      Each Occurrence – Bodily Injury and Property Damage Combined

#### **2.2.4 Professional Liability**

Such insurance shall be on a form acceptable to the TOWN and shall cover CONSULTANT for liability arising out of the rendering or failure to render professional services in the performance of the services required in the Agreement including any hold harmless and/or indemnification agreement. Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$ 1,000,000 Each Claim

\$ 1,000,000 Annual Aggregate

### **2.3 Insurance Administration**

Insurance certificates, evidencing all insurance coverage referred to in this Subsection (hereafter the "Insurance Certificates"), shall be filed (or be on file) with the TOWN at least ten (10) Calendar Days after the final execution of this Agreement. The Insurance Certificates shall be fully acceptable to the TOWN in both form and content, and shall provide and specify that the related insurance coverage shall not be canceled (hereafter the "Coverage Change") without at least thirty (30) Calendar Days prior written notice having been given to the TOWN. The CONSULTANT further agrees that no material modification or reduction shall be made to any insurance policy coverage referred to in this Agreement, unless the CONSULTANT gives written notice to the TOWN [within seven (7) Calendar Days of the CONSULTANT's having been given notice by the insurer] of such material modification or reduction. "Material modification" shall mean but not be limited to, reduction in the limit of liability by endorsement to the policy during the policy period, change and types of claims payable, or any other change that significantly reduces the coverage originally provided in the policy's terms. The CONSULTANT shall have thirty (30) Calendar Days following such Coverage Change to file an Insurance Certificate with the TOWN, demonstrating that the particular coverage has either been reinstated, or has been provided through another insurer(s) that is (are) acceptable to the TOWN. Failure of the CONSULTANT to obtain the TOWN's approval, or to satisfy the TOWN in this matter of Insurance Certificates, shall be grounds for termination of the Agreement as specified in **Article XVII**. It is also understood and agreed that it is the CONSULTANT's sole burden and responsibility to coordinate activities between itself, the TOWN, and the CONSULTANT's insurer(s) so that the Insurance Certificates are acceptable to and accepted by the TOWN within the time limits described in this Subsection.

### **2.4 TOWN's Right to Inspect Policies**

The CONSULTANT shall, upon thirty (30) Business Days' written request from the TOWN, deliver copies to the TOWN of any or all insurance policies that are required in this Agreement. Provided that CONSULTANT shall be entitled to redact all confidential information on copies of all such policies of insurance that are delivered to the TOWN. It being the intent of the parties that the TOWN shall have copies of all policies in order to determine appropriate and relevant coverage, limits, deductibles, insurance exclusions and other information related thereto.

## **2.5 Miscellaneous**

- (a) The insurance provided by CONSULTANT pursuant to this Agreement shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the TOWN or the TOWN's members, officials, officers or employees.
- (b) Except where prior written approval has been obtained hereunder, the insurance maintained by CONSULTANT shall apply on a first dollar basis without application of a deductible or self-insured retention. CONSULTANT shall pay on behalf of the TOWN or the TOWN's members, officials, officers and employees any deductible or self-insured retention applicable to a claim against the TOWN or the TOWN's members, officials, officers, agents and employees.
- (c) The insurance provided by the CONSULTANT shall be endorsed to provide that the Insurer waives its rights against the TOWN and the Town's members, officials, officers and employees.
- (d) Compliance with these insurance requirements shall not limit the liability of CONSULTANT. Any remedy provided to the TOWN by the insurance provided by CONSULTANT shall be in addition to and not in lieu of any other remedy (including but not limited to, as an indemnitee of CONSULTANT) available to the TOWN under this Agreement or otherwise.
- (e) Neither approval nor failure to disapprove insurance furnished by CONSULTANT shall relieve CONSULTANT from responsibility to provide insurance as required by this Agreement.

**2.5.1** CONSULTANT shall ensure that any company issuing insurance to cover the requirements contained in this Agreement and/or any TASK ORDER(S) issued hereunder agrees that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance. All required insurance policies shall preclude any insurer's rights of recovery or subrogation against the TOWN with the express intention of the parties being that the required insurance coverage protect both parties as the primary coverage for any and all losses covered by the above-described insurance. Violation of the terms of this paragraph and its subparts shall constitute a breach of the Agreement, and the TOWN, at its sole discretion, may cancel the Agreement and all rights, title and interest of the CONSULTANT shall thereupon cease and terminate. The TOWN reserves the right to require or adjust any of the insurance coverage it deems necessary depending upon the company, the Services to be provided under this Agreement and/or any TASK ORDER(S) issued hereunder, or the potential exposures. The CONSULTANT shall not commence performance of duties under this Agreement and/or any TASK ORDER(S) issued hereunder until the CONSULTANT has obtained all insurance coverage required under this paragraph and this Agreement and all Insurance Certificates have been approved by the TOWN, nor shall the CONSULTANT allow any sub-consultant to commence performance of duties under any TASK ORDER with the TOWN until all similar such insurance coverage and Insurance Certificates required of the sub-consultant have been obtained and approved by the TOWN or the TOWN Representative.

### **Item 3. No Waiver of Sovereign Immunity/Limits of Liability**

Nothing herein is intended to act as a waiver of the TOWN's sovereign immunity and/or limits of liability as set forth in section 768.28, Florida Statutes regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise.

## **ARTICLE XVI. CONFIDENTIALITY**

Subject to Florida Law, CONSULTANT agrees it will maintain the confidentiality of material it receives from TOWN, which TOWN has clearly identified as "confidential", and will not disclose, distribute, or publish to any third party such confidential information without the prior permission of TOWN. Notwithstanding the foregoing, CONSULTANT shall have no confidentiality obligation with respect to information that:

(a) becomes generally available to the public other than as a result of disclosure by CONSULTANT or its agents or employees;

(b) was available to CONSULTANT on a non-confidential basis prior to its disclosure by TOWN; or

(c) becomes available to CONSULTANT from a third party who is not, to the knowledge of CONSULTANT, bound to retain such information in confidence.

In the event CONSULTANT is compelled by subpoena, court order, or administrative order to disclose any confidential information, CONSULTANT shall promptly notify TOWN and shall cooperate with TOWN prior to disclosure so that TOWN may take necessary actions to protect such confidential information from disclosure.

## **ARTICLE XVII. SUSPENSION AND/OR TERMINATION OF WORK**

Any Services being performed under this Agreement and/or any TASK ORDER(S) issued hereunder may be suspended as follows:

### **Item 1. By Town**

By written notice to CONSULTANT, TOWN may suspend all or a portion of the Services provided under this Agreement and/or any TASK ORDER(S) issued hereunder if unforeseen circumstances beyond TOWN's control make normal progress of the Services provided under this Agreement and/or any TASK ORDER(S) issued hereunder impracticable. If suspension is greater than sixty (60) business days, then CONSULTANT shall have the right to terminate this Agreement in accordance with Article XVIII of this Agreement. TOWN's suspension of any Services provided under this Agreement and/or any TASK ORDER(S) issued hereunder shall be without prejudice to any other remedy of TOWN at law or equity.

### **Item 2. By CONSULTANT**

By written notice to TOWN, CONSULTANT may suspend the Services provided under this Agreement and/or TASK ORDER(S) issued hereunder if CONSULTANT reasonably determines that working conditions at the site and/or location (outside CONSULTANT's control) are unsafe, or in violation of applicable laws. CONSULTANT's suspension of any Services provided under this Agreement and/or any TASK ORDER(S) issued hereunder shall be without prejudice to any other remedy of CONSULTANT at law or equity.



## ARTICLE XVIII. TERMINATION OF AGREEMENT

**Item 1.** This Agreement may be terminated by TOWN as follows: (1) for its convenience on 30 Calendar Days' written notice to CONSULTANT, or (2) for cause, if CONSULTANT or any entity utilized by CONSULTANT to provide services under this Agreement and/or any TASK ORDER(s) issued hereunder materially breaches this Agreement and/or any TASK ORDER(s) issued hereunder through no fault of TOWN and CONSULTANT neither cures such material breach nor makes reasonable progress toward cure within 15 Business Days after TOWN has given written notice of the alleged breach to CONSULTANT.

**Item 2.** This Agreement and/or any TASK ORDER(s) issued hereunder may be terminated by CONSULTANT as follows: (1) for cause, if TOWN materially breaches this Agreement through no fault of CONSULTANT and TOWN neither cures such material breach nor makes reasonable progress toward cure within 15 business days after CONSULTANT has given written notice of the alleged breach to TOWN, or (2) upon five (5) Business Days' notice if Services provided under this Agreement and/or any TASK ORDER(S) issued hereunder have been suspended by either TOWN or CONSULTANT for more than 60 calendar days in the aggregate.

### **Item 3. Payment upon Termination**

In the event of termination, CONSULTANT shall perform such additional Services as is reasonably necessary for the orderly closing of the Services being performed under this Agreement and/or any TASK ORDER(S) issued hereunder. CONSULTANT shall be compensated for all Services performed prior to the effective date of termination, plus Services required ( as were authorized under this Agreement and/or any TASK ORDER(S) issued hereunder for the orderly closing of the Services being performed under this Agreement and/or any TASK ORDER(S) issued hereunder, including: (1) authorized Services performed up to the termination date; (2) all efforts necessary to document the Services completed or in progress; and (3) any termination reports requested by TOWN in writing.

## ARTICLE XIX. ASSIGNMENT

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. This Agreement may not be assigned by TOWN or CONSULTANT without prior, written consent of the other.

## ARTICLE XX. NO BENEFIT FOR THIRD PARTIES

The services to be performed by CONSULTANT are intended solely for the benefit of TOWN, and no benefit shall be conferred on, nor contractual relationship shall be established with any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely on CONSULTANT's services, opinions, recommendations, plans, or reports without the express written consent of CONSULTANT. No right to assert a claim against the CONSULTANT, its officers, employees, agents, or CONSULTANTs shall accrue to any subcontractor, supplier, manufacturer, lender, insurer, surety, or any other third party as a result of this Agreement or the performance or nonperformance of the CONSULTANT's Services under this Agreement and/or any Task Order issued hereunder.

## ARTICLE XXI. APPLICABLE LAW; STATE LAW COMPLIANCE

### **Item 1. Compliance with Applicable Law.**

The CONSULTANT shall comply with any and all applicable federal, state, and local rules, regulations, resolutions, ordinances and/or laws as they relate to the provisions of this Agreement and/or any TASK ORDER(s) issued hereunder; and CONSULTANT specifically acknowledges the applicability of the public record provisions of Florida Law. The CONSULTANT represents and warrants unto the TOWN that no elected official, officer, employee, or agent of the TOWN has any interest, either

directly or indirectly, in the business of the CONSULTANT to be conducted hereunder. The CONSULTANT further represents and warrants to the TOWN that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid, or agreed to pay, or given or offered any fee, commission, percentage, gift, loan, or anything of value (Value) to any person, company, corporation, individual, or firm, other than bona fide personnel working solely for the CONSULTANT, in consideration for or contingent upon, or resulting from the award or making of this Agreement. Further, the CONSULTANT also acknowledges that it has not agreed, as an expressed or implied condition for obtaining this Agreement, to employ or retain the services of any person, company, individual or firm in connection with carrying out this Agreement. It is absolutely understood and agreed by the CONSULTANT that, for the breach or violation of this Subsection, the TOWN shall have the right to terminate this Agreement without liability and at its sole discretion, and to deduct from any amounts owed, or to otherwise recover, the full amount of any value paid by the CONSULTANT. The CONSULTANT shall also require, by contract, that all subconsultants shall comply with the provisions of this Subsection.

**Item 2. State Law Compliance.**

(a) ***Scrutinized Companies.*** Section 287.135 of the Florida Statutes states that a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with the TOWN for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the *Scrutinized Companies that Boycott Israel List*, created pursuant to Section 215.4725 of the Florida Statutes or is engaged in a boycott of Israel; or for One Million Dollars (\$1,000,000.00) or more if, at the time of bidding on submitting a proposal for, or entering into or renewing a contract, the company is on the *Scrutinized Companies with Activities in Sudan List*, the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*, created pursuant to Section 215.473 of the Florida Statutes, or is engaged in business operations in Cuba or Syria. By executing this Agreement, CONSULTANT certifies that it does not and did not at any time since the submission of a response to the initial solicitation participate in a boycott of Israel; that it is not on the *Scrutinized Companies that Boycott Israel List*, *Scrutinized Companies with Activities in Sudan List*, or the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*; and that it does not engage in business operations in Cuba or Syria. CONSULTANT understands that a false certification may subject it to civil penalties, attorneys' fees and costs pursuant to Section 287.135 of the Florida Statutes and that the TOWN may terminate this Agreement at the TOWN's option if the CONSULTANT is found to have submitted a false certification.

(b) ***Public Entity Crimes; Convicted Vendor List.*** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. By executing this Agreement, CONSULTANT certifies that it is not on the convicted vendor list.

(c) ***Drug-Free Workplace.*** By executing this Agreement, CONSULTANT certifies that it has a drug-free workplace and has a substance abuse policy in accordance with and pursuant to Section 440.102 of the Florida Statutes.

(d) ***E-Verify.*** By entering into this Agreement, the CONSULTANT becomes obligated to comply

with the provisions of Section 448.095(5)(a), Florida Statutes, to register with and use the E-Verify system to verify the work authorization status of all new employees of the CONSULTANT and any subcontractor hired by the CONSULTANT. If the CONSULTANT enters into a contract with a subcontractor, the subcontractor must provide the CONSULTANT with an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of the statute by the CONSULTANT, the CONSULTANT may not be awarded a public contract for a period of one (1) year after the date of termination.

(e) *No Consideration of Social, Political, and Ideological Interests.* CONSULTANT acknowledges receipt of notice from the TOWN of the provisions of Section 287.05701 of the Florida Statutes which prohibits local governments from giving preference to a prospective contractor based on the prospective contractor's social, political or ideological interests or requesting documentation from, or considering, a prospective contractor's social, political, or ideological interests when determining if the prospective contractor is a responsible vendor. CONSULTANT affirms and agrees that the TOWN did not request any documentation about, or give any consideration to, the CONSULTANT's social, political, or ideological interests in the award of this Agreement.

(f) *Contracting with Foreign Entities.* By executing this Agreement, CONSULTANT certifies that it is not owned by the government of the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic (collectively "Foreign Countries of Concern"), nor is it owned by any agency of or any other entity of significant control of any such government. Further, CONSULTANT certifies that no government of a Foreign Country of Concern has a "controlling interest" in CONSULTANT as the term is defined in Section 287.138(1)(a) of the Florida Statutes, nor is the CONSULTANT organized under the laws of a Foreign Country of Concern, nor does the CONSULTANT have its principal place of business located in a Foreign Country of Concern. If this Agreement permits the CONSULTANT to access the personal identifying information of any individual, CONSULTANT agrees to notify the TOWN in advance of any contemplated transaction that would cause CONSULTANT to be disqualified from such access under Section 287.138 of the Florida Statutes. CONSULTANT agrees to furnish the TOWN with an affidavit signed by an officer or representative of the CONSULTANT under penalty of perjury at any time and upon request that the statements in this paragraph are true and correct.

#### **ARTICLE XXII. FORCE MAJEURE**

CONSULTANT shall not be responsible for delays caused by circumstances beyond its reasonable control, including, but not limited to (1) strikes, lockouts, work slowdowns or stoppages, or accidents, (2) acts of God, (3) failure of TOWN to furnish timely information or to approve or disapprove CONSULTANT's instruments of service promptly, and (4) faulty performance or nonperformance by TOWN, TOWN's independent CONSULTANTS or contractors, or governmental agencies. CONSULTANT shall not be liable for damages arising out of any such delay, nor shall the CONSULTANT be deemed to be in breach of this Agreement as a result thereof.

**ARTICLE XXIII. SEVERABILITY**

If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances shall to any extent, be deemed by a court of competent jurisdiction to be lawfully invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, and condition of this Agreement shall be valid and enforced to the fullest extent permitted by law. The TOWN and CONSULTANT further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

**ARTICLE XXIV. VENUE**

Each of the parties hereto hereby irrevocably (i) agrees that any suit, action or other legal proceeding against any of them arising with respect to this Agreement and/or any TASK ORDER(S) issued hereunder shall be brought exclusively in the State Courts of Polk County, State of Florida, in the 10<sup>th</sup> Judicial Circuit; and (ii) waives any and all objections any of them might otherwise now or hereafter have to the laying of the venue of any such suit, action or proceeding in any of the courts referred to in this Section hereof or to service of any writ, summons or other legal process in accordance with applicable law.

**ARTICLE XXV. ATTORNEYS' FEES**

In the event either the TOWN or the CONSULTANT brings an action against the other to interpret and/or enforce this Agreement and/or any TASK ORDER(S) issued hereunder and/or any condition, covenant and/or provision herein, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs, including, without limitation, any such fees or costs related to appellate or bankruptcy proceedings.

**ARTICLE XXVI. NOTICES**

All notices, demands, requests, consents, approvals, and other communications (collectively, "Notices"), required or permitted to be given hereunder shall be in writing and sent by either: (i) registered or certified mail, postage prepaid, return receipt requested; or, (ii) special delivery service (e.g. Federal Express, DHL, UPS, etc.); addressed to the party to be so notified as follows:

CONSULTANT:		ATTN: Legal Department Dewberry 8401 Arlington Blvd Fairfax, VA 22031 Notices@dewberry.com
TOWN:	Trevor Douthat, Town Clerk Town of Dundee Attn: RFP 23-01 202 East Main Street PO BOX 1000 Dundee, FL 3383	

With a copy to: *(which shall not constitute notice)*  
Frederick J. Murphy, Jr., Esquire  
Town Attorney  
Boswell & Dunlap LLP  
Post Office Drawer 30

Notice shall be effective upon delivery to the above addresses. Either party may notify the other that a new person has been designated by it to receive notices, or that the address for the delivery of such notices has been changed, provided that, until such time as the other party receives such notice in the manner provided for herein, any notice addressed to the previously-designated person and/or delivered to the previously-designated address shall be effective.

## **ARTICLE XXVII. MISCELLANEOUS PROVISIONS**

**Item 1.** Documents, drawings, specifications, and electronic information/data, including computer aided drafting and design (“CADD”), prepared by CONSULTANT pursuant to this Agreement are not intended or represented to be suitable for reuse by TOWN or others on extensions of the Project or on any other project. Any use of completed documents for other projects and any use of incomplete documents without specific written authorization from CONSULTANT will be at TOWN’s sole risk and without liability to CONSULTANT. Electronic data delivered to TOWN shall be for TOWN’s convenience only and shall not include the professional stamp or signature of an engineer or architect.

**Item 2.** TOWN agrees that in accordance with generally accepted construction practices, unless otherwise set forth in a specific TASK ORDER, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the PROJECT, including safety of all persons and property, and that this requirement shall be made to apply continuously and not be limited to normal working hours. CONSULTANT shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, as these are solely the responsibility of the construction contractor. CONSULTANT shall not have the authority to stop or reject the work of the construction contractor.

**Item 3.** Any opinion of the Construction Cost prepared by CONSULTANT represents its judgment as a design professional and is supplied for the general guidance of TOWN. Since CONSULTANT has no control over the cost of labor and material, or over competitive bidding or market conditions, CONSULTANT does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to TOWN.

### **Item 4. Waiver of Claim**

The CONSULTANT and the TOWN hereby mutually waive any claim against each other, their elected or appointed officials, agents, and employees, for any loss of anticipated profits caused by any suit or proceedings brought by any third party directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable, or delaying the same, or any part thereof, from being carried out.

### **Item 5. TOWN’s Agent**

The TOWN will assign an agent based upon the Department/Division requesting the work. The assigned agent shall act as the TOWN’s agent with respect to the Services to be rendered by the CONSULTANT hereunder, and shall transmit instructions, receive information, and communicate the TOWN’s policies and decisions to the CONSULTANT.

### **Item 6. CONSULTANT’s Project Team**

Subject to the approval of the TOWN or TOWN Representative, the CONSULTANT shall assign members of its staff as the CONSULTANT'S principal-in-charge, project manager and key personnel (hereafter the "Project Team"), who shall collectively devote such working time and attention as may be reasonably required to ensure that the Services are properly, economically, and efficiently performed. The CONSULTANT shall indicate to the TOWN and the TOWN or TOWN Representative shall approve in writing, as a part of each TASK ORDER, the authority and powers that the CONSULTANT'S Project Team shall possess during the life of that TASK ORDER. The CONSULTANT acknowledges that the TOWN shall have the right to approve the CONSULTANT'S Project Team, and that the CONSULTANT shall not change any member of its Project Team without the written approval of the TOWN or the TOWN Representative. Furthermore, if any member of the CONSULTANT's Project Team is removed from his TASK ORDER duties, or his employment is otherwise terminated or curtailed by the CONSULTANT, or if the CONSULTANT's Project Team member terminated his employment with the CONSULTANT, then the CONSULTANT shall promptly replace its Project Team member with a person of comparable experience and expertise, who shall also be subject to the TOWN or the TOWN Representative's written approval. The TOWN agrees that its approval shall not be unreasonably withheld.

#### **Item 7. Non-Exclusive Agreement**

This Agreement is non-exclusive, and may be terminated at the TOWN's convenience with the proper notice having been given to the CONSULTANT pursuant to **Article XVIII**. It is understood and acknowledged that the rights granted herein to the CONSULTANT are non-exclusive, and the TOWN shall have the right, at any time, to enter into similar agreements with other environmental consultants, subconsultants, and so forth, to have them perform such professional services as the TOWN may desire.

#### **Item 8. Licenses**

The CONSULTANT shall, during the life of this Agreement, procure and keep in full force, effect, and good standing all necessary licenses, registrations, certificates, permits, and other authorizations as are required by local, state, or federal law, in order for the CONSULTANT to render its Services performed under this Agreement and/or any TASK ORDER(S) issued hereunder. The CONSULTANT shall also require all subconsultants to comply by contract with the provisions of this Subsection.

#### **Item 9. Compliance With New Regulations**

The CONSULTANT agrees that at such time as the local, state, or federal agencies modify their grant procedures in order for the TOWN or the CONSULTANT to qualify for local, state or federal funding for the Services to be rendered by the CONSULTANT, then the CONSULTANT shall consent to and make such modifications or amendments in a timely manner. If the CONSULTANT is unable to comply with applicable local, state, or federal laws and regulations governing the grant of such funds for Services to be rendered herein, then the TOWN shall have the right, by written notice to the CONSULTANT, to terminate this Agreement for convenience. Furthermore, if the CONSULTANT's compliance with such laws, regulations, rules, or procedures causes a material change to a term or condition of this Agreement, and/or to any TASK ORDER(S) issued hereunder, then the TOWN agrees, upon sufficient proof of material changes as may be presented to it by the CONSULTANT, to amend all related TOWN/CONSULTANT contractual obligations, and to revise such TASK ORDER budgets accordingly.

#### **Item 10. License Fee and Royalties**

The CONSULTANT agrees that any invention, design, process, product, devise, proprietary system, or proprietary process for which an approval (of any type) may be necessary, shall be paid for by the TOWN, but shall be secured by the CONSULTANT (or, at the CONSULTANT's direction, by the Contractor during the CONSULTANT's construction phase services as may be memorialized in a TASK ORDER before the completion of any TASK ORDER.

## **ARTICLE XXVIII. SUBORDINATION OF TASK ORDERS**

The provisions of this Agreement are superior to any provision(s) set forth in a subsequent TASK ORDER entered into pursuant to the terms of this Agreement. In the event of any discrepancy between the language of this Agreement and any subsequent TASK ORDER, the provisions of any such TASK ORDER are subject and subordinate to the provisions of this Agreement and the language of this Agreement shall prevail.

## **ARTICLE XXIX. HEADINGS**

Any section or paragraph headings appearing in this Agreement have been inserted for the sole purpose of convenience and ready reference of the parties. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the sections and paragraphs to which they may pertain.

## **ARTICLE XXX. GOVERNING LAW**

The validity, interpretation, construction, and effect of this agreement shall be in accordance with and governed by the laws of the State of Florida, only.

## **ARTICLE XXXI. REMEDIES AND COSTS**

Subject to the provisions in **Article XV** of this Agreement, all remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of, exclusive of each other or of any other remedy available to either party, at law or in equity. No delay or omission to exercise any TOWN right or TOWN power accruing upon any event of default shall impair any TOWN right or TOWN power nor shall it be construed to be a waiver of any event of default or acquiescence in it, and every TOWN right and TOWN power may be exercised from time to time as often as may be deemed expedient.

## **ARTICLE XXXII. TIMELINESS**

The TOWN and the CONSULTANT acknowledge and understand that time is of the essence in this Agreement, and that the Services shall be performed in as expeditious a manner as may be in accord with the nature of each Project.

## **ARTICLE XXXIII. PUBLIC ENTITY CRIME**

Any person or affiliate, as defined in Section 287.133 of the Florida Statutes, shall not be allowed to contract with the TOWN, nor be allowed to enter into a subcontract for work on this Agreement, if such person or affiliate has been convicted of a public entity crime within three (3) years of the date this Agreement was advertised for proposals, or if such person or affiliate was listed on the State's convicted vendor list within three (3) years of the date this Agreement was advertised, whichever time period is greater. A public entity crime means a violation of any state or federal law with respect to and directly related to the transaction of business with any public entity or agency (federal, state or local), involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, forgery, falsification of records, receiving stolen property or material representation. Any Agreement with the TOWN obtained in violation of this Section shall be subject to termination for cause. A sub-consultant who obtains a subcontract in violation of this Section shall be removed from the TASK ORDER and/or Services provided thereunder and promptly replaced by a sub-consultant acceptable to the TOWN.

**ARTICLE XXXIV. ENTIRETY OF AGREEMENT**

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other Agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.

**ARTICLE XXXV. AUTHORIZATION**

Both the TOWN and CONSULTANT represent to the one another that all the necessary actions to execute this Agreement have occurred and that both parties possess the legal authority to enter into this Agreement and undertake all the obligations imposed herein.

**ARTICLE XXXVI. REPRESENTATIONS AND WARRANTIES**

Each party signing this Agreement on behalf of TOWN and CONSULTANT represents and warrants that he or she has read, understands and acknowledges any and all of the conditions and requirements as set forth herein.

**ARTICLE XXXVII. GENDER NEUTRAL**

For purposes of this Agreement, any and all gender specific references, classifications and/or language shall be interpreted to be gender neutral.

**ARTICLE XXXVIII. CONSTRUCTION**

The TOWN and CONSULTANT acknowledge that the Agreement has been fairly negotiated by each party's respective legal counsel and at arm's length; and, as such, the Agreement shall be interpreted in accordance with the terms contained herein.

**ARTICLE XXXIV. CALCULATION OF TIME**

The calculation of the number of days that have passed during any time period prescribed shall be based on calendar days (unless specified otherwise in this Agreement). Unless otherwise specified in this Agreement, the calculation of the number of days that have passed during any time period prescribed in or by this Agreement shall commence on the day immediately following the event triggering such time period. If the tolling of such a time period is not contingent upon an action or event, the calculation of the number of days that have passed during such time period prescribed in or by this Agreement shall commence on the day immediately following the Effective Date. For purposes of this Agreement, unless otherwise specified herein, the tolling of any such time period(s) shall be in "calendar days" which means any and all days in a 365 Day calendar year; and "business days" shall mean each calendar day which is not a Saturday, Sunday or a recognized holiday by the TOWN. In the event any time period or deadline identified in this Agreement expires and/or falls on a Saturday, Sunday or recognized holiday by the TOWN, said expiration and/or deadline shall be automatically tolled until 5:00 pm on the next available business day which the TOWN is open for business to the public.

**ARTICLE XXXX. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with, or any rights in favor of, any third party, including any subcontractor.



## **ARTICLE XXXXI. INDEPENDENT CONTRACTOR**

Notwithstanding any provision of this Agreement and/or any TASK ORDER issued hereunder the CONSULTANT and TOWN agree that the CONSULTANT is an independent contractor for all purposes and when performing any Services under this Agreement and/or any TASK ORDER(S) issued hereunder.

## **ARTICLE XXXXII. EXHIBITS**

All exhibits annexed hereto are incorporated by reference and made a part of the Agreement.

## **ARTICLE XXXXIII. DUTY TO COOPERATE AND ACT IN GOOD FAITH**

The TOWN and CONSULTANT acknowledge and agree that it is in their best interests and the best interests of the public that this Agreement and any and all TASK ORDER(S) issued hereunder be performed in accordance with the terms, covenants and conditions contained herein; and both the TOWN and CONSULTANT shall, in all instances, cooperate and act in good faith in complying with all of the terms, covenants and conditions contained herein.

## **ARTICLE XXXXIV. PUBLIC RECORDS**

Public Records. CONSULTANT agrees to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes 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 Agreement term and following completion of the Agreement and/or any TASK ORDER(S) issued hereunder if the CONSULTANT does not transfer the records to the public agency.
4. Upon completion of the Agreement and/or any TASK ORDER(S) issued hereunder, transfer, at no cost, to the public agency all public records in possession of the CONSULTANT or keep and maintain public records required by the public agency to perform the service. If the CONSULTANT transfers all public records to the public agency upon completion of the Agreement and/or any TASK ORDER(S) issued hereunder, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement and/or any TASK ORDER(S) issued hereunder, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**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 AGREEMENT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS, TREVOR DOUTHAT, TOWN CLERK, (863) 438-8330, EXT. 222,**

**tdouthat@townofdundee.com , 202 EAST MAIN STREET, DUNDEE, FLORIDA 33838.**

If the CONSULTANT does not comply with a public records request, TOWN shall enforce the Agreement and/or any TASK ORDER(S) provisions which may include immediate termination of Agreement and/or any TASK ORDER(S) issued hereunder. **This Section shall survive the termination of this Agreement.**

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Consultant:

*Robert R. Beltran* VP  
By: Robert R. Beltran, PE, VP  
Dewberry Engineers, Managing Member

*Colleen M. Collins* 1-11-2024  
Witness Colleen M. Collins

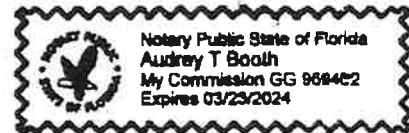
*Aziza Baan*  
Witness Aziza Baan

1-11-2024  
Date

STATE OF FLORIDA  
COUNTY OF Polk

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this 11th day of January, 2024, by Robert R. Beltran PE, VP, on its as behalf who is personally known to me or who has produced \_\_\_\_\_ as identification.

*Audrey T Booth*  
Notary Public, State of Florida  
Printed Name: Audrey T. Booth  
My commission expires: \_\_\_\_\_



*Town of Dundee:*

TOWN OF DUNDEE

By: \_\_\_\_\_  
Sam Pennant, Town Mayor

ATTEST:

\_\_\_\_\_  
Trevor Douthat, Town Clerk

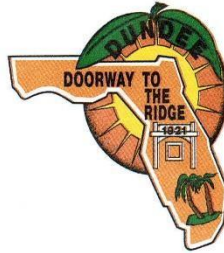
APPROVED AS TO FORM:

\_\_\_\_\_  
Frederick J. Murphy, Jr., Town Attorney

# EXHIBIT A

THE TOWN OF DUNDEE, FLORIDA

*Town of Dundee*



REQUEST FOR QUALIFICATIONS  
RFQ 23-01

## Continuing Professional Consulting Services Contracts

Responses are due by  
Wednesday, September 13, 2023 at 4:00 pm

**MAIL OR DELIVER RESPONSES TO:**

Town of Dundee  
Attn: RFP 23-01  
202 East Main Street  
PO BOX 1000  
Dundee, FL 33838

**Contact:**

Trevor Douthat, Town Clerk  
Town of Dundee  
[TDouthat@TownofDundee.com](mailto:TDouthat@TownofDundee.com)  
(863) 438-8330

## **TABLE OF CONTENTS**

### **I LEGAL ADVERTISEMENT**

### **II REQUEST FOR QUALIFICATIONS**

#### **1.0 INTRODUCTION**

- 1.1 RFQ Process
- 1.2 Interested Parties
- 1.3 Selection
- 1.4 RFQ Schedule
- 1.5 Term of Agreement

#### **2.0 SCOPE OF SERVICES**

- 2.1 Overview
- 2.2 Types of Services
- 2.3 General Scope of Services for Large Firms
- 2.4 General Scope of Services for Small Firms
- 2.5 Minimum Required Services
- 2.6 Detailed Scope of Services

#### **3.0 REQUIREMENTS FOR SUBMISSION**

- 3.1 Economy of Preparation
- 3.2 Format of Response
- 3.3 Additional Information
- 3.4 Communication and Inquires

#### **4.0 SUBMISSION OF STATEMENT OF QUALIFICATIONS**

- 4.1 Sealed Proposals
- 4.2 Submittal Copies
- 4.3 Response Submittal Deadline and Delivery Address
- 4.4 Incurred Expenses
- 4.5 Interviews

#### **5.0 EVALUATION PROCESS**

- 5.1 Evaluation Committee
- 5.2 Rating System
- 5.3 Evaluation Committee Meeting(s)
- 5.4 Submittal Ranking
- 5.5 Presentations
- 5.6 Rejection of Proposals
- 5.7 Modifications to Proposals
- 5.8 Requests for Additional Information

#### **6.0 EVALUATION CRITERIA**

- 6.1 RFQ Evaluation Criteria

## **7.0 CONDITIONS OF PROPOSALS**

- 7.1 Late Proposals
- 7.2 Completeness
- 7.3 Proposer's Certification Form
- 7.4 Drug-Free Workplace Form
- 7.5 Proposer's Warranty
- 7.6 Public Opening
- 7.7 Property of the Town
- 7.8 Award Presentation

## **8.0 GENERAL TERMS & CONDITIONS**

- 8.1 General Conditions
- 8.2 Definitions
- 8.3 Interpretations or Addenda
- 8.4 Protest Procedures
- 8.5 Responses
  
- 8.6 Offer Extended to Other Governmental Entities
- 8.7 Mistakes, Inaccuracies; Incomplete Information
- 8.8 Statement of Bidder's Qualifications
- 8.9 Local Preference Ordinance
- 8.10 Equal Employment Opportunity
  
- 8.11 Notice (Convicted Vendor List)
- 8.12 Unauthorized Alien(s)
- 8.13 Accident Prevention
- 8.14 Assignment or Novation
- 8.15 Patent Infringement
- 8.16 Progress of Work
- 8.17 Consultant / Contractor Provided Insurance 8.18 Indemnification  
by Consultant / Contractor
- 8.19 Liens
- 8.20 Construction and Consulting Evaluation

## **9.0 STANDARD FORMS**

- 9.1 Attachment A: Submittal Cover Page
- 9.2 Attachment B: Addendum Page
- 9.3 Attachment C: Lobbying Certification Form
- 9.4 Attachment D: Non-Collusion Affidavit of Prime Bidder
- 9.5 Attachment E: Affidavit Certification-Immigration Laws
- 9.6 Attachment F: Certification of Drug Free Workplace

## **SAMPLE AGREEMENT (Addendum to RFQ)**

LEGAL ADVERTISEMENT

**REQUEST FOR QUALIFICATIONS  
RFQ-23-01**

Sealed proposals will be received by the Town of Dundee until **4:00 P.M., Wednesday, September 13, 2023**, at the office of the Town of Dundee Town Clerk, 202 East Main Street, Dundee, Florida 33838, for the following:

**“Continuing Professional Consulting Services Contracts”**

Copies of the RFQ are available at the following website:

[www.townofdundee.com/purchasing-procurement](http://www.townofdundee.com/purchasing-procurement)

A Pre-submittal Conference will be held at Town Hall, Town of Dundee, 202 E. Main St., Dundee, 33838 at 2:00 P.M., Wednesday, August 23, 2023, for the purpose of answering questions in reference to this solicitation.

The responses specified shall be furnished in accordance with the RFQ 23-01, Specifications, and any other documents prepared for this submittal.

The Town of Dundee reserves the right to reject any and all bids, waive informalities, re- advertise, and the Town of Dundee may enter into a contract determined, in the sole discretion of the Town of Dundee, to be in its best interest, in accordance with the Terms and Conditions referenced herein above.

Sincerely,

TOWN OF DUNDEE

**Trevor Douthat**  
Town Clerk

**Advertise: August 16, 2023**



*Town of Dundee*  
**REQUEST FOR QUALIFICATIONS**  
RFQ-23-01

Sealed responses marked **“Continuing Professional Consulting Services Contracts”**, with the attached label, will be received by the Town of Dundee until **4:00 P.M., Wednesday, September 13, 2023**, at the office of the Town Clerk, 202 East Main Street, Dundee, Florida 33838, for the following:

**“Continuing Professional Consulting Services Contracts”**

At that time, responses will be publicly opened and read aloud in the Town Hall, Town of Dundee.

A Pre-submittal Conference will be held at Town Hall, Town of Dundee, 202 East Main Street, Dundee, Florida 33838 at 2:00 P.M., Wednesday, August 23, 2023, for the purpose of answering questions in reference to this solicitation.

The Town of Dundee is requesting responses from those qualified firms with previous experience in this type of work. Firms submitting responses shall provide evidence of their experience and expertise in similar work performed. Please submit **one (1) unbound, single sided original, eight (8) complete paper copies and one electronic copy on flash drive.**

**Public Records** – It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency / Fla. Statute – 119.01(1). (Do not submit any documents that you do not want to be made public).

**Questions may be submitted to the Town Clerk until 4:00 pm on Wednesday, August 30, 2023. For more information regarding this RFQ 23-01, please contact Trevor Douthat, Town Clerk, (863) 438-8330 or by email at [tdouthat@townofdundee.com](mailto:tdouthat@townofdundee.com).**

The Town of Dundee welcomes your response to this RFQ. The Town of Dundee reserves the right to reject any responses found to be non-responsive, vague, non-conforming, or irresponsible. The Town of Dundee may withdraw all or part of this RFQ at any time to protect its best interest. The desire of the Town of Dundee to pursue qualifications shall in no way obligate the Town to compensate you for your efforts or to execute a contract. All responses are to be thorough yet concise in the response to this RQP. The failure to provide a response in the manner prescribed herein shall be grounds for disqualification.

The Town of Dundee reserves the right to reject any and all responses, waive informalities, re-advertise, and the Town of Dundee may enter into a contract determined, in the sole discretion of the Town of Dundee, to be in its best interest, in accordance with the Terms and Conditions referenced herein above.

The responses shall be furnished in accordance with the RFQ, requirements, and any other documents prepared for this RFQ. **W-9** should be attached to any response when returned by the responding vendor. Payment will be rendered to the name and ID appearing on the W-9.

Sincerely,  
TOWN OF DUNDEE

Trevor Douthat  
Town Clerk

## **1.0 INTRODUCTION**

- 1.1 **RFQ PROCESS:** The Town of Dundee's Selection Process for consultants' services is in accordance with Section 287.055, Florida Statutes, Consultants' Competitive Negotiations Act. The Selection Committee(s) will review the qualifications of all submitting firms. The Town reserves the right to determine, at its sole discretion, whether the statement of qualifications (SOQs) satisfactorily meets the criteria established in this RFQ, and the right to seek clarification from any firm(s) submitting qualifications.
- 1.2 **INTERESTED PARTIES:** All interested parties must submit the requested information within the time provided herein.
- 1.3 **SELECTION:** It is the intent of the Town to select and negotiate Continuing Professional Consulting Agreements with one (1) or more firms. The Town may employ several different consultants to perform the work described. No consultant shall be employed as the exclusive consultant. Consultants will be chosen based upon the expertise and experience listed as it pertains to the work described. Selection of a qualified firm under this RFQ is not a guarantee of work.
- 1.4 **RFQ SCHEDULE:** The following identifies the RFQ process schedule:

<b>RFQ PROCESS</b>	<b>DATE</b>
RFQ Solicitation Issued	August 16, 2023
Non-Mandatory Pre-submittal Conference	August 23, 2023 2:00 P.M.
Deadline to Submit- Request for Additional Information	August 30, 2023 4:00 P.M.
Proposals Due	September 13, 2023 4:00P.M.
Evaluation Committee Meeting	September 27, 2023 2:00 P.M.
Town Commission Award – Tentative	October 10, 2023 6:30 P.M.

### 1.5 TERM OF CONSULTANT CONTINUING AGREEMENT:

Performance period shall be for a period of five (5) years unless terminated sooner under the provisions of the Consultant Continuing Agreement (the "Agreement") with a renewal option of up to five (5) successive one-year terms, at the mutual agreement of both parties, for a maximum possible contract term of ten (10) years.

- 1.5.1 If an awarded firm has lost more than 50% of its key staff, (assigned to a particular Town contract), the contract may not be renewed, and the firm in question will be required to resubmit at the next RFQ advertisement if consideration for that firm is so desired.
- 1.5.2 Consultant shall provide proposed Task Orders to be used for specific projects. Each Task Order will have time specific limitations and monetary values negotiated at the time of issuance.
- 1.5.3 To the extent permitted by §287.055, Florida Statutes (2022), and based upon continued satisfactory performance of the firm(s) selected, the Town of Dundee reserves the right to utilize additional consulting services for substantially similar

services. When applicable, this/these resulting contract(s) shall be considered continuing contract(s).

- 1.5.4 Performance Period shall commence upon execution of the Agreement between the Town of Dundee and the successful responder. **It is anticipated multiple firms will be awarded a basic Consultant Continuing Agreement to provide the necessary services.**
- 1.5.5 Authorization of performance of services by the selected firms(s) under the basic agreements shall be in the form of specific written task order signed by the firm, and executed and issued by the Town.
  - 1.5.5.1 Each written Task Order for a specific project shall be negotiated and shall describe the required services, state the commencement and completion dates and establish the amount and method of payment.
  - 1.5.5.2 The task order will be issued under and incorporate the terms of the Agreement.
- 1.5.6 The Town makes no guarantee or promise as to the number of available projects or that the firm will perform any project for the Town during the life of the Agreement.
- 1.5.7 The Agreement does not authorize the performance of any work or require the Town to place orders of work. Expiration of the term of the Agreement will have no effect upon task assignments issued pursuant to the Agreement and prior to the expiration date. Obligations entered therein by both parties shall remain in effect until completion of the work authorized by the task assignment.

## **2.0 SCOPE OF SERVICES**

2.1 OVERVIEW: The Town is seeking interest and statement of qualifications in response to the RFQ from both large multidiscipline firms and also smaller consulting firms.

- 2.1.1. It is anticipated the Town will enter into agreements with **three (3) or more** Large Firms for the scope of services as described herein. Work will be assigned on an as needed basis.
- 2.1.2 The Town will also enter into agreements with **one (1) or more** Small Firms specializing in each field as described herein. Work will be assigned on an as-needed basis.
- 2.1.3 For the purposes of this solicitation, Small Firms are defined as those properly licensed firms having less than 15 employees in the entire company, inclusive of all office locations. Large Firms are defined as those properly licensed firms having 15 or more employees in the entire company, inclusive of all office locations.

2.2 TYPES OF SERVICES: The services listed below are the minimum requirements. The work task orders may include services that will assist in the completion of the assigned Town projects in accordance with the Agreement.

2.2.1 Services Related to Utility Systems:

- Potable Water Treatment, Transmission and Distribution
- Sanitary Sewer Treatment, Transmission and Collection
- Geographic Mapping of Utilities and Infrastructure
- Reclaimed Water Treatment, Transmission and Distribution
- Route Surveys for Utility Projects
- Surveying for Wastewater Treatment Plant (WWTP) Projects

- Surveying for Water Treatment Plant (WTP) Projects
- GeoDesign and Green Infrastructure Systems

#### 2.2.2 Services Related to Transportation Systems:

- Roads and Drainage
- Bridge
- Urban Transportation
- Traffic Signage
- Traffic Studies
- Traffic Signals
- Advanced Traffic Management System
- Alternate Means of Transportation
- Trails and Greenways

#### 2.2.3 Services Related to Solid Waste:

- Solid Waste Operation Planning
- Route Studies
- Waste Stream Studies

#### 2.2.4 Services Related to Parks and Recreation:

- Architecture Services Related to Parks and Facilities Design
- Landscape Architecture

#### 2.2.5 Services Related to General Consulting Services:

- Architectural Services to a Project (including Landscaping)
- Geographic Information Systems (GIS)
- Boundary and Topographic Surveying
- Legal Descriptions and As-built Surveys
- Asset Management in Conjunction with Mapping and Inventory
- Mapping of Municipal Boundaries
- Geotechnical – Soils Analysis and Testing
- Environmental – Wetland and Endangered Species
- Floodplain Management
- Hydrologic Investigations
- Stormwater Planning and Modeling
- Land Use Planning
- Policy Analysis
- Project Outreach and Communication
- Development of Artistic Renderings and Conceptual Layouts

2.3 GENERAL SCOPE OF SERVICES FOR LARGE FIRMS: It is the Town's intent that Large Firms provide a full complement of general consulting services with in-house capabilities. The use of subcontractors is acceptable, but the use of subcontractors shall not be included in the RFQ process. The Large Firm is expected to perform complex or large tasks requiring specific expertise and staff availability.

- 2.3.1 General engineering/consulting services, including but not limited to civil, electrical, mechanical and structural engineering;
- 2.3.2 General architectural services, includes landscaping;
- 2.3.3 Development of capital projects for infrastructure, parks and recreation, the Community Redevelopment Agency and other Town departments as required;
- 2.3.4 Peer review of capital project plans and specifications;
- 2.3.5 Threshold or special inspections services;

2.3.6 Construction engineering and inspection (CEI) services;

2.3.7 Urban & transportation planning;

2.4 GENERAL SCOPE OF SERVICES FOR SMALL FIRMS: The Agreement for Small Firms consists of providing general consulting services to the Town and shall include, but not be limited to, services listed under 2.2 (above).

2.5 MINIMUM REQUIRED SERVICES: The services listed below are minimum requirements. The work task order may include services that will assist in the completion of assigned Town projects in accordance with the Agreement.

2.6 DETAILED SCOPE OF SERVICES: A more detailed scope of services for both Large and Small Firms to be performed may include, but shall not be limited to, the following:

2.6.1 STUDY, PLANNING, INVESTIGATION, AND REPORT PREPARATION

SERVICES. The consultant(s) shall perform the following tasks:

- Investigations involving detailed considerations of operations, maintenance, and overhead expenses.
- Preparation of feasibility studies, cash flow and economic evaluations, rate schedules.
- Boundary, topographic, engineering, and other specific purpose surveys.
- Preparation and/or review of legal descriptions and easement documents.
- Consulting and/or witness services in litigation or administrative proceedings.
- Development of design guidelines and standard specifications.
- Assistance with updates or modifications to master plans, comprehensive plan, Land Development Code, etc. including evaluations using computer models for water, wastewater, reclaimed water and stormwater.
- Preparation of applications and supporting documents for governmental grants, loans, or bonds in connection with projects.
- Preparation and/or review of water, wastewater, and stormwater system operating permit applications through the Florida Department of Environmental Protection (FDEP), Southwest Florida Water Management District (SWFWMD), and other Federal, State, and local agencies.
- Evaluation of natural resources, water quality and hydrologic systems.

2.6.2 DESIGN SERVICES. The consultant shall perform engineering and architectural design services as needed for the following items:

- Design of infrastructure systems for potable water, wastewater, stormwater, and reclaimed water.
- Design of other projects, including roadways, pedestrian enhancements, traffic management, lighting, environmental restoration, parks and buildings.
- Preparation of all drawings, specifications, and other contract documents necessary to complete the projects in-house or procure bids for the projects.

- Preparation of all necessary permits, deeds, and easements necessary to complete the projects in accordance with all appropriate laws, regulations, and rules.
- Attendance at public meetings with stakeholders, neighborhood groups, and appropriate boards, committees, and Town Commission.
- Prepare construction specifications and special provisions and bid documents.
- Conduct or attend all pre-bid conferences.
- Evaluation of bids and recommendations of award for contracts.
- Review and make recommendations concerning the acceptability of subcontractors, substitute materials, and/or equipment.
- Provide subject matter expertise.

2.6.3 CONSTRUCTION SERVICES. The consultant shall assist Town staff in the construction administration of and/or for projects on an as-needed basis that shall include the following tasks:

- Conduct or attend all pre-construction conferences.
- Coordinate with Town staff to administer contracts.
- Assist with review and approval of shop drawings and submittals.
- Assist with preparation or review of change orders.
- Assist with review of pay applications.
- Assist with site inspections during construction.
- Review and approval of samples and results of tests and inspections and operation and maintenance instructions.
- Determination of suitability of materials and equipment provided by contractors.
- Certification of final construction as to acceptability.
- Preparation of as-built drawings.

### 3.0 REQUIREMENTS & CONTENTS FOR SUBMISSION:

Only those firms or individuals submitting letters of interest and statements of qualifications which meet the requirements herein specified will be considered. Submittals shall not contain information in excess of that requested, should be concise and should specifically address the issues of this RFQ.

- 3.1 ECONOMY OF PREPARATION: Submit one (1) unbound, single sided original, one electronic copy on disc or flash drive and eight (8) copies, including a cover letter, requested documents and information. Be sure to clearly specify which "Firm Size and discipline under section 2.3 or 2.4 the firm is qualifying for. The submittal should be prepared simply and economically, providing a straightforward, concise description of the proposer's ability to fulfill the requirements of this Request for Qualifications and should not exceed 40 pages in length (excluding resumes). The page count criteria are listed in Section 3.2 of this RFQ.
- 3.2 FORMAT OF RESPONSE: **To provide a degree of consistency in review of the written proposals, firms are requested to prepare their proposals in the standard format specified below** (See Sections 3.2.1 – 3.3). The page count for the proposals shall not exceed 40 pages in length (two-sided pages shall count as two pages). Large Firms will be

allowed 10 pages for resumes and those pages will not be counted toward the 40-page limit. The page count shall not include required forms listed in Section 9 of this RFQ, section dividers, or Items 3.2.1 through 3.2.3 of this section:

- 3.2.1 **TITLE PAGE:** Proposer should identify the RFQ subject, name and title of contact person, address, telephone number, fax number, email address, and date of submission. The Title Page shall also identify which of the categories the proposer is submitting an RFQ response for:
- Large Firm Services - Multi-discipline Firm
  - Small Firm Services - General civil engineering/consulting services
- 3.2.2 **COVER LETTER:** The Cover letter should not be more than two (2) pages long and should include, at a minimum, the following:
- A brief statement of the Proposer's understanding of the required services.
  - A positive commitment to perform the services on a consistent and timely basis.
  - Names and contact information for the person(s) authorized to represent the Proposer.
- 3.2.3 **TABLE OF CONTENTS:** The table of contents should include a clear and complete identification by section and page number of the materials submitted.
- 3.2.4 **EXECUTIVE SUMMARY:** The purpose of the Executive Summary is to provide an overview of the Proposer's qualifications to perform the scope of services. At a minimum, the Executive Summary should contain the following information:
- Name and corporate headquarters address of Proposer;
  - Name and location of regional/local office which will be the Town's designated primary office;
  - Description of the Proposer's team and legal structure (corporation, joint venture, subcontractors);
  - The general and specific capabilities and experience of the Proposer's team that the Proposer believes will benefit the Town.
- 3.2.5 **STATEMENT OF UNDERSTANDING:** Proposers must submit a brief narrative outlining the firm's understanding of the Town's goals and types of projects that may be encountered within the context of the proposed scope of services included in this RFQ. Proposers should be detailed on their level of experience in similar work and the knowledge it has provided them.
- 3.2.6 **SIMILAR PROJECT EXPERIENCE.** Provide examples demonstrating experience for the type of work listed within the last five (5) years. Each Proposer shall provide proof of experience in providing general consulting services for Town and County governments within the State of Florida under the Consultants' Competitive Negotiations Act.
- 3.2.7 **WORK PLAN & AVAILABILITY OF RESOURCES.** Proposers must submit an outline of the firm's approach in the planning, design, permitting, and other key elements of a typical project.
- 3.2.7.1 This item shall also include information concerning the Proposer's current and future workloads and resource allocations and the effect of the

workloads and resource allocations on the ability to meet the requirements of this agreement. Provide total number of staff available within 100 miles of Town. Provide total number of staff available within Firm.

3.2.8 TEAM MEMBERS. Identify the Team members and provide resumes, (limited to one page per employee), of the individuals who will perform the required tasks. All discipline leads shall be licensed in the State of Florida. The resumes shall include the professional credentials and experience of the firm's key members who would complete the required tasks. Identify the proposed Project Manager who the Town will have primary contact for all work associated with this RFQ.

3.2.8.1 For each member, provide their:

- Title
- Area of Specialty
- Office Location assigned for previous two years. If recently reassigned, provide explanation and timing.
- Total years of experience
- Years with firm
- Specific involvement/role in projects used as references or experience summary.

3.2.8.2 Include an organizational chart.

3.2.8.3 This item shall also include a short descriptive summary of the firm's key members experience in each of the areas outlined in the Scope of Services. Each program area identified in the Scope of Services shall be limited to a one-page summary.

3.2.9 LICENSURE: Principal firms must be certified to practice engineering in the State of Florida pursuant to the provisions of Chapter 471, Florida Statutes. For other proposed professional services, such as surveying and architecture, as applicable, principal firms must be certified to practice in the State of Florida pursuant to the applicable provisions of the Florida Statutes.

3.2.10 REFERENCES. Please list a minimum of three (3) business references with at least the following information:

- Company Name
- Contact Individual
- Contact's Title
- Phone Number
- Email address
- Brief Description of the Project(s) Completed

3.2.10.1 REFERENCES: The Town reserves the right to conduct reference checks for firms submitting qualifications. In the event that information obtained from the reference checks reveals concerns about the firm's past performance or their ability to successfully perform the Agreement to be executed based on this RFQ and subsequent work, **the Town may, at its**



**sole discretion, determine that the firm is not the most qualified firm and may select the next highest-ranked firm whose reference checks validate the ability of the firm to successfully perform the work.**

The Town also reserves the right to check references from others not identified by the Proposer.

3.2.11 MINORITY BUSINESS-OWNED/ WOMAN-OWNED/ DISABLED VETERAN

/ VETERAN-OWNED ENTERPRISES: Identify whether any of the Proposer's team qualifies pursuant to §288.703, Florida Statutes (2022). Eligible firms must currently be certified as such through the State of Florida Office of Supplier Diversity to qualify for this criterion.

3.2.12 PRIMARY OFFICE LOCATION: Identify the location of the primary office that will perform the majority of the work on this contract. It is the Town's expectation that the project manager assigned to the respective task order will be located at the consultant's office that provides for the greatest efficiency and responsiveness in completing the work. This item shall also include pertinent information concerning the location of the primary firm of the Proposer.

3.3 ADDITIONAL INFORMATION: Please provide any other information which you feel would help the Evaluation Committee evaluate your Statement of Qualification in response to this RFQ.

3.4 COMMUNICATIONS AND INQUIRIES:

3.4.1 Sole Point of Contact: Respondents are advised that from the date of release of this solicitation until award of an agreement, **no contact with Town personnel related to this solicitation is permitted. All communications are to be directed to the Town Clerk and sole contact listed below.**

Trevor Douthat, Town Clerk

Email: [tdouthat@townofdunde.com](mailto:tdouthat@townofdunde.com)

3.4.2 The Town Clerk, or designee, may discuss a submission directly with the responsible proposer to get clarification and assure a full understanding of, and responsiveness to the solicitation requirements. All proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission for the purpose of obtaining best and final offers. In conducting such discussions, there shall be no disclosure of any information derived from proposals submitted by competing proposers except as may be required by the Florida Public Records Law, Chapter 119, Florida Statutes.

3.4.3 Prohibition of Communication: To ensure fair consideration for all prospective firms, the Town prohibits communication associated with this RFQ to or with any department, bureau or employee during the submission process, except as in Section 20. Additionally, the Town prohibits communications initiated by a prospective firm to any Town official or employee evaluating or considering the submission prior to the time a decision has been made. If a firm initiates communications of any form regarding this solicitation (with the exception of contacting the Town Clerk) that act may be grounds for disqualifying the proposer from the consideration for the RFQ.

3.4.4 Request for additional information: Any questions related to interpretation of scope of services or submission process shall be addressed to the Town Clerk, **in writing**, in ample time before the period set for the receipt and opening of bids.

3.4.4.1 Inquiries, if received prior to seven (7) days of the date set for the receipt of the Statement of Qualifications (SOQ), will be answered.

3.4.4.2 Any inquiries received after that time, will not be answered or given any consideration.

3.4.4.3 Oral answers will not be authoritative.

3.4.5 Addenda: The Town Clerk shall issue any Town responses for proposers' inquiries in the form of an addendum to this RFQ, posted on the website as timely as possible. **If an addendum is issued, the Town Clerk will post the final addendum no later than five (5) calendar days prior to the date set for receipt of SOQs.**

**The Agreement will be posted by the Town as an addendum to this RFQ.**

#### **4.0 SUBMISSION OF STATEMENT OF QUALIFICATIONS (SOQ):**

4.1 **SEALED PROPOSALS:** All SOQs proposals in response to this RFQ must be submitted in a sealed envelope, packet or box. The face of the envelope shall contain the date and time of the RFQ opening and the RFQ number. Information not submitted on the Town's bid forms may be rejected. All SOQ proposals are subject to the conditions specified and on any attached sheets, specifications, special conditions or vendor notes.

**Submittal of the SOQs via e-mail is NOT acceptable.**

4.2 **SUBMITTAL COPIES:** Sealed SOQs shall include the following:

- One (1) unbound original, and eight (8) complete paper copies of the Statement of Qualifications; and
- One (1) electronic copy of the SOQ on a compact disk or USB drive containing the above-listed information. Electronic copies must be identical in all aspects to the paper copy submitted.

4.3 **RESPONSE SUBMITTAL DEADLINE AND DELIVERY ADDRESS:**

**Sealed SOQs shall be submitted to the Office of the Town Clerk no later than 4:00 P.M., September 13, 2023.** Proposals shall not be accepted after this time and date. Each proposal shall be submitted in a sealed envelope, packet or box marked with the RFQ number, title of the RFQ, and RFQ opening date.

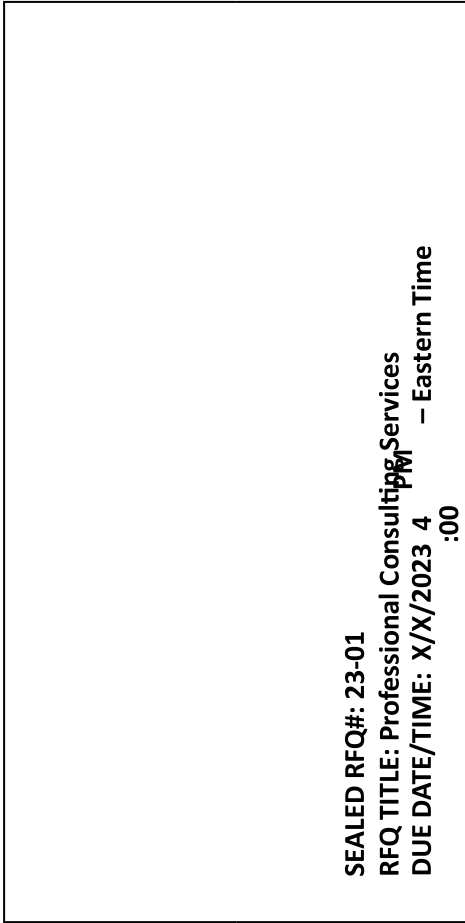
4.3.1 **FOR HAND DELIVERY / MAIL / EXPRESS MAIL/ UPS DELIVERY:**

SOQ's shall be addressed as follows:

**Trevor Douthat, Town Clerk  
Town of Dundee  
Attn: RFQ 23-01  
202 East Main Street PO  
BOX 1000  
Dundee, FL 33838**

4.3.2 Submitted envelopes should be marked: "RFQ 23-01 Continuing Professional Consulting Services Contracts".

4.3.3 For your convenience – you may use the label printed on the next page, and affix to your OUTER sealed bid envelope to identify it as a “Sealed Bid”.



- 4.4 INCURRED EXPENSES: The Town is not responsible for any expenses which proposers may incur in preparing and submitting proposals called for in this RFQ.
- 4.5 INTERVIEWS: The Town reserves the right to conduct personal interviews or require presentations of any or all proposers prior to selection. The Town will not be liable for any costs incurred by the proposer in connection with such interviews/presentations (i.e., travel, accommodations, etc.).

**5.0 EVALUATION PROCESS**

- 5.1 EVALUATION COMMITTEE: An Evaluation Committee consisting of at least three members assembled by the Town will review and evaluate each proposal. Proposals will be evaluated to determine those that best meet the needs of the Town. The proposals will be evaluated on both qualifications and the technical merits of the firm. Proposals will be evaluated in accordance with the rating system listed in Section 6 below.

*This area left intentionally blank.*

- 5.2 **RATING SYSTEM:** The Evaluation Committee will rate all proposals utilizing the Weighted Rating System shown in Section 6.2. The average of the Total Weighted Ratings assigned by the Evaluation Committee members will be used to rank the proposals.
- 5.3 **EVALUATION COMMITTEE MEETING(S):** The Evaluation Committee will first meet on September 27, 2023 at 202 East Main Street, Dundee, FL.
- 5.4 **SUBMITTAL RANKING:** The committee will select those submissions, in their sole determination, that best meet the Town's need based upon its evaluation of all proposals.
- 5.5 **PRESENTATIONS:**
- 5.5.1 At the sole determination of the Town, firms may be required to make a presentation of their proposal. This will provide an opportunity to clarify or elaborate on the proposal, but will not, in any way provide an opportunity to change any items in the original proposal.
- 5.5.2 If presentations are determined to be necessary, the Town Clerk shall coordinate presentations and notify the selected firms.
- 5.5.3 Each proposer will be notified in writing at least ten (10) days in advance of presentation date if a presentation is necessary.
- 5.6 **REJECTION OF PROPOSALS:** The Town reserves the right to reject all proposals. In the event the Town does so, it shall provide in writing to all proposers the reasons for its rejection.
- 5.7 **MODIFICATIONS TO PROPOSALS:** The Town reserves the right to request at any time, that the proposer modify their proposal to meet the needs of the Town more fully. The Town also reserves the right to negotiate with the proposer, any changes it deems necessary, and to waive minor irregularities in the bid process.
- 5.8 **REQUESTS FOR ADDITIONAL INFORMATION:** The proposer shall furnish such additional information as the Town of Dundee may reasonably require. The Town reserves the right to make investigations of the qualifications of the proposer as it deems appropriate.

## **6.0 EVALUATION CRITERIA**

- 6.1 **RFQ EVALUATION CRITERIA:** The Statement of Qualifications (SOQ) submitted by the proposing firm must include information documenting how the firm meets the evaluation criteria described below, and will be evaluated based on the criteria and weighting identified below. Submittals will not be returned to the firms submitting their SOQ. The Town reserves the right to request additional information from Proposers subsequent to the receipt of proposals.

### **Proposal meeting minimum requirements of RFQ (5 Points):**

1. Provide a general description of the firm and/or team that is proposing to provide professional consulting services. Explain the legal organization of the proposed firm or team.
2. List the Florida professional (Engineer, Surveyor, Environmental, Hydrologic, Planning, Landscape Architect, etc.) and applicable licenses held by the firm/team. Provide the license number and explain if held by an individual or firm.

### **Organizational resources (10 points):**

1. As part of the evaluation process, the Town has the responsibility of taking into account the size and complexity of the project/tasks and be assured that the firm/team has the organizational and financial resources required to successfully deliver this project/task. Please describe your operational stability, corporate financial resources, and insurance limits.
2. Identify any contract or subcontract held by the firm or officers of the firm, which has been terminated within the last five (5) years. Identify any claims arising from a contract, which resulted in litigation or arbitration within the last three (3) years. Briefly describe the circumstances and the outcomes.

**Experience and Qualifications (20 Points):**

1. Identify comparable or similar projects in which the firm is submitting qualifications for each project identified, provide the following:
  - a. Description of project
  - b. Final cost of effort
  - c. Completion dates (if applicable)
  - d. Name of client
  - e. Experience with implementation, coordination and funding plans.
  - f. Reference information, per project (one current contact name and title with telephone number and e-mail address)

**Understanding the project and approach to performing the required services (30 points):**

1. Describe the approach, project management and organization that will provide support to the project. Describe systems used for planning, scheduling, estimating and managing progress. The firm/team's experience in qualifications submitting for should be included.
2. Outline of a pragmatic approach to achieving the Town's goals and objectives while minimizing disruption of Town activities and to the residents.
3. Briefly describe the firm's experience on quality control, dispute resolution, and stakeholder engagement.

**Team member Qualifications & Organization (20 points):**

1. Provide an organization chart showing key personnel. Including ability to coordinate with state and federal agencies on permitting and funding. Include a resume for each key person identified.

**MOB/WOB/Disabled Veteran & Veteran Owned Business Utilization (5 points):**

1. Provide the potential utilization of any MOB/WOB/Disabled Veteran or Veteran owned businesses. Include certifications and description of services.

**Performed site visit to at least one (1) Wastewater Treatment Facility (WWTF) and Water Treatment Facility (WTF) within the past 2 years (5 points).**

**Intent/capacity to affect the local economy through the use of local labor, vendors, sub-contractors and resources (5 points):**

1. Describe your firm's approach to maximize utilization of local resources, to include as a minimum, local suppliers, equipment providers, subcontractors, and consultants. Identify the location of the firm's principal office and the home office location of key staff on this project. Identify local (i.e. presently living or relocating to the area) vs. non-local staffing of your team, and the percent (%) of work expected to be done locally.
2. Any of the firm's offices can be considered as the firm's principal office for the purposes of this RFQ; as long as the location is the home office of key staff on this project and where actual work will be performed.

**SUBMITTAL EVALUATION & SCORING**

Each section to be evaluated is identified and weighted independently. The score for each section should be marked clearly in the subtotal box. The final score will be the sum of each of the subtotal scores.

**Firm Name:** \_\_\_\_\_

<b>EVALUATION FORM</b>		
<b>EVALUATION CRITERIA</b>	<b>WEIGHT</b>	<b>SUBTOTAL</b>
Meeting Minimum Requirements of RFQ	5 points 0-5	
Organizational Resources	10 points 0-10	
Experience and Qualifications	20 points 0-20	
Work Approach & Availability of Resources	30 points 0-30	
Team Member Qualifications & Organization	20 points 0-20	
MOB/WOB/Disabled Veteran & Veteran-Owned Business Utilization	5 points 0-5	
Preformed recent site visit to at least one (1) treatment facility within the past 2 years (5 points)	5 points 0-5	
Intent/Capacity to affect the local economy through the use of local labor, vendors subcontractors and resources	5 points 0-5	
<b>TOTAL WEIGHTED RATING:</b>	<b>100</b>	

**Evaluator:** \_\_\_\_\_

The Town Clerk, or designee, will initiate any necessary communication with a proposer to obtain information or clarification to allow the Evaluation Committee to properly and accurately rate the submissions.

## **7.0 CONDITIONS OF PROPOSALS**

- 7.1 **LATE PROPOSALS:** Proposals received by the Town after the time specified for receipt will not be considered. Proposers shall assume full responsibility for timely delivery of the proposals to the location designated for receipt of proposals.
- 7.2 **COMPLETENESS:** All information required by this Request for Qualifications must be supplied to constitute a responsive proposal.
- 7.3 **PROPOSER'S CERTIFICATION FORM**
- 7.3.1 Each proposer shall complete the "Proposer's Certification" form included with this Request for Proposal, and submit the form with the proposal. The form must be acknowledged before a notary public and have the notary seal affixed. Proposals will be rejected if the Proposer's Certification is not submitted with the proposal.
- 7.3.2 By submitting a proposal, the proposer certifies they have fully read and understand the proposal method and have full knowledge of the scope, nature, and quality of work to be performed.
- 7.4 **DRUG-FREE WORKPLACE CERTIFICATION FORM:** By submitting the Drug Free Workplace Form as part of this RFQ, you are certifying that your company is a drug-free workplace in accordance with § 287.087 of the Florida Statutes.
- 7.5 **PROPOSER'S WARRANTY:** The proposer acknowledges and warrants that no one was paid a fee, commission, gift, or other consideration contingent upon receipt of an award for the services and/or supplies specified in this RFQ.
- 7.6 **PUBLIC OPENING:** All proposals will be publicly opened and the list of proposers read aloud at the Town Hall, Town of Dundee, 202 East Main Street, Dundee, Florida 33838, at the time specified and will be made available for public inspection within thirty (30) days after the proposal opening or when an award decision is made, whichever is earlier.
- 7.7 **PROPERTY OF THE TOWN:** All proposals received from proposers in response to this RFQ will become the property of the Town of Dundee and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the Agreement shall become the exclusive property of the Town.
- 7.8 **AWARD PRESENTATION:** The Town will provide the staff recommendation to the Town Commission, at a duly notice public meeting, Tuesday, October 10, 2023 , to enter into the Agreement with the top-ranked firm(s) or to reject all proposals.



## **8.0 TERMS AND CONDITIONS OF CONTRACT**

### **8.1 GENERAL CONDITIONS:**

Proposers are required to submit their proposal(s) subject to and upon the following express conditions:

- a) Proposers shall thoroughly examine the specifications, instructions, all other Contract Documents (as defined by **8.2**), visit the site of this project (if applicable) and fully acquaint itself, at its own risk, with all conditions which may affect completion of this project and/or delivery of bid items. Proposers, subcontractors and suppliers are encouraged to attend a pre-bid conference and site visit if announced in the advertisement for bid and/or included in specifications. Work areas to be examined during the site visit may contain hazardous materials or conditions. Attendees should review the information and safety precautions set forth in the Bid Documents to determine for themselves appropriate protective clothing or equipment. Attendees further agree to indemnify and hold the Town of Dundee harmless from any and all claims of personal injury arising from their participation in the site visit.
- b) These Terms and Conditions and any Contract Documents related hereto are subject and subordinate to any existing or future state, federal, or local law, regulation, or written policy, which may be applicable hereto, including any applicable building codes.
- c) Notwithstanding anything in this Request for Qualifications (the "RFQ") to the contrary, the obligation of the Town of Dundee (the "Town") to furnish payment is expressly subject to appropriation(s) of sufficient public funds by the Town Commission of the Town of Dundee, Florida. In the event the Town Commission of the Town of Dundee fails to appropriate sufficient funds to satisfy the payment obligations of any kind or type, the Town and/or successful proposer may immediately terminate the Agreement entered into pursuant to this RFQ and be released from any future responsibility or liability thereunder.

d) **PUBLIC RECORDS:**

Town and Consultant/Contractor (defined by **8.2**) agree that Consultant/Contractor shall comply with Florida's public records laws to specifically include the following:

Public Records. Consultant/Bidder/Contractor agrees to:

- i) Keep and maintain public records required by the public agency to perform the service.
- ii) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or as otherwise provided by law.

- iii) 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 public agency.
- iv) Upon completion of the Contract (as defined in **8.2**), transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor 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 Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 863-438-8330, [tdouthat@townofdundee.com](mailto:tdouthat@townofdundee.com), P.O. Box 1000, 202 East Main Street, Dundee, Florida 33838.**

- e) If the Contractor does not comply with a public records request, the Town shall enforce the Contract provisions which may include immediate termination of the Contract.
- f) It shall be understood and agreed that by the submission of a proposal, the Contractor, if awarded a contract, shall save harmless and fully indemnify the Town and any of its officers, or agents from any and all damages that may, at any time, be imposed or claimed for infringement of any patent right, trademark, or copyright of any person or persons, association, or corporation, as the result of the use of such articles by the Town, or any of its officers, agents, or employees, and of which articles the Contractor is not the patentee, assignee, licensee, or lawfully entitled to sell same.
- g) It is the intent of the Town that this RFQ promotes competitive bidding. It shall be the proposer's responsibility to advise the Town at the address noted on the cover letter, if any language, requirements, etc. inadvertently limits the requirements stated in this RFQ to a single source. Such notification shall be received in writing not later than ten (10) days prior to the bid opening date.
- h) Proposers must possess any applicable business, contractor, or occupational licenses at the time of submission of the bid. The Town may request proof of such licensure. Proposers shall also obtain all permits required for this project.
- i) The Town shall be entitled to rely on the written representations of the proposer. No claims shall be paid by the Town unless in writing and approved by the Town. Additionally, sovereign immunity is not waived as to any verbal representations or comments made by the Town.
- j) Unless detailed elsewhere in the Contract Documents, proof of insurance naming the Town as an additional insured shall be required of the successful proposer (on any project requiring work, labor, and/or installation on Town property) with the following minimum coverage: workers compensation, general liability, and automobile insurance in an amount and form acceptable to the Town, with limits of not less than one-million dollars and zero cents (\$1,000,000.00).

## 8.2 DEFINITIONS:

Words used in the RFQ and/or Contract Documents any and all attachment(s) and/or exhibit(s) incorporated and made a part hereof shall possess their everyday and ordinary meaning, provided however, that where one (1) of the following listed terms is used, such term(s) shall possess the corresponding meaning, as follows:

- a) **ACCEPTANCE:** The Seller shall be bound by the Purchase Order and its terms and conditions when it delivers the goods ordered or render the services ordered by the Town.
- b) **APPLICABLE LAW:** Any contract entered into pursuant to this bid shall be construed in accordance with the laws of the State of Florida. Venue for any action or proceeding concerning this contract shall be in the State Courts of Polk County, Florida.
- c) **CHANGES:** The Town, without invalidating the Contract, may order changes, including additions, deletions, or modifications. The Parties recognize that said changes may affect price and time for performance, in which event appropriate adjustments will be considered. All such changes in the work shall be authorized in writing, signed by the Town Manager or his designee, or the Town Clerk in a manner consistent with contract documents. The price and the time for performance may be changed only by Change Order Request. By written instructions to the Consultant/Contractor, the Town may make minor changes in the work which are consistent with the purpose of the work and which do not change the contract price or time for completion. Procurement is to be notified of any proposed changes in: (a) materials used, (b) manufacturing process, or (c) construction. However, changes shall not be binding upon the Town unless evidenced by a Change Order Request issued and signed by the Town Clerk.
- d) **TOWN:** The Town of Dundee, Florida or its authorized representative.
- e) **CONTRACT:** The Agreement executed by the Town and the Consultant/Contractor, and shall include all Contract Documents.
- f) **CONSULTANT/CONTRACTOR:** The successful bidder who enters into a Contract with the Town to complete the project.
- g) **DEFAULT:** Default in promised delivery of supplies, completion of project, or failure to meet specifications authorizes the Town to terminate the Consultant/Contractor's right to proceed with the order/work by giving the Consultant/Contractor written notice. The defaulting Consultant/Contractor may, at the discretion of the Town, be charged the increase in costs of obtaining the goods/services elsewhere.
- h) **CONTRACT DOCUMENTS:** The RFP; Terms and Conditions; Agreement; Bond; Performance Bond; Maintenance Bond; Contract Bond; Special Provisions; Specifications; Technical Specifications; Proposal and Bid Form; Engineering Plans and/or Drawings; Addenda issued before, during and after the bidding period for the RFQ; Change Orders issued after the Contract is let; and any other document incorporated by reference and/or annexed hereto.
- i) **INDEMNIFICATION:** As specified in the bid documents.
- j) **INSPECTION:** The goods and services purchased are subject to the inspection and approval of the initiating department. The Town reserves the right to reject goods and services which do not conform to provisions of the Purchase Order.
- k) **INSURANCE:** As specified in the Contract Documents.

- l) **LIMITATION ON MUNICIPAL INDEMNITY:** To the extent that the contract or agreement calls for the Town to indemnify any party thereto, the following sentence shall be appended to the indemnity and shall control the indemnity as if set forth therein:
  - i) "Provided, however, that regardless of whether any such obligations incurred hereunder are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the Town of Dundee under this indemnification provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to section 768.28, Florida Statutes, as that section existed at the inception of this Contract or Agreement." Provided further, no waiver of the Town's sovereign immunity is intended to be made herein.
  - ii) The addition of this language shall not be construed to create Town indemnifications where none are expressly made in the terms and conditions of the contract or agreement.
- m) **STATEMENT OF ASSURANCE:** No bids submitted shall be considered unless the Bidder warrants that upon execution of a Contract with the Town it will:
  - i) not engage in employment practices that have the effect of discriminating against employees or prospective employees because of race, color, religion, sex, national origin, age, handicap, or marital status
  - ii) will submit such reports as the Town may thereafter require to assure compliance.
- n) **SUB-CONTRACTOR:** An individual, firm, company, corporation, association, society or group which enters into a contract with the Consultant/Contractor to do a portion of the work on this project.
- o) **TITLE:** The risk of loss of goods covered by the Purchase Order shall remain with the Seller until the goods have been delivered to a designated site and actually received by the Town. Any damage to the material and equipment, or loss of any kind, occasioned in transit shall be borne by the Seller.
- p) **WARRANTY:** The Consultant/Contractor shall not incorporate in the work of a project any materials or equipment subject to a chattel mortgage, a conditional sales contract, or any other agreement permitting a Vendor to retain an interest. The Consultant/Contractor shall warrant clear title to all materials and equipment incorporated in the work; when the project is completed, the Consultant/Contractor shall deliver to the Town the improvements it has incorporated free of any lien or claim. The provisions of this section shall be included in all contracts with Vendors and Sub-Contractors. Vendors who furnish materials without a formal contract shall be given notice, by Consultant/Contractor that this provision exists.

### **8.3 INTERPRETATIONS OR ADDENDA:**

- a) No oral interpretation will be made to any Proposer as to the meaning of the Contract Documents or any part thereof--to include any error, omission, discrepancy or vagueness. Every request for such an interpretation shall be made in writing to the Town Clerk. Any inquiry received prior to the cut-off time and date for questions will be given consideration. Where necessary, interpretations made to a Proposer will be in the form of an Addendum to the Contract Documents, and when issued, will be on file in the office of Town Clerk. In addition, all Addenda will be posted for review by the General Public on the Town web site.
- b) Notification will be emailed to vendors who are registered for the RFQ on the web site.

- c) The Town shall not be responsible for the safe delivery of the Addenda/email notification. It shall be the Proposers' responsibility to make inquiry as to the Addenda issued. All such Addenda shall become part of the Contract Documents and all Proposers shall be bound by such Addenda, whether received or not.

#### 8.4 PROTEST PROCEDURES:

The Town encourages prompt and fair handling of all complaints and disputes with the business community. In order to resolve disputed matters in a fair, timely and equitable manner, without fear of retribution on the part of a vendor or person, the following shall apply:

- a) All formal responses to the RFQ shall include the following statement: **"NOTE: THE FAILURE TO FOLLOW THE BID PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIME FRAMES PRESCRIBED HEREIN AS ESTABLISHED BY THE TOWN OF DUNDEE, FLORIDA, SHALL CONSTITUTE A WAIVER OF BIDDERS PROTEST AND ANY RESULTING CLAIMS."**
- b) **RIGHT TO PROTEST:** Any aggrieved, actual, or prospective bidder in connection with the RFQ may protest to the Town Manager of the Town prior to the award of a contract by the Town Commission of the Town of Dundee.
- c) **NOTIFICATION:** The Town shall post all recommendation of awards available for review by the General Public.
- d) **INITIAL NOTICE:** Any person adversely affected by an intended decision or action with respect to the initial recommendation of award of any bid or action shall file a written notice of intent to file a protest. For the purpose of computation of time, the initial notice of intent to file a protest must be received by the Town Manager no later than 3:00 p.m. on the third (3rd) workday following the date of the notice of the initial recommendation of award (excluding Saturdays, Sundays and legal Town holidays).

In addition, a non-refundable protest bond (the "Bond") in the amount of one thousand dollars and zero cents (\$1,000.00) in the form of a cashier's check payable to the Town shall be submitted with the initial notice of intent to file a protest. The initial notice of intent to file protest shall be in writing and shall state the basis of the protest (recommendation of award protest or other) and clearly indicate that its purpose is to serve as the initial notice of intent to file a protest. Failure to clearly indicate its intent or failure to provide a Bond shall constitute a waiver of the right to seek any remedy provided under these protest procedures.

Upon the timely receipt of an initial notice of intent to file a protest and the required Bond, the Town shall toll (put on hold) any further actions related to the recommendation of award (except as noted below). Should the affected party decide to withdraw its initial notice of intent to file a protest during the tolled action the Bond will be refunded in full. This is the only reason the Town will refund the Bond other than a finding in favor of the protestor.

**If during tolled action, the Town Manager determines that an Emergency Purchase (as defined by the Code of Ordinances of the Town of Dundee) is necessary, action may be taken to secure the goods or services.**

- e) **FORMAL NOTICE:** Any person who has filed an initial notice of intent to file a protest, as described above, shall file a formal written protest within ten (10) calendar days after the date of the filing of the initial notice of intent to file a protest. Any amendment to the formal written protest shall be in writing and received by the Town Manager within ten (10) calendar days of the date of the initial notice of intent to file a protest. No amendments to the protest will be allowed after the ten (10) calendars day period has expired.

**The formal written protest shall contain the following:**

- i) Town RFQ number and/or title (if applicable);
- ii) Name and/or address of the Town department, division or agency affected; iii) The name and address of the affected party;

iv) The title and position of the person submitting the protest; v)

A statement of disputed issues of material fact;

- vi) If there are no disputed material facts, the written letter must so indicate; vii)

Concise statement of the facts alleged;

- viii) Statement identifying with specificity the rule(s), regulation(s), statute(s), ordinance(s), and/or constitutional provision(s) entitling the affected party to the relief requested;

- ix) Statement identifying with specificity the relief which an entitlement is alleged; and x) Such other information as the affected party deems to be material to the issue.

- f) **PROTEST MEETING:** The Town will notify all parties and schedule a protest meeting. The protest will be presented to the Protest Committee, which shall be made up of three (3) members consisting of the Town Manager or his/her designee who shall serve as the Chairperson, the Town of Dundee Finance Director or his/her designee and a designated member of the Purchasing Review Committee. The Town Attorney or designee shall be present and act in an advisory capacity to the Protest Committee.
- g) The Protest Committee shall meet with the protesting party within fourteen (14) business days of receipt of the formal written protest. The response time may be extended, if necessary. All affected parties will be notified of the location, date and time of the bid protest meeting and will be allowed the opportunity to make their presentation to the Bid Protest Committee. The parties may bring a representative if they so choose.
- h) The Town Manager shall present the background for the protest to the RFQ Protest Committee. The purpose of the protest meeting is: (1) to question and review the basis of the protest; (2) to evaluate the facts and merits of the protest; and (3) gather information in order to make a decision.
- i) The agenda for the bid protest meeting will be:
  - i) The background as to why the recommendation for award was made or why the vendor was not selected.
  - ii) The protesting party or their representative will speak to how they were adversely affected by the decision of the Town.
  - iii) Any other affected parties or their representative will be given the opportunity for rebuttal and to present any facts that they deem are relevant to the protest.
  - iv) During the meeting, the Bid Protest Committee may ask questions of all parties as necessary.
- j) The RFQ Protest Committee will render their decision in writing within five (5) business days of the RFQ protest meeting.

- k) The Town Manager may conduct an evidentiary hearing if there are disputed issues of material fact. The Town Manager will conduct a review and make a final written decision within ten (10) business days after the rendering of the decision of the RFQ Protest Committee. **The Town Manager's decision shall be final and binding. No further protests of the action in question will be heard by the Town.**
- l) Any person who is aggrieved by the final and binding decision of the Town Manager shall be entitled to a review of the final and binding decision by the 10th Judicial Circuit Court of Polk County, Florida, by filing an appropriate petition with the Clerk of the Court within 30 calendar days following the rendering of the Town Manager's final and binding decision.

## **8.5 RESPONSES:**

- a) Submittals must be received no later than the time and date, and at the location specified for submission in the Contract Documents. No proposal will be accepted after the specified deadline or at any location other than that specified in the Contract Documents. Any proposal received late or because of submittal to another location will be maintained unopened in the bid file. Proposals properly received will be opened at the time and place stated in the Contract Documents.
- b) The Town Clerk may elect to cancel or postpone a bid at any time prior to the time and date set to open proposals.
- c) Sealed bids, proposals, or replies received by the Town pursuant to an Request for Qualifications/Request for Proposals are exempt from disclosure under s.119.07(1) and s.24(a), Art. I of the State Constitution until such time as the Town provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.
- d) If the Town rejects all bids, proposals, or replies submitted in response to a Request for Qualifications/Request for Proposals and the Town concurrently provides notice of its intent to reissue the Request for Qualifications/Request for Proposals, the rejected bids, proposals, or replies remain exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the Town provides notice of an intended decision concerning the reissued Request for Qualifications/Request for Proposals or until the Town withdraws the reissued Request for Qualifications/Request for Proposals. A bid, proposal, or reply is not exempt for longer than 12 months after the initial Town notice rejecting all bids, proposals, or replies.
- e) Proposal and a non-collusion affidavit should be submitted on forms furnished by the Town and completed by the Bidder without additions, modifications, deletions, and erasures. Proposals not submitted on attached bid form may be rejected. Proposals must be typed or printed in ink. All corrections made by Bidder to their bid must be initialed. Each Proposer shall deliver its sealed proposal to the location specified on the Request for Qualifications/Request for Proposals, in an envelope bearing the name of the Proposer, the name of the bid and the time and date of the bid opening. It is the Proposer's responsibility to assure that its bid is delivered at the proper time and place of the proposal opening. Proposals which are not received, as set forth herein, may not be considered. **The official time shall be the time that is displayed on the desk telephone of the Town of Dundee Town Clerk.**
- f) Telegraph, telephone, e-mail, electronically transmitted, or facsimile (FAX) bids will not be considered. Bids may be modified, in writing, provided such modification is received at the location specified for submission in the Contract Documents prior to the time and date set for the proposal opening. Each Proposer shall be solely responsible for the costs associated with preparation and submittal of its proposal.
- g) **RESPONSES RECEIVED AFTER THE TIME AND DATE SET FOR THE PROPOSAL OPENING WILL NOT BE CONSIDERED.**

## 8.6 OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES:

- a) The Town of Dundee encourages and agrees to the successful proposer extending the pricing, terms, and conditions of this solicitation and any resulting contract (if there is any such resulting contract) to other governmental entities at the discretion/option of the successful proposer.

## 8.7 MISTAKES; INACCURACIES; INCOMPLETE INFORMATION:

- a) Bidders are expected to examine the specifications, delivery schedule, bid prices (if applicable), and all instructions pertaining to supplies and services. Failure to do so will be at bidder's risk.
- b) **In the purchasing of goods or supplies, without labor, where the bid contains a mistake in extension or total bid amount, the unit price will govern.** The Town shall be entitled to presume that a mistake has been made where the unit price and total or extension do not equate.
- c) The Town reserves the right to contact bidders, telephonically or in writing, to clarify inconsistent, inaccurate, or confusing information regarding the proposal submitted. As well, the Town reserves the right to demand the execution or re-execution of the proposal, affidavits, or certification required to be accompanied with the bid proposal, when it appears to the Town that the deficiency was an oversight in good faith. It shall be presumed that proposals submitted without a single signature on an affidavit or on the proposal is non-responsive and shall not be considered for clarification or correction.

## 8.8 STATEMENT OF BIDDER'S QUALIFICATIONS:

- a) Each bidder shall, upon request of the Town, submit a statement of the Bidder's qualifications, its experience record in furnishing a particular commodity or constructing any type of improvements embraced in the Agreement, its organization and equipment available for the work contemplated, and, when specifically requested by the Town, appropriate financial information which would assist in determining bidders ability and solvency to perform work contemplated by the Agreement. The Bidder may also be requested to furnish references which the Town may use to verify claims of competency. The Town shall have the right to take such steps as it deems necessary to determine the ability of the Bidder to perform its obligations under the Contract; and the Bidder shall furnish the Town all such information and data for this purpose as it may request. The right is reserved to reject any Bid where an investigation of the available evidence or information does not satisfy the Town that the Bidder is qualified to carry out properly the terms of the Contract.

## 8.9 STATE LAW COMPLIANCE:

The Contract shall comply with Florida State Statutes:

- a. **Scrutinized Companies.** Section 287.135 of the Florida Statutes states that a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with the Town for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the *Scrutinized Companies that Boycott Israel List*, created pursuant to Section 215.4725 of the Florida Statutes or is engaged in a boycott of Israel; or for One Million Dollars (\$1,000,000.00) or more if, at the time of bidding on submitting a proposal for, or entering into or renewing a contract, the company is on the *Scrutinized Companies with Activities in Sudan List*, the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*, created pursuant to Section 215.473 of the Florida Statutes, or is engaged in business operations in Cuba or Syria. By executing this Contract, Contractor certifies that it does not and did not at any time since the submission of a response to the initial solicitation participate in a boycott of Israel; that it is not on the *Scrutinized Companies that Boycott Israel*



*List, Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and that it does not engage in business operations in Cuba or Syria. Contractor understands that a false certification may subject it to civil penalties, attorneys' fees and costs pursuant to Section 287.135 of the Florida Statutes and that the Town may terminate this Contract at the Town's option if the Contractor is found to have submitted a false certification.*

- b. **Public Entity Crimes; Convicted Vendor List.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. By executing this Contract, Contractor certifies that it is not on the convicted vendor list.
- c. **Drug-Free Workplace.** By executing the Contract, Contractor certifies that it has a drug-free workplace and has a substance abuse policy in accordance with and pursuant to Section 440.102 of the Florida Statutes.
- d. **E-Verify.** By entering into the Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095(5)(a), Florida Statutes, to register with and use the E-Verify system to verify the work authorization status of all new employees of the Contractor and any subcontractor hired by the Contractor. If the Contractor enters into a contract with a subcontractor, the subcontractor must provide the Contractor with an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.
- e. **No Consideration of Social, Political, and Ideological Interests.** Contractor acknowledges receipt of notice from the Town of the provisions of Section 287.05701 of the Florida Statutes which prohibits local governments from giving preference to a prospective contractor based on the prospective contractor's social, political or ideological interests or requesting documentation from, or considering, a prospective contractor's social, political, or ideological interests when determining if the prospective contractor is a responsible vendor. Contractor affirms and agrees that the Town did not request any documentation about, or give any consideration to, the Contractor's social, political, or ideological interests in the award of the Contract.
- f. **Contracting with Foreign Entities.** By executing the Contract, Contractor certifies that it is not owned by the government of the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic (collectively "Foreign Countries of Concern"), nor is it owned by any agency of or any other entity of significant control of any such government. Further, Contractor certifies that no government of a Foreign Country of Concern has a "controlling interest" in Contractor as the term is defined in Section 287.138(1)(a) of the Florida Statutes, nor is the Contractor organized under the laws of a Foreign Country of Concern, nor does the Contractor have its principal place of business located in a Foreign Country of Concern. If this Contract permits the Contractor to access the personal identifying information of any individual, Contractor agrees to notify the Town in advance of any contemplated transaction that would cause Contractor to be disqualified from such access under Section 287.138 of the Florida Statutes. Contractor agrees to furnish the Town with an affidavit signed by an officer or representative of the Contractor under penalty of perjury at any time and upon request that the statements in this paragraph are true and correct.

## **8.10 EQUAL EMPLOYMENT OPPORTUNITY:**

- a) No bids submitted shall be considered unless the Bidder warrants that upon execution of a Contract with the Town, it will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, sex, national origin, age, handicap, or marital status, and will submit such reports as the Town may thereafter require to assure compliance.

## **8.11 \*NOTICE\***

- a) **A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.**
- b) **A company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more if that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company: (a) Is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a boycott of Israel;**
- c) **Any contract for goods and/or services in and amount of \$1,000,000.00 or more will be subject to termination by the Town if the contractor is found to have been placed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Sector List, or been engaged in business operations in Cuba or Syria or has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel.**

## **8.12 UNAUTHORIZED ALIEN(S):**

- a) The Contractor agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The Town shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the Town. As part of the response to this solicitation, the successful vendor will complete and submit the attached form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS".
- b) Employers may avail themselves of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.
- c) If your company wishes to avail themselves of this program, you can register online for E-Verify at <https://www.vis-dhs.com/EmployerRegistration>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you as the employer, the SSA, and DHS. An employee who has signatory authority for the employer can sign

the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit [www.dhs.gov/e-verify](http://www.dhs.gov/e-verify) or contact USCIS at **1-888-464-4218**.

### **8.13 ACCIDENT PREVENTION:**

- a) No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.
- b) The Consultant/Contractor shall exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of Consultant/Contractor's prosecution of the work. Machinery, equipment and all hazards shall be guarded in accordance with safety provisions to the extent that such provisions are not in conflict with applicable laws.
- c) The Consultant/Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Consultant/Contractor shall promptly furnish the Town with these reports.

### **8.14 ASSIGNMENT OR NOVATION:**

- a) The Consultant/Contractor shall not assign or transfer, whether by assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the Town; provided, however, that assignments to banks, trust companies or other financial institutions, of payments due to Consultant/Contractor, may be made without the consent of the Town.

### **8.15 PATENT INFRINGEMENT:**

- a) The Consultant/Contractor shall protect and indemnify the Town, its officers, its agents, and its employees and hold all free of liability and unharmed by any suit or claim which results from the incorporation of any patented or unpatented invention, device, process, or system in the work of this project.

### **8.16 PROGRESS OF WORK:**

- a) If the Consultant/Contractor fails to proceed with the diligence required to complete the project within the contract time or within an extension of that time the Town may grant, the Town may terminate the Consultant/Contractor's right to proceed with the work by giving it written notice.
- b) If the Town terminates the Consultant/Contractor's right to proceed, the Town may choose to proceed with the work, take possession of the materials on the project site, incorporate these materials in the work, and hold the Consultant/Contractor and its sureties liable for payment of excess costs the Town may incur, or demand the surety to complete the project as permitted under the terms and conditions of the performance bond. The execution of this Contract by Consultant/Contractor shall constitute an acknowledgment of the Surety's consent to this provision.
- c) If the Town does not terminate the Consultant/Contractor's rights to proceed, the Consultant/Contractor shall proceed with the work; in this event, it will be impossible to determine the actual damage the delay has caused. In lieu of payment of actual damage, the

Consultant/Contractor and its sureties shall be liable for the payment of the fixed, agreed, and liquidated damages as may be set forth in the Contract Documents for each calendar day of delay beyond the contract time.

### 8.17 CONSULTANT/CONTRACTOR PROVIDED INSURANCE:

i) The Consultant/Contractor shall, at its own expense, procure and maintain, with insurers acceptable to the Town (Owner), the types and amounts of insurance conforming to the minimum requirements set forth herein. The Consultant/Contractor shall not commence work until the required insurance is in force and evidence of insurance acceptable to the Owner has been provided to and approved by the Owner. As evidence of compliance with the insurance required herein, Consultant/Contractor shall furnish Owner with:

- (a) a fully completed satisfactory Certificate of Insurance (ACORD Form 25 or equivalent) evidencing all coverage required herein, with a copy of the actual notice of cancellation endorsement(s) as issued on the policies and a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of Owner's officials, officers and employees as Additional Insureds in the Commercial General Liability coverage;
- (b) the original of the policy(ies); or
- (c) other evidence satisfactory to Owner. Such evidence shall include thirty (30) days written notice of cancellation to the Owner for all coverage. With respect to Property Insurance, an appropriate Evidence of Property Insurance form (ACORD Form 28 or equivalent), or a copy of the policy itself shall be satisfactory evidence of insurance. Until such insurance is no longer required by this Contract, the Consultant/Contractor shall provide the Owner with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

#### (1) Workers' Compensation Insurance:

(a) Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council of Compensation Insurance, without restrictive endorsements. In addition to coverage for the Florida Workers' Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

- (i) Part One: "Statutory"
- (ii) Part Two: \$1,000,000 Each Accident  
\$1,000,000 Disease-Policy Limit  
\$1,000,000 Disease-Each Employee

#### (2) General Liability Insurance:

(a) Such insurance shall be no more restrictive than that provided by the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those required by ISO or the State of Florida or those described below. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- (i) Mold, fungus, or bacteria
- (ii) Terrorism
- (iii) Sexual molestation

(b) The Owner and the Owner's officials, officers and employees shall be included as an "Additional Insured" on a form no more restrictive than ISO Form (CG 20 10), Additional Insured - Owners, Lessees, or Contractors. The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

- (i) \$1,000,000 General Aggregate
- (ii) \$1,000,000 Products/Completed Operations Aggregate
- (iii) \$1,000,000 Personal and Advertising Injury
- (iv) \$1,000,000 Each Occurrence

(3) Automobile Liability Insurance:

(a) Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the work. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. Such insurance shall not be subject to any aggregate limit and the minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

- (i) \$1,000,000 Each Occurrence-Bodily Injury and Property Damage Combined

(4) Professional Liability Insurance:

(a) Such insurance shall be on a form acceptable to the Owner and shall cover the Consultant/Contractor for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required in the agreement. Coverage must either be on an occurrence basis; or, if on a claim made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have covered had the coverage been on an occurrence basis. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. The minimum limits (inclusive of any amount provided by an umbrella or excess policy) shall be:

- (i) \$1,000,000 Each Claim/Occurrence
- (ii) \$1,000,000 Annual Aggregate

The Professional Liability Insurance may be subject to a deductible not to exceed \$5,000 per claim.

- ii) All insurance policies provided by the Consultant/Contractor shall be endorsed to provide that the Insurer waives its rights against the Owner and Owner's officials, officers and employees.
- iii) Compliance with these insurance requirements shall not limit the liability of the Consultant/Contractor or its Subcontractors. Any remedy provided to the Owner by the insurance provided by the Consultant/Contractor and its Subcontractors shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the Consultant/Contractor) available to the Owner under this Contract or otherwise.
- iv) Neither approval nor failure to disapprove insurance furnished by the Consultant/Contractor shall relieve the Consultant/Contractor from responsibility to provide insurance as required by this Contract.
- v) The insurance provided by Consultant/Contractor shall apply on a primary basis. Any insurance, or self-insurance, maintained by the Town of Dundee shall be excess of, and shall not contribute with, the insurance provided by Consultant/Contractor.
- vi) Except where prior written approval has been obtained hereunder, the insurance maintained by Consultant/Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention. Consultant/Contractor shall pay on behalf of the Owner and Owner's officials, officers and employees any deductible or self-insured retention applicable to a claim against the Owner and Owner's officials, officers and employees.
- vii) Certificates of Insurance must be completed as follows:

1. Certificate Holder Town  
of Dundee  
202 East Main Street  
PO BOX 1000  
Dundee, FL 33838

2. Additional Insured for General Liability  
Town of Dundee and its officials, officers and employees

#### **8.18 INDEMNIFICATION BY CONSULTANT/CONTRACTOR:**

- a) The Consultant/Contractor shall indemnify and hold harmless the Town (Owner), and its officers and employees, from liabilities, damages, losses, and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Consultant/Contractor and persons employed or utilized by the Consultant/Contractor in the performance of this Contract.
- b) The remedy provided to an indemnitee by Paragraph a), shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.
- c) The remedy provided to an indemnitee by this Contract shall survive this Contract and shall not be limited in any manner by acceptance, final completion or final payment.
- d) A claim for indemnity pursuant to this Contract shall be commenced within the period established under Florida law for commencement of an action founded on the design, planning or construction of an improvement to real property.

- e) The provisions of this Article are severable and if, for any reason, any one or more of the provisions contained in the Article shall be held by a court of competent jurisdiction to be invalid, illegal, against public policy or unenforceable in any respect, the invalidity, illegality, being against public policy or unenforceability shall not affect any other provision of this Article which shall remain in effect and be construed as if the invalid, illegal, against public policy or unenforceable provision had never been contained in the Article.

**8.19 LIENS:**

- a) No liens of any type shall be allowed, including labor, materials, rentals, or services furnished.

**8.20 CONSTRUCTION AND CONSULTING EVALUATION:**

- a) The award of contracts by the Town of Dundee for construction and/or consulting services is based on the lowest responsive/responsible bid (for construction) or in accordance with the guidelines and requirements of FS 287.055 – Consultants Competitive Negotiation Act-CCNA (for applicable consulting services). In addition, the Town will consider the previous performance of any bidder who may have completed work for the Town of Dundee or other entity.
- b) The Construction and Consulting Evaluation Form shall be completed by the department head or his designee responsible for the project. The form shall be filled in upon the completion of the project and submitted to Procurement for retention.
- c) This form will be completed on all firms performing construction and/or consulting work for the Town of Dundee. Furthermore, the Town may, at its discretion, provide this form to other entities for whom the noted firm has completed work.

**9.0 STANDARD FORMS**

THE FORMS LISTED BELOW ARE TO BE COMPLETED AND SUBMITTED WITH YOUR PROPOSAL, AND ARE ATTACHED HEREWITH:

- 9.1 RFQ 23-01 SUBMITTAL COVER PAGE, Attachment A
- 9.2 ADDENDUM PAGE, Attachment B
- 9.3 LOBBYING CERTIFICATION FORM, Attachment C
- 9.4 NONCOLLUSION AFFIDAVIT OF PRIME BIDDER, Attachment D
- 9.5 AFFIDAVIT CERTIFICATION-IMMIGRATION LAWS, Attachment E
- 9.6 CERTIFICATION OF DRUG-FREE WORKPLACE, Attachment F

**NOTE: PLEASE ENSURE THAT ALL OF THESE DOCUMENTS ARE COMPLETED AND SUBMITTED WITH YOUR PROPOSAL.**

**FAILURE TO DO SO MAY RESULT IN YOUR PROPOSAL NOT BEING CONSIDERED FOR AWARD.**

**9.1 ATTACHMENT A**

**RFQ-23-01 Submittal Cover Page** (this does not count as part of the maximum page limit)

Date

\_\_\_\_\_  
Name  
of Company

\_\_\_\_\_  
Authorized  
Signature

\_\_\_\_\_  
Printed Name Title/Position

\_\_\_\_\_  
Physical  
Address

\_\_\_\_\_  
Town State Zip

\_\_\_\_\_  
Email  
address

\_\_\_\_\_  
Telephone  
Number / Fax Number

List all "Professional Association/Sub-Consultants" (companies that you will be in association with for this project):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Key Team members and addresses of principal office:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**9.2 ATTACHMENT B**

**ADDENDUM PAGE (RFQ 23-01)**

The undersigned acknowledges receipt of the following addenda to the Request for Qualifications (Give number and date of each):

Addendum No. Dated:



Addendum No.	_____	_____	Dated:
Addendum No.	_____	_____	Dated:
Addendum No.	_____	_____	Dated:
Addendum No.	_____	_____	Dated:

FAILURE TO SUBMIT ACKNOWLEDGMENT OF ANY ADDENDUM THAT AFFECTS THE SUBMITTAL IS CONSIDERED A MAJOR IRREGULARITY AND WILL BE CAUSE FOR REJECTION OF THE PROPOSAL.

NAME OF BUSINESS:  
\_\_\_\_\_

BY: \_\_\_\_\_  
SIGNATURE

NAME & TITLE, TYPED OR PRINTED: \_\_\_\_\_

**9.3 ATTACHMENT C**

**LOBBYING - 31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20**  
APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements *(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned [Proposer] certifies, to the best of his or her knowledge and belief, that:

- 9.3.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 9.3.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- 9.3.3 The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts

under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.**

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Proposer, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Signature of Proposer's Authorized  
Official  
Name and Title of Proposer's Authorized Official Date

**9.4 ATTACHMENT D**

NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says that:

Name

(1) He is \_\_\_\_\_ of \_\_\_\_\_, the  
Title Company Bidder that has submitted the  
attached bid;

(2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of his officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or has refrained from bidding in connection with such Contract; nor in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder; nor has fixed any overhead, profit or cost element of the Bid price, or the Bid price of any other Bidder; nor has

secured through any collusion, conspiracy, connivance or unlawful agreement, any advantage against the Town of Dundee or any person interested in the proposed Contract; and

- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of it's agents, representatives, owners, employees, or parties in interest, including this affiant.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Notary Name

My commission expires \_\_\_\_\_

**9.5 ATTACHMENT E**

**AFFIDAVIT CERTIFICATION  
IMMIGRATION LAWS**

TOWN OF DUNDEE WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

TOWN OF DUNDEE MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY TOWN OF DUNDEE.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**STATE OF:** \_\_\_\_\_

**COUNTY OF:** \_\_\_\_\_

The foregoing instrument was signed and acknowledged before me this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ who has produced (Print  
or Type Name)

\_\_\_\_\_ as identification.  
(Type of Identification and Number)

\_\_\_\_\_  
Public Signature Notary

\_\_\_\_\_  
Name of Notary Public Printed

\_\_\_\_\_  
Notary Commission Number/Expiration

## 9.6 Attachment F

### CERTIFICATION OF DRUG-FREE WORKPLACE

**IDENTICAL TIE BIDS** - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the purchasing of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME OF FIRM

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
STREET ADDRESS

\_\_\_\_\_  
VENDOR'S SIGNATURE

\_\_\_\_\_  
TOWN

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP

**MASTER CONTINUING PROFESSIONAL CONSULTING AGREEMENT FOR  
ARCHITECTURAL, ENGINEERING, PLANNING, AND VARIOUS CONSULTING  
PROFESSIONAL SERVICES BETWEEN THE TOWN OF DUNDEE, FLORIDA AND  
CONSULTANT**

THIS MASTER CONTINUING PROFESSIONAL CONSULTING AGREEMENT FOR ARCHITECTURAL, ENGINEERING, PLANNING, AND VARIOUS CONSULTING PROFESSIONAL SERVICES (hereafter the “Agreement”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (hereafter the “Effective Date”), by and between The Town of Dundee, Florida, a Florida municipal corporation (hereafter the “TOWN”), and \_\_\_\_\_, \_\_\_\_\_ (hereafter the “CONSULTANT”).

**FACTUAL RECITALS**

**WHEREAS**, the TOWN as required by Florida Law advertised a Request for Qualifications 23-01 (“RFQ 23-01”) for the provision of architectural, engineering, planning, and various professional consulting services; and

**WHEREAS**, the TOWN desires to retain the CONSULTANT to furnish certain architectural, engineering, planning and various professional consulting services presented herein in connection with the provision of municipal services by the TOWN to areas within the Corporate TOWN Limits and to unincorporated area(s) in Polk County; and

**WHEREAS**, the TOWN has recognized a need for architectural, engineering, planning and various professional consulting services on both a continuing and special project basis with regard to RFQ 23-01, sections:

2.2.1 Services Related to Utility Systems:

- Potable Water Treatment, Transmission and Distribution;
- Sanitary Sewer Treatment, Transmission and Collection;
- Geographic Mapping of Utilities and Infrastructure;
- Reclaimed Water Treatment, Transmission and Distribution;
- Route Surveys for Utility Projects;
- Surveying for Wastewater Treatment Plant (WWTP) Projects;
- Surveying for Water Treatment Plant (WTP) Projects;
- GeoDesign and Green Infrastructure Systems;

2.2.2 Services Related to Transportation System:

- Roads and Drainage;
- Bridges;
- Urban Transportation;
- Traffic Signage;
- Traffic Studies;
- Traffic Signals;
- Advanced Traffic Management System;
- Alternate Means of Transportation;
- Trails and Greenways;

2.2.3 Services Related to Solid Waste:

- Solid Waste Operation Planning;
- Route Studies;
- Waste Stream Studies;

2.2.4 Services Related to Parks and Recreation:

- Architecture Services Related to Parks and Facilities Design;
- Landscape Architecture;

2.2.5 Services Related to General Consulting Services:

- Architectural Services to a Project (including Landscaping);
- Geographic Information Systems (GIS);
- Boundary and Topographic Surveying;
- Legal Descriptions and As-built Surveys;
- Asset Management in Conjunction with Mapping and Inventory;
- Mapping of Municipal Boundaries;
- Geotechnical – Soils Analysis and Testing;
- Environmental – Wetland and Endangered Species;
- Floodplain Management;
- Hydrologic Investigations;
- Stormwater Planning and Modeling;
- Land Use Planning;
- Policy Analysis;
- Project Outreach and Communication;
- Development of Artistic Renderings and Conceptual Layouts.

Any other associated municipal functions within the TOWN’s service area(s) as further described in the TOWN’s Scope of Work set forth in RFQ 23-01 which Scope of Work is attached hereto as **Exhibit “A”**, and as may be specified in subsequent TASK ORDER Authorizations, hereinafter called the “TASK ORDER(s)”; and

**WHEREAS**, the TOWN selected the CONSULTANT in strict accordance with Chapter 287.055 Florida Statutes, also known as the *Consultant’s Competitive Negotiations Act* (hereafter the “Act”) and found the CONSULTANT to possess the qualifications necessary to satisfactorily perform the work herein contemplated; and

**WHEREAS**, the CONSULTANT, having examined the scope of the architectural, engineering, planning, and various professional consulting services required for the services to be performed under this Agreement and/or any proposed TASK ORDER(s) issued hereunder, and having expressed its desire and willingness to provide such services, and having presented its qualifications to the TOWN in support of its expressed desires; and

**WHEREAS**, as a result of the aforementioned mutual understanding, the TOWN desires to enter into this Agreement with the CONSULTANT; and

**WHEREAS**, the CONSULTANT has agreed to provide professional architectural, engineering, planning, and various professional consulting services to the TOWN upon the terms and conditions hereinafter set forth; and

**WHEREAS**, it is intended that funds, if available, will be provided in the TOWN’s budgets as needed to pay the costs of the architectural, engineering, planning, and various professional consulting services; and

**WHEREAS**, it is in the best interests and will promote the health, safety and welfare of all citizens and residents of the TOWN for the TOWN and CONSULTANT to enter into this Agreement for architectural, engineering, planning, and various professional consulting services.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, the exchange of which is both acknowledged and deemed sufficient by the parties as binding, and *subject always* to availability of funding as determined by the TOWN's annual appropriations process, the TOWN agrees to retain the CONSULTANT and the CONSULTANT agrees to perform the agreed upon consulting work, both for a continuing nature and special project basis, as described in RFQ 23-01, and upon the following terms and conditions:

### **ARTICLE I. INCORPORATION OF RECITALS; DEFINITIONS**

The foregoing recitals are incorporated herein by the parties as true and correct statements which form the factual basis for entry into this Agreement between the TOWN and CONSULTANT.

Term(s) used in this Agreement and/or any TASK ORDER(S) shall possess the meanings, interpretations and/or definitions assigned herein, provided however, that where one (1) of the following listed terms is used in this Agreement, such term(s) shall possess the corresponding meaning, as follows:

*"Applicable Law"* means the Town of Dundee Charter, Town of Dundee Code of Ordinances, Town of Dundee Land Development Code, and any and all applicable statutes, laws, rules, regulations, charter provisions, ordinances and resolutions of the United States of America, State of Florida, Polk County, Town of Dundee, and any and all other public authority which may be applicable.

*"Town"* means the Town of Dundee, Florida, a Florida municipal corporation, and/or its authorized representative vested with home rule authority pursuant to the Municipal Home Rule Powers Act, Chapter 166 of the Florida Statutes, and Article VIII, §2 of the Florida Constitution; and the TOWN is therefore vested with governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, including the general exercise of any power for municipal purposes.

*"Town Code"* means the Town of Dundee Code of Ordinances and Town of Dundee Land Development Code.

*"Town Commission"* means the duly elected Town of Dundee Town Commission and/or governing body of the Town of Dundee.

*"Town Representative"* means the Town Manager, or her/his designated appointee, who is authorized to act on behalf of the TOWN in the administration of this Agreement. The Town Representative does not have the authority to waive or modify any condition or term of this Agreement.

*"Day(s)"* means calendar day unless specifically stated otherwise.

*"Calendar Day(s)"* means all days in a 365-day calendar year.

*"Business Day(s)"* means each calendar day which is not a Saturday, Sunday or a recognized holiday by the Town of Dundee, Florida.

*"Contract Documents"* means the RFQ 23-01; Terms and Conditions; Contract; Bond; Performance Bond; Maintenance Bond; Contract Bond; Special Provisions; Specifications; Technical Specifications; Proposal and Bid Form; Engineering Plans and/or Drawings; Addenda issued before, during and after the bidding period for the RFQ 23-01; Change Orders issued after the Agreement is let; and any other document incorporated by reference and/or annexed hereto.

*"Effective Date"* means, for purposes of calculating time periods and the commencement of the term of this Agreement, the date on which this Agreement is approved by the Town Commission at a duly noticed public meeting.

*"Indemnification"* means, for purposes of this Agreement, CONSULTANT shall hold harmless, indemnify, and defend the TOWN, its elected officials, appointed officers, and employees,



representatives, or agents, against any claims, action, loss, damage, injury, liability, tax, assessment, cost or expense of whatever kind (including, but not by way of limitation, attorneys' fees and court costs (in bankruptcy, trial and appellate matters in any judicial and/or administrative tribunal) arising out of and/or incidental to the CONSULTANT performance of this Agreement. Other specific references to the CONSULTANT duty to indemnify the TOWN and hold it harmless, which may be set forth herein, shall be construed as in addition to, and not as a limitation of the requirements of this section. The TOWN shall be entitled to recover its reasonable attorneys' fees, including trial and appellate, and court costs in the event judicial and/or administrative enforcement of this CONSULTANT indemnity is required.

“Term” means the duration of this Agreement which shall commence on the Effective Date and shall expire and/or terminate in accordance with the provisions set forth in **ARTICLE II** of this Agreement.

## **ARTICLE II. DESCRIPTION OF PROJECT AND TERM OF AGREEMENT**

It being the intent of this Agreement to provide a general basis for performing architectural, engineering, planning, and various professional consulting services, as yet not fully defined. Any service, project, job and/or task(s) shall be performed in strict compliance with the terms, conditions and covenants set forth by this Agreement and/or any TASK ORDER(S) issued hereunder; and, prior to the commencement of any service, project, job and/or task(s) by the CONSULTANT, the TOWN and CONSULTANT shall mutually agree in writing as to the starting date, scope of services and/or work, deliverables, time for completion, and any other term(s) and/or condition(s), which are not set forth in this Agreement, as related to a specific service, project, job and/or task(s) (hereafter referred to as the “TASK ORDER”). This Agreement shall continue in full force and effect for a period of **five (5) years** beginning on the Effective Date or until terminated in accordance with **Article XVIII** of this Agreement.

At the discretion of the Town Manager, this Agreement may be extended for an additional five (5), one (1) year term(s) for a total of ten (10) successive years without re-advertising under the Act. The above time periods may also be extended at the discretion of the Town Manager to complete any TASK ORDER(S) already in progress. For purposes of this Agreement, the phrase *in progress* shall be interpreted to mean that a TASK ORDER has been issued by the TOWN and accepted by the CONSULTANT.

## **ARTICLE III. BASIC SERVICES OF THE CONSULTANT**

This Agreement provides the general terms, obligations and conditions which shall control all work identified and/or described in this Agreement and/or any TASK ORDER(S) issued hereunder. The CONSULTANT, when so authorized by the TOWN, agrees to provide and perform such professional architectural, engineering, planning, and various professional consulting services as the TOWN may require, from time to time, including but not limited to, providing professional architectural, engineering, planning, and various professional consulting consultation and advice as set forth in the Scope of Work for RFQ 23-01 which Scope of Work is attached hereto as **Exhibit “A”** and incorporated herein by reference.

The CONSULTANT shall perform any and all services in a timely, efficient, and cost-effective manner and in accordance with the generally accepted standards of professional consultants. Unless modified in writing by both parties, the services to be performed by the CONSULTANT shall not be construed to exceed those services specifically described in each TASK ORDER.

The requested services may include, but shall not be limited to, the following:

### **Item 1. General Consulting Services**

- 1.1** The TOWN shall, from time to time, in its sole and absolute discretion, authorize the CONSULTANT in writing to provide services by means of a TASK ORDER under the terms of this Agreement. A

TASK ORDER shall, by mutual agreement of the parties hereto, set forth (1) the scope of services, (2) the time period(s) for performance, (3) method and amount of compensation, (4) the provisions of Articles I and II of this Agreement which are applicable, (5) the deliverables, if any (which are the items to be provided to the TOWN as a result of the services), and (6) the services, information, and data that can be provided by the TOWN to CONSULTANT.

- 1.2 The TOWN does not guarantee, warrant, or represent that any number and/or any particular type of services will be assigned to the CONSULTANT under the terms of this Agreement and/or under any TASK ORDER(S) issued hereunder. Furthermore, the purpose of this Agreement is not to authorize a specific TASK ORDER, but to set forth certain duties, obligations, rights, and responsibilities that may be incorporated by reference into any TASK ORDER(S) that may be mutually agreed to by the parties. The TOWN shall have the sole discretion to select the service(s), if any, which may be assigned to the CONSULTANT.
- 1.3 All references to drawings shall mean both traditionally drafted as well as computer-based, and all submissions of drawings will include paper, mylar, and computer file versions as appropriate.
- 1.4 When so authorized and instructed by the TOWN, a representative of the CONSULTANT shall attend meetings of the TOWN to advise and assist in matters within the scope of the CONSULTANT's profession as well as to clarify and help define the TOWN's requirements for a particular project within the scope of this Agreement.
- 1.5 The CONSULTANT shall provide minor reports and opinions of probable cost which do not contemplate the full professional services required under **ARTICLE III**, items 2 through 6, and which do not occupy a substantial amount of time of the CONSULTANT's representative delegated to serve the TOWN.
- 1.6 The CONSULTANT shall be available for office consultation at the CONSULTANT's place of business in Florida and maintain liaison with TOWN officials.
- 1.7 The CONSULTANT shall provide services as required by fiscal and legal advisors to bond financing, except when these services are provided under **ARTICLE IV**, Items 2 through 7.
- 1.8 The CONSULTANT shall provide services as CONSULTANT or engineer as may be required under bond indentures, except when services are provided under **ARTICLE IV**, Items 2 through 7.

## **Item 2. Studies and Reports**

Upon written authorization to proceed from the TOWN with a preliminary study and report to determine the feasibility of a proposed TASK ORDER, the CONSULTANT shall:

- 2.1 Consult with the TOWN to clarify and define the TOWN's requirements under the TASK ORDER.
- 2.2 Obtain from the TOWN, or its designated representative, available reports, records, property maps, drawings, opinions of probable cost, financial data, field survey notes, and other data that may be reasonably available at the time of authorization to proceed.
- 2.3 Advise the TOWN as to the necessity of the TOWN's providing or its need for obtaining any other services reasonably required in the CONSULTANT's judgment from others.
- 2.4 Provide special analysis of the TOWN's needs, preliminary studies, regional planning reports, feasibility investigations, evaluations, comparative studies, appraisals, rate studies, operational-management services, or any other program as authorized by the TOWN.

- 2.5 Provide a general economic analysis of the TOWN's requirements applicable to various alternatives, which includes a broad estimate of construction cost and method of financing.
- 2.6 Prepare a Preliminary Report with findings and recommendations.
- 2.7 Furnish three (3) printed copies and one (1) electronic, if requested, of the Preliminary Report to the TOWN.

### **Item 3. Preliminary Design Plans**

After written authorization to proceed with the Preliminary Design Phase, the CONSULTANT shall:

- 3.1 On the basis of the data and information obtained under **Item 2**, or for any defined TASK ORDER(S), prepare preliminary engineering data including basis of design, sketches, drawings, maps, opinions of probable cost, time of completion and outline specifications to develop and establish the scope of the proposed construction.
- 3.2 Make a personal examination of the proposed Project site, and as may reasonably be discoverable, note site conditions and impediments that pertain to or might adversely affect the timely, efficient, and economical completion of any phase of the Project or the Project as a whole. The CONSULTANT shall promptly report any adverse site conditions to the TOWN.
- 3.3 Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
- 3.4 At a minimum, provide the TOWN with a 50% and 90% complete document(s) for preliminary review during the development and submission of the Preliminary Design Phase report. In addition, CONSULTANT will meet with the TOWN to discuss preliminary submittal reviews by the TOWN.
- 3.5 Provide services to investigate existing conditions of facilities or to verify the accuracy of drawings or other information furnished by the TOWN or others to the CONSULTANT. Such verification services shall be set forth in the applicable TASK ORDER(S).
- 3.6 Advise the TOWN if additional data or services are necessary for preliminary design and assist the TOWN in obtaining such data and services.
- 3.7 Based on the information contained in the preliminary design documents, submit a revised Total Project Cost estimate to the TOWN.
- 3.8 Make on-site field investigations as necessary to become familiar with the conditions affecting the TASK ORDER(S).
- 3.9 Furnish five (5) printed copies and one (1) electronic copy, if requested, of the Preliminary Design Documents.
- 3.10 Assist the TOWN in obtaining preliminary approval of the proposed work from any Local, State or Federal Agency having jurisdiction over the TASK ORDER(S).

### **Item 4. Final Design Phase**

After written authorization to proceed with the Final Design Phase, the CONSULTANT shall:

- 4.1 On the basis of the preliminary design documents for a defined TASK ORDER(S), prepare and furnish the *Contract Documents*.
- 4.2 Advise the TOWN of additional services of others, if required, and arrange for, and furnish if authorized, all necessary additional tests, borings, soils investigations for the TASK ORDER(S). (The actual cost of said tests, borings, etc. shall be paid for by the TOWN).
- 4.3 Complete work on the TASK ORDER(S) within the time allowed by maintaining an adequate staff of engineers, draftsmen, and other employees on the work. The CONSULTANT is not responsible for delays caused by factors beyond the CONSULTANT's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the TOWN to furnish timely information or approve or disapprove of the CONSULTANT's services of work product promptly, or delays caused by faulty performance by the TOWN or by contractors of any level. When such delays beyond the CONSULTANT's reasonable control occur, the TOWN agrees the CONSULTANT is not responsible for damages, nor shall the CONSULTANT be deemed to be in default of this Agreement.
- 4.4 Comply with all Federal, State and Local laws or ordinances applicable to this work.
- 4.5 Prepare the necessary application forms and supporting documents for the approval of the TASK ORDER(S) and assist the TOWN in acquiring the approval from Local, State and Federal Regulatory Agencies. The CONSULTANT shall also assist the TOWN in obtaining such approvals by submitting, participating, and/or leading in negotiations with appropriate authorities, and the TASK ORDER(S) shall define the CONSULTANT's role in this regard.
- 4.6 Cooperate fully with the TOWN in order that all phases of the work may be properly scheduled and coordinated. At this Final Design Phase, the CONSULTANT will furnish the TOWN a construction time schedule for the completion of the TASK ORDER(S).
- 4.7 Request information and verification of location of utility facilities in the vicinity of the proposed work. Upon approval of the final plans, send letter with applicable sheets of the plans to each utility company having installations in the area of the work, notifying them of any relocations required. Send copies of all such letters to utilities to the TOWN for reference and file.
- 4.8 Report the status of TASK ORDER(S) to the Town Manager or her/his designee upon request, and hold the drawings, calculations, and related work open to the inspection of the Town Manager or her/his authorized agent or designee at any time.
- 4.9 Submit to the TOWN five (5) sets of check prints and the *Contract Documents* at 30%, 60%, and 90% completion for each TASK ORDER for review and approval and advise the TOWN in writing with each submittal of the estimated project construction cost.
- 4.10 Submit to the TOWN a final draft of the *Contract Documents*, including all revisions and/or modifications. Upon approval, assemble and bind the *Contract Documents* and deliver five (5) sets to the TOWN. Additional copies required shall be furnished at actual cost of reproduction if requested by the TOWN. It is understood and agreed that the CONSULTANT assumes no responsibility for the legal review of such documents. **Consultant shall provide an electronic copy of all contract documents.**

- 4.11 Advise the TOWN of any adjustments in the cost of the PROJECT caused by changes in scope, design requirements or construction costs; and furnish final cost estimate for the subject project, based on the approved drawings and specifications.

#### **Item 5. Bidding or Negotiating Phase**

After written authorization to proceed with the Bidding or Negotiating Phase, the CONSULTANT shall:

- 5.1 Assist the TOWN in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment, and services; and, when authorized in the applicable TASK ORDER(S), attend pre-bid conferences.
- 5.2 Prepare any addenda with accompanying drawings or other material as required by TOWN and furnish a copy for each set of *Contract Documents* at actual cost of reproduction. Distribution will be made by the TOWN.
- 5.3 Consult with and advise the TOWN as to the acceptability of the prime Contractor as well as Subcontractors, suppliers, and other persons and organizations proposed by the prime Contractor(s) for those portions of the work where determination of such acceptability is required by the bidding documents. In addition, advise in the selection of a qualified list of general contractors for the subject project.
- 5.4 Assist the TOWN in obtaining, receiving, tabulating and evaluating bids or negotiating proposals and preparing construction contracts, materials, equipment and services.
- 5.5 Review bids received and submit to the Town Manager or her/his designee CONSULTANT's recommendation as to action to be taken upon the bids.

#### **Item 6. Construction Phase**

The Construction Phase for each PROJECT will commence on the date of execution of the first construction contract and will terminate upon written approval of final payment by the CONSULTANT to all the Contractor(s) for each PROJECT. The CONSULTANT agrees, upon written authorization, to furnish general services during the Construction Phase, including resident inspection of the work, as follows:

- 6.1 Consult with and advise the TOWN and act as its representative as provided in the TOWN's Standard Construction Contract Documents (Construction Contract Documents). The TOWN shall have sole discretion as to the form of these *Contract Documents*, or as to how they are to be amended pursuant to any Project, or as to how they may otherwise be amended from time to time.
- 6.2 Pre-Construction Meeting. Prepare for and attend a pre-construction meeting conducted by the TOWN with representatives of the Contractor(s), subcontractor(s), utility companies, etc., for each Project as determined necessary by the TOWN.
- 6.3 Consult with the TOWN concerning the acceptability of subcontractors and other persons and organizations proposed by the general contractor for portions of the work.
- 6.4 Furnish to contractors, at contractor's expense, as many copies as necessary of the completed construction drawings and specifications for construction purposes at cost of reproduction.

- 6.4.1** In addition, the CONSULTANT may provide, if requested by the TOWN in a TASK ORDER(S), the services of a Construction Manager and/or Field Representative (and assistants as agreed) at the site to assist the CONSULTANT and to provide more continuous observation of such work. Based on information obtained during such visits and on such observations, the CONSULTANT shall determine in general if such work is proceeding in accordance with the Construction Contract Documents, Drawings and Specifications, and the CONSULTANT shall inform the TOWN on the progress of the work.
- 6.4.2** If authorized in the TASK ORDER(S), the Construction Manager and/or Field Representative (and any assistants) will be the CONSULTANT's agent or employee and under the CONSULTANT's supervision. The duties and responsibilities of the Construction Manager and/or Field Representative (and assistants) are set forth in the Construction Contract Documents, or as may otherwise be agreed in a TASK ORDER. Daily Reports generated by the Construction Manager and/or Field Representative(s) shall be in a form acceptable to the TOWN, and shall be submitted to the TOWN on a weekly basis throughout the construction phase of the Project (from Notice to Proceed through Final Acceptance of the work).
- 6.4.3** The purpose of the CONSULTANT's visits to and representation by the Construction Manager and/or Field Representative (and assistants, if any) at the site will be to enable the CONSULTANT to better carry out the duties and responsibilities assigned to and undertaken by the CONSULTANT during the Construction Phase and, in addition, by exercise of the CONSULTANT's efforts as an experienced and qualified design professional, to provide confidence for the TOWN that the completed work of the Contractor(s) will conform to the Construction Contract Documents, Drawings, and Specifications and that the integrity of the design concept as reflected in the aforesaid documents has been implemented and preserved by the Contractor(s). The CONSULTANT shall not, however, during such visits or as a result of such observations of the Contractor(s) work in progress, supervise, direct, or have control over the Contractor(s) work, nor shall the CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by the Contractor(s), for safety precautions and programs incident to the work of the Contractor(s), or for any failure of the Contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to the Contractor(s) furnishing and performing their work. Accordingly, the CONSULTANT can neither guarantee the performance of the construction contract by the Contractor(s), nor assume responsibility for the Contractor(s) failure to furnish and perform their work in accordance with the Construction Contract Documents, Drawings and Specifications.
- 6.4.4 Defective Work.** During such visits and on the basis of such observations, the CONSULTANT shall keep the TOWN informed of the progress of the work, shall endeavor to guard the TOWN against defects and deficiencies in such work, and may disapprove of or reject the Contractor(s) work while it is in progress if the CONSULTANT believes that such work will not produce a completed Project that conforms generally to the Construction Contract Documents, Drawings, and Specifications or that it will prejudice the integrity of the design concept of the Project as reflected in the Construction Contract Documents, Drawings, and Specifications. The CONSULTANT shall advise the TOWN in a timely manner of defect(s) in the

Contractors or Subcontractors work and of the action taken to have the defect(s) corrected.

- 6.5 Advise and consult with the TOWN and act as the CONSULTANT as provided in the *Contract Documents* covering the construction of the subject project and work described in the TASK ORDER.
- 6.6 Make weekly visits **and as needed** to the site by a qualified representative of the CONSULTANT to observe the work. The CONSULTANT shall have authority, as the TOWN's representative, to require special inspection or testing of the work and shall receive and review all certificates of inspections, testings, and approvals required by laws, rules, regulations, ordinances, codes, orders and terms of the Drawings and Specifications (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Drawings and Specifications) and, in addition, the CONSULTANT shall have authority, as the TOWN's representative, to act as initial interpreter of the requirements of the Drawings and Specifications.
- 6.7 Review and approve shop and equipment drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, results of tests and inspections, and other data which any Contractor is required to submit, and receive and review maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the *Contract Documents*. The CONSULTANT may be allowed to use its shop drawing stamp during review provided the format and language of the shop drawing stamp is approved by the TOWN prior to use. Furthermore, the CONSULTANT agrees that it shall devise a separate tracking system for Shop Drawings previously disapproved or for which corrections, modifications, or changes are necessary. The tracking system shall be both timely and efficient, and shall account for the status and party responsible to correct all previously submitted Shop Drawings until their complete approval and acceptance. The tracking system shall include, but not be limited to, the following CONSULTANT activities: subsequent to any Contractors being ordered to start construction work, the CONSULTANT shall transmit to the TOWN, if required by TASK ORDER at such frequency as defined therein, a list of Shop Drawings anticipated for such construction contract, the names of the Shop Drawings, their due dates (in accordance with Shop Drawing schedules submitted by the Contractor(s)) required from the Contractor(s); their dates of issue, receipt, checking, return for correction, resubmission, and approval; and any information that will clearly provide the TOWN with the progress of project shop drawings; provided, however, that in any event all Shop Drawings that have been submitted to the CONSULTANT (whether for approval or re-approval) shall be reviewed and returned by the CONSULTANT within twenty-eight (28) Days of submission.
- 6.8 Prepare routine change orders as required. The CONSULTANT shall evaluate and determine the acceptability of substitute materials and equipment proposed by the Contractor(s).
- 6.9 Review, verify, approve, and certify Contractor's monthly estimates and final estimates and payments. The CONSULTANT shall also periodically review the Record Drawings as prepared by the Contractor(s) and verify the accuracy and completeness thereof, prior to recommendation to the TOWN of the release of progress payments for the work in question.
- 6.10 Conduct a site visit, in company with the TOWN to determine if a TASK ORDER is substantially complete and a final site visit to determine if a TASK ORDER has been completed in accordance with the *Contract Documents* and the Contractor(s) has fulfilled all of his

obligations there-under so that the CONSULTANT may approve, in writing, final payment to the Contractor(s). The CONSULTANT shall certify a completed TASK ORDER to all regulatory agencies upon completion. Advise and consult with the TOWN as to interpretations of the Contract Documents in any disputes between the TOWN and the prime Contractor and any other entity involved on working on the project at the direction of the prime Contractor.

- 6.11** Furnish the TOWN five (5) sets of reproducible revised Contract Drawings showing the work as constructed. Record Drawings shall be based on the marked-up prints, drawings, and other data furnished by the Contractor(s)' field engineering and inspection personnel and which the CONSULTANT considers significant.
- 6.12 Track Progress of Contractor.** If providing Construction Manager and/or Field Representative Services, the CONSULTANT shall track the progress of the Contractor(s) and submit a written report to the TOWN, at the 30%, 60% and 90% stages of the construction (as identified by the Contractor(s) original approved schedule) or as defined in the TASK ORDER, documenting the progress of the Contractor relative to the original approved schedule.
- 6.13 Minimize Claims.** The CONSULTANT shall endeavor to minimize the potential areas for Contractor claims by initiating timely, thorough, and complete communication among the TOWN and the design and construction contract principals; other local, state, or federal parties (when directed by the TOWN); or private entities that may also be involved. Upon identification of a potential Contractor claim, the CONSULTANT shall immediately notify the TOWN of all data relevant to the potential Contractor claims, and of which the CONSULTANT is aware.
- 6.14 Resolve Construction-Related Difficulties.** The CONSULTANT shall report to the TOWN the status of all significant construction-related system operational and system quality concerns, as well as the actions taken by the CONSULTANT to encourage effective communication and timely resolution thereof. Once a problem area is identified, the CONSULTANT shall keep a detailed log on the item in question and pursue the timely resolution of that item.
- 6.15 Contractor(s) Completion Documents.** The CONSULTANT shall receive and review maintenance operating instructions, schedules, guarantees, bonds, and certificates of inspection, tests and approvals which are to be assembled by the Contractor(s) in accordance with the Construction Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests, and approvals, the results certified will indicate compliance with the Construction Contract Documents, Drawings, and Specifications); and shall transmit them to the TOWN with written comments.
- 6.16 Time of Essence.** CONSULTANT shall achieve Final Completion within an agreed time period determined and agreed upon by both parties from the date appearing in the Notice To Proceed form for the specified project. CONSULTANT agrees to begin each project in conformity with the provisions set forth and to prosecute it with all due diligence so as to complete the entire Work and Project by the time limits set forth in the agreed project schedule for the specified project. As to such assignments that have deadlines, time will be of the essence unless stated otherwise in the assignment and a liquidated damages clause may be included in the assignment.



## ARTICLE IV. RESPONSIBILITIES OF TOWN

In addition to payment for the Services performed under this Agreement, TOWN shall:

**Item 1.** Assist and cooperate with CONSULTANT to a reasonable extent and provide readily available information as identified by CONSULTANT to facilitate CONSULTANT's performance under this Agreement.

**Item 2.** Designate in writing a person to act as the TOWN's representative with respect to the work to be performed under this Agreement (hereafter the "TOWN Representative"). The CONSULTANT may rely upon the fact that the TOWN's Representative has complete authority to transmit instructions, receive information, interpret and define TOWN's policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this Agreement. The TOWN Representative shall also (1) communicate the TOWN's policies and decisions to the CONSULTANT regarding the Services; (2) determine whether the CONSULTANT is fulfilling its duties, responsibilities, and obligations hereunder, and (3) determine the merits of any allegation by the CONSULTANT respecting the TOWN's nonperformance of any obligations under this Agreement and/or any TASK ORDER(S) issued hereunder. All determinations made by the TOWN Representative, as outlined above, shall be final and binding upon the CONSULTANT in regard to further administrative review, but shall not be binding upon the CONSULTANT or TOWN in regard to appeals to a court of competent jurisdiction.

**Item 3.** Furnish CONSULTANT with reasonably available technical and other data in TOWN's possession including, but not limited to, data, maps, surveys, drawings, soils or geotechnical and other types of reports, and any other information required by, or useful to, CONSULTANT as may be identified by CONSULTANT to TOWN in performance of its Services under this Agreement. CONSULTANT shall take care to review information supplied for accuracy, but be reasonably entitled to rely upon the information supplied by TOWN.

**Item 4.** Notify CONSULTANT of any known or potential health or safety hazards existing at or near project or work sites.

**Item 5.** Provide access to and/or obtain permission for CONSULTANT to enter upon all TOWN properties, and provide assistance with access to properties not owned by the TOWN as required to perform and complete the Services.

**Item 6.** If CONSULTANT's scope of work includes services during construction, TOWN will require the construction contractor to indemnify and hold harmless CONSULTANT, its officers, employees, agents, and CONSULTANTS against claims, suits, demands, liabilities, losses, damages, and costs, including reasonable attorneys' fees and all other costs of defense, arising out of the performance of the work of the contractor, breach of contract, or willful misconduct of the contractor or its subcontractors, employees, and agents.

TOWN will require the contractor to name CONSULTANT, its directors, officers and employees as additional insureds on the contractor's general liability insurance and/or Owner's and Contractor's Protective Policy (OCP), and any builder's risk, or other property insurance purchased by TOWN or the contractor to protect work in progress or any materials, supplies, or equipment purchased for installation therein.

TOWN will furnish contractor's certificates of insurance evidencing that CONSULTANT, its officers, employees, agents, and CONSULTANTS are named as additional insureds on contractor's general liability

and property insurance applicable to the Project. Contractor's policies shall be primary and any such insurance carried by the CONSULTANT shall be excess and noncontributory.

The certificates shall provide that CONSULTANT be given 30 Days' written notice prior to any cancellation thereof.

**Item 7.** Provide all legal services, including review of *Contract Documents*, accounting, and insurance consulting services as may be required for each TASK ORDER, and such auditing services as the TOWN may require to ascertain how or for what purpose the Contractor has used the money paid to him under the construction agreement.

#### **ARTICLE V. AMERICANS WITH DISABILITIES ACT**

Any other provision of this Agreement to the contrary notwithstanding, unless otherwise specified in this Agreement and/or any TASK ORDER(S) issued hereunder, the TOWN shall have sole responsibility as between TOWN and CONSULTANT for compliance with the Americans With Disabilities Act ("ADA") 42 U.S.C. 12101 et seq. and any state and/or federal regulations as related thereto.

#### **ARTICLE VI. COMPENSATION**

For the Services described in each TASK ORDER, TOWN agrees to pay, and CONSULTANT agrees to accept the total compensation in accordance with compensation terms included in the TASK ORDER. CONSULTANT may re-allocate compensation between tasks, provided total compensation is not exceeded without written approval (e- mail is sufficient) of TOWN Representative. For each defined service, or separately authorized TASK ORDER, a mutually acceptable fee shall be negotiated when the scope of such proposed authorization has been defined. In the event that a specific fee is not established, the hourly rate schedule contained in Exhibit "B" attached hereto shall control. The rate schedule shall be revised annually and furnished to the TOWN prior to its effective date. The revised hourly rate schedule shall take effect unless written notice is received from the TOWN Representative that the revised rates are not accepted. Provided further that CONSULTANT agrees that the rates on its hourly rate schedule shall not be increased above three percent (3%) of existing accepted rates per calendar year during the term of this Agreement. Compensation shall be billed monthly in summary form. For other than lump-sum contracts, the TOWN shall only be obligated to pay for those Services that the CONSULTANT can demonstrate are reasonable, provable, and within the scope of services of any TASK ORDER(S).

#### **ARTICLE VII. DIRECT AND REIMBURSABLE EXPENSES**

The TOWN shall reimburse the CONSULTANT for certain direct out-of-pocket expenses (see itemized list below). Such direct charges shall be submitted to the TOWN on a timely basis at actual cost, verified by appropriate written bills, invoices, statements, etc. Reimbursable expenses shall not exceed \$3,000.00 except when authorized in advance in writing by TOWN or included in the TASK ORDER.

#### **Item 1. Travel and Subsistence**

The actual cost of travel and subsistence expense(s) incurred while performing authorized TOWN business. Travel performed in the CONSULTANT's vehicle shall be at the calculation rate authorized by the TOWN for its employees from time to time pursuant to TOWN ordinance(s) and/or Florida Law. Air travel, if required, shall be reimbursed at the economy class fare.

## **Item 2. Printing and Reproduction**

The reasonable costs of reproduction of reports, plans, and specifications except as otherwise provided in this Agreement and/or any TASK ORDER(s) issued hereunder, plus the hourly cost of the CONSULTANT's staff incurred for administration.

## **Item 3. Services of Others**

For services of others when included in the TASK ORDER, the actual cost of such services plus the hourly cost of the CONSULTANT's staff incurred for administration.

## **Item 4. Miscellaneous**

Such other miscellaneous direct charges as may be approved by the TOWN Manager or TOWN's Representative, plus the hourly cost of the CONSULTANT's staff incurred for administration.

# **ARTICLE VIII. PAYMENTS**

## **Item 1. Payment for Authorized Services**

Payment for authorized Services rendered, including direct and reimbursable costs, shall be payable in approximate proportion to the degree and/or percentage of completion of the work as estimated by the CONSULTANT, subject to approval of the Town's Representative. Payment shall be made within forty-five (45) Calendar Days of receipt of invoice as provided by Section 218.74, Florida Statutes.

## **Item 2. Payment Withheld**

When the TOWN has reasonable ground for belief, or information to believe that: (1) the CONSULTANT will be unable to perform the Services set forth under this Agreement and/or any TASK ORDER(S) issued hereunder; or (2) a meritorious claim exists against the CONSULTANT or the TOWN arising out of the CONSULTANT's negligence or the CONSULTANT's breach of any provision of this Agreement or any TASK ORDER(S) issued hereunder; then the TOWN may withhold payment otherwise due and payable to the CONSULTANT; provided, however, that the TOWN shall not unreasonably withhold other payment(s) that may not otherwise be in dispute. Any payment so withheld may be retained by the TOWN for such period as it deems advisable, in its sole and absolute discretion, to protect the TOWN against any loss or deprivation that the TOWN may incur pursuant to this Subsection or as may be determined by a court of competent jurisdiction.

This provision is intended solely for the benefit of the TOWN and no person shall have any right against the TOWN and/or its employees and officials by reason of the TOWN's withholding of payment(s). Interest [one percent (1%) simple interest, per month] shall only be payable by the TOWN on any amounts withheld under this provision if the TOWN has acted without justification. This provision is not intended to limit or in any way prejudice any other right the TOWN may have in this regard or any right or defense that the CONSULTANT might choose to exercise against the TOWN.

## **Item 3. Termination**

Upon the termination of this Agreement and/or any TASK ORDER(S) issued hereunder, the CONSULTANT shall prepare a final and complete payment statement for all Services and reimbursable expenses incurred since the posting of the last payment statement and through the date of termination. The final payment statement shall be subject to all of the provisions described in **Article XXVII** of this Agreement.

#### **Item 4. Final Payment**

The acceptance by the CONSULTANT, its successors, or assigns, of any final payment due upon the termination of this Agreement or any TASK ORDER(S) issued hereunder, shall constitute a full and complete release of the TOWN from any and all claims or demands regarding further compensation for authorized services rendered prior to such final payment that the CONSULTANT, its successors, or assigns have or may have against the TOWN under the provisions of this Agreement and/or any TASK ORDER(S) issued hereunder, unless otherwise previously and properly filed pursuant to the provisions of this Agreement in a court of competent jurisdiction and/or as may be determined by the TOWN. This Subsection does not affect any other portion of this Agreement and/or any TASK ORDER(S) issued hereunder, that extends obligations of the parties beyond final payment.

Under present Florida Law, the TOWN is exempt from sales taxes imposed upon professional services when the TOWN purchases such services directly. The CONSULTANT agrees to pay actual taxes (exclusive of multiplier) imposed and/or assessed as a result of the provision of any Services provided under this Agreement and/or TASK ORDER(S) issued hereunder. The TOWN and the CONSULTANT agree that this Subsection may be modified by a duly executed amendment in the event of future changes to Florida Law that affect the parties, terms, or conditions of this Agreement.

### **ARTICLE IX. SCHEDULE OF WORK**

The TOWN shall have the sole rights to determine on which unit(s) or section(s) of the services to be performed under this Agreement and/or any TASK ORDER(S) issued hereunder that the CONSULTANT shall proceed and in what order. Authorization by the TOWN, through the TOWN Manager, his designee or Town Representative, in writing through the issuance of a TASK ORDER, shall cover in detail the scope, timing and intent of the proposed professional consulting services. The TASK ORDER shall specify the timing of the Services to be performed and provide additional direction on when written approval is necessary to continue with additional tasks.

### **ARTICLE X. RESPONSIBILITY OF CONSULTANT**

#### **Item 1. Standard of Care Professional Services**

Subject to the limitations prescribed and/or identified in the agreed scope of work as related to the degree of care, amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement and/or any TASK ORDER(S) issued hereunder, CONSULTANT shall perform its Services in accordance with generally accepted standards and practices customarily utilized by competent professional consulting firms in effect at the time CONSULTANT'S Services are rendered.

#### **Item 2. Reliance upon Information Provided by Others**

If CONSULTANT's performance of any TASK ORDER(S) and/or Services hereunder requires CONSULTANT to rely on information provided by other parties (excepting CONSULTANT's subcontractors), CONSULTANT shall not be required to independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so in writing by TOWN. The CONSULTANT shall be responsible for advising the TOWN when the validity, completeness or accuracy of information is of concern.

#### **Item 3. CONSULTANT's Opinion of Costs**

TOWN acknowledges that construction cost estimates, financial analyses and feasibility projections are

subject to many influences including, but not limited to, price of labor and materials, unknown or latent conditions of existing equipment or structures, and time or quality of performance by third parties. TOWN acknowledges that such influences may not be precisely forecasted and are beyond the control of CONSULTANT and that actual costs incurred may vary substantially from the estimates prepared by CONSULTANT. CONSULTANT does not warrant or guarantee the accuracy of construction or development cost estimates.

#### **Item 4. Construction Phase Services**

- 4.1 CONSULTANT's Activities at Construction Site.** The presence of CONSULTANT's personnel at a construction site, whether as on-site representative, resident engineer, construction manager, or otherwise, does not make CONSULTANT responsible for those duties that belong to TOWN and/or construction contractors or others, and does not relieve construction contractors or others of their obligations, duties, and responsibilities, including, but not limited to, construction methods, means, techniques, sequences, and procedures necessary for completing all portions of the construction work in accordance with the contract documents, any health or safety programs and precautions required by such construction work, and any compliance with applicable laws and regulations. Any inspection or observation of the contractor's work is solely for the purpose of determining that the work is generally proceeding in conformance with the intent of the project specifications and contract documents. CONSULTANT makes no warranty or guarantee with respect to the performance of a contractor. CONSULTANT has no authority to exercise control over any construction contractor in connection with their work or health or safety programs and precautions. Except to protect CONSULTANT's own personnel and except as may be expressly required elsewhere in the scope of services, CONSULTANT has no duty to inspect, observe, correct, or report on health or safety deficiencies of the construction contractor.
- 4.2 Shop Drawing and Submittal Review.** If required by TASK ORDER(S) issued hereunder, CONSULTANT shall review shop drawings or other contractor submittals for general conformance with the intent of the contract documents. CONSULTANT shall not be required to verify dimensions, to engineer contractor's shop drawings or submittals, nor to coordinate shop drawings or other submittals with other shop drawings or submittals provided by contractor.
- 4.3 Record Drawings.** Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. CONSULTANT is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

#### **ARTICLE XI. AUDIT RIGHTS**

The TOWN reserves the right to audit the records of the CONSULTANT related to compensation issues associated with an authorized TASK ORDER at any time during the execution of the TASK ORDER and for a period of one (1) year after final payment is made to the CONSULTANT. Failure of the CONSULTANT to maintain sufficient auditable records shall authorize the TOWN to determine, at its sole and conclusive discretion, the time and cost expended from information maintained by the CONSULTANT relevant to the services performed under this Agreement and any TASK ORDER(S) issued hereunder. The CONSULTANT's staff will be compensated on an hourly rate basis for assisting the TOWN in its audit process and the TOWN shall pay for the reasonable cost of reproducing such records in accordance with the provisions of **Article VII**, Item 2 of this Agreement.

## **ARTICLE XII. ASSIGNMENT**

The CONSULTANT shall not sublet, assign, or transfer this Agreement and/or any TASK ORDER(S) issued hereunder and/or any interest and/or work under this Agreement and/or any TASK ORDER(S) issued hereunder without the written consent of the TOWN.

## **ARTICLE XIII. SPECIAL PROJECTS**

Periodically, the TOWN may require professional consulting services on special projects which are funded, in whole or in part, by various State or Federal agencies as well as TOWN bond issues. The TOWN, by virtue of its strict compliance with the Act, reserves the right to either authorize the CONSULTANT to proceed, by the issuance of a TASK ORDER, with such a special project without further competitive negotiations, or the TOWN may, at its discretion, reinstate competitive negotiations under the Act to select a consultant for that individual special project. Any additional requirements imposed and/or prescribed by such State or Federal agencies, when performing professional consulting services on and/or for special projects, shall also be acknowledged and satisfied.

## **ARTICLE XIV. CONSULTANT'S WORK PRODUCT**

### **Item 1. Scope**

CONSULTANT's work product, which is prepared solely for the purposes of this Agreement and/or any TASK ORDER(S) issued hereunder, including, but not limited to, drawings, test results, recommendations and technical reports, whether in hard copy or electronic form, shall become the property of TOWN when CONSULTANT has been fully compensated as set forth herein. CONSULTANT may keep copies of all work products for its records. Pursuant to Florida Law, all correspondence(s) between the TOWN and CONSULTANT are public records and subject to public records requests.

CONSULTANT and TOWN recognize that CONSULTANT's work product submitted in performance of this Agreement is intended only for the Services performed under this Agreement and/or any TASK ORDER(S) issued hereunder. TOWN's alteration of CONSULTANT's work product or its use by TOWN for any other purpose shall be at TOWN's sole risk, and TOWN shall hold harmless and indemnify CONSULTANT against all losses, damages, costs and expense, including reasonable attorneys' fees, arising out of or related to any such alteration or unauthorized use.

### **Item 2. Electronic Copies**

If requested, solely as an aid and accommodation to TOWN, CONSULTANT may provide copies of its work product documents in computer-readable media ("electronic copies" more specifically "CADD Files"). CONSULTANT will maintain the original copy, which shall serve as the official, archived record of the electronic documents. TOWN agrees to hold harmless, indemnify and defend CONSULTANT from any claims arising out of or relating to any unauthorized change or alteration by the TOWN of electronic copies.

If requested, solely as an aid and accommodation to TOWN, CONSULTANT shall provide copies of its work product documents in computer-readable media ("electronic copies," more specifically "CADD Files"). These documents will duplicate the documents provided as work product, but will not bear the signature and professional seals of the registered professionals responsible for the work. TOWN is cautioned that the accuracy of electronic copies and CADD documents may be compromised by electronic media degradation, errors in format translation, file corruption, printing errors and incompatibilities, operator inexperience and file modification. CONSULTANT will maintain the original copy, which shall serve as the official, archived record of the electronic and CADD documents. TOWN agrees to hold harmless,

indemnify and defend CONSULTANT from any claims arising out of or relating to any unauthorized change or alteration of electronic copies and CADD documents.

### **Item 3. Limitation on Indemnity**

To the extent this Agreement calls for the TOWN to indemnify CONSULTANT, the TOWN does not intend to waive any sovereign immunity. Further regardless of whether any such obligations which are the subject of any indemnification by the TOWN hereunder are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the TOWN and any indemnification provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to Section 768.28, Florida Statutes, as amended from time to time, as between the TOWN and CONSULTANT.

## **ARTICLE XV. INDEMNIFICATION AND INSURANCE**

### **Item 1. Indemnification and Repair of Damage**

**1.1 CONSULTANT'S INDEMNIFICATION OF TOWN.** The CONSULTANT shall indemnify and hold harmless the TOWN, its elected officials, officers, agents, and employees, from and against any and all claims, costs, losses, and damages (including but not limited to all reasonable fees and charges of attorneys, and other professionals, and all court or other dispute resolution costs), liabilities, expenditures, or causes of action of any kind (including, but not limited to, negligent, reckless, or intentionally wrongful acts or omissions of the CONSULTANT and any person or organization directly or indirectly employed and/or utilized by the CONSULTANT to perform or furnish any work or anyone for whose acts any of them may be liable), 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 this Agreement and/or pursuant to any TASK ORDER(S) issued hereunder. Such indemnification shall specifically include, but not be limited to, claims, damages, losses, liabilities and expenses to the extent caused by:

- (a) Any negligent, reckless, or intentionally wrongful act, omission or default of the CONSULTANT and/or persons it employees and/or utilizes and/or any combination thereof in the performance of this Agreement and/or any Task Orders issued hereunder;
- (b) Any and all bodily injuries, sickness, disease or death;
- (c) Injury to or destruction of tangible property, including, but not limited to, the loss of use resulting therefrom;
- (d) Other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with this Agreement and/or any TASK ORDER(S) and/or special project(s) performed thereunder; and/or
- (e) The violation of any federal, state, county or Town laws, by-laws, ordinances or regulations by the CONSULTANT or persons employed and/or utilized by CONSULTANT.

CONSULTANT deems and acknowledges that \$500.00 of the amount paid to CONSULTANT under this Agreement is in consideration, for this and all other indemnifications given by CONSULTANT. For purposes of compliance with Florida law, CONSULTANT acknowledges that this provision shall be deemed a part of the project specifications or the bid documents and is given

subject to the provisions of Section 725.08 of the Florida Statutes.

- 1.1.1** CONSULTANT also agrees to indemnify, and hold harmless the TOWN, its elected officials, officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description (including reasonable attorney's fees and charges incurred in any court and/or dispute resolution process) that may be brought against the TOWN, its elected officials, officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation to the extent same is 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 this Agreement and/or any TASK ORDER(S) issued hereunder.
- 1.1.2** In the event of any claims or suits which fall within either of the foregoing indemnities, payment of any amount due pursuant thereto shall, after receipt of written notice by CONSULTANT from the TOWN that such amount is due, be made by CONSULTANT prior to the TOWN being required to pay same, or in the alternative, the TOWN, at the TOWN's option, may make payment of an amount so due and the CONSULTANT shall promptly reimburse the TOWN for same, together with interest thereon at the rate of 12% per annum simple interest from the day of the TOWN's payment.
- 1.1.3** If CONSULTANT, after receipt of written notice from the TOWN fails to make any payment due hereunder to the TOWN, CONSULTANT shall pay any reasonable attorney's fees or costs incurred by the TOWN in securing any such payment from CONSULTANT.
- 1.1.4** Nothing contained herein is intended nor shall it be construed to waive the TOWN's Sovereign immunity and/or its limits of liability set forth in Section 768.28 of the Florida Statutes, as amended from time to time, regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist in the TOWN's favor.
- 1.1.5** PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.



## **1.2 NO DAMAGES FOR DELAY BY TOWN**

CONSULTANT shall not be entitled to an increase in the contract price or payment or compensation of any kind from TOWN for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency or extended overhead, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CONSULTANT for hindrances or delays due solely to fraud, bad faith or active malicious interference on the part of TOWN. Otherwise, CONSULTANT shall be entitled only to extensions of the contract time as the sole and exclusive remedy for excusable events of delay.

**1.2.1** If the CONSULTANT submits a schedule or expresses an intention to complete the Services to be provided under this Agreement TASK ORDER(S) issued hereunder required by any required milestone or completion date, the TOWN shall not be liable to the CONSULTANT for any costs incurred, lost profits, extended overhead, expenses, or other damages of any kind because of delay or hindrance, regardless of whether such delay or hindrance was caused by the TOWN or its agents, should CONSULTANT be unable to complete the work before such milestone or completion date as is described within the schedule.

**1.2.2** On any particular TASK ORDER the TOWN shall have the right to include a provision for liquidated damages as a result of any delay.

## **Item 2. INSURANCE**

### **2.1 Insurance in General**

CONSULTANT shall, at its own expense, procure and maintain throughout the term of this Agreement and/or any TASK ORDERS issued hereunder, with an insurer or insurers acceptable to the TOWN, the types and amounts of insurance conforming to the minimum requirements set forth herein. As evidence of compliance with the insurance required herein, CONSULTANT shall furnish the TOWN with:

(a) a fully completed satisfactory Certificate of Insurance evidencing all coverage required. Also, a copy of the actual notice of cancellation endorsement(s) as issued on the policy(ies) and a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of the TOWN and the TOWN's members, officials, officers and employees as additional insureds in the Commercial General Liability coverage;

(b) the original of the policy(ies); and/or

(c) other evidence satisfactory to the TOWN.

Until such coverage is no longer required by this Agreement, CONSULTANT shall provide the TOWN with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

## **2.2 Types of Insurance and Limits of Liability**

### **2.2.1 Workers' Compensation/Employers' Liability**

Such insurance shall be no more restrictive than that provided by the Standard Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The policy must be endorsed to provide the TOWN with thirty (30) days written notice of cancellation. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

- Part One: "Statutory"
- Part Two: \$500,000 Each Accident  
\$500,000 Disease – Policy Limit  
\$500,000 Disease – Each Employee

### **2.2.2 Commercial General Liability Insurance**

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those required by ISO or the state of Florida or those described below. The policy must be endorsed to provide the TOWN with thirty (30) Days written notice of cancellation. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- Mold, fungus, or bacteria
- Terrorism
- Sexual molestation

The TOWN and the TOWN's members, officials, officers and employees shall be included as "Additional Insureds" on a form no more restrictive than the latest edition of ISO Form CG 20 10 (Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization Endorsement).

The limits are to be applicable only to work performed under the Contract and shall be those that would be provided with the attachment of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement (ISO Form CG 25 01) to a Commercial General Liability policy subject to the following minimum limits (inclusive of amounts provided by an umbrella or excess policy):

- \$1,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal and Advertising Injury
- \$1,000,000 Each Occurrence

### **2.2.3 Automobile Liability Insurance**

Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office, without any restrictive endorsements, including coverage for liability contractually assumed. The policy shall cover all owned, non-owned, and hired autos used in connection with the performance of the work and must be endorsed to provide the TOWN with thirty (30) days written notice of cancellation. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000      Each Occurrence – Bodily Injury and Property Damage Combined

#### **2.2.4 Professional Liability**

Such insurance shall be on a form acceptable to the TOWN and shall cover CONSULTANT for liability arising out of the rendering or failure to render professional services in the performance of the services required in the Agreement including any hold harmless and/or indemnification agreement. Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$ 1,000,000 Each Claim  
\$ 1,000,000 Annual Aggregate

### **2.3 Insurance Administration**

Insurance certificates, evidencing all insurance coverage referred to in this Subsection (hereafter the "Insurance Certificates"), shall be filed (or be on file) with the TOWN at least ten (10) Calendar Days after the final execution of this Agreement. The Insurance Certificates shall be fully acceptable to the TOWN in both form and content, and shall provide and specify that the related insurance coverage shall not be canceled (hereafter the "Coverage Change") without at least thirty (30) Calendar Days prior written notice having been given to the TOWN. The CONSULTANT further agrees that no material modification or reduction shall be made to any insurance policy coverage referred to in this Agreement, unless the CONSULTANT gives written notice to the TOWN [within seven (7) Calendar Days of the CONSULTANT's having been given notice by the insurer] of such material modification or reduction. "Material modification" shall mean but not be limited to, reduction in the limit of liability by endorsement to the policy during the policy period, change and types of claims payable, or any other change that significantly reduces the coverage originally provided in the policy's terms. The CONSULTANT shall have thirty (30) Calendar Days following such Coverage Change to file an Insurance Certificate with the TOWN, demonstrating that the particular coverage has either been reinstated, or has been provided through another insurer(s) that is (are) acceptable to the TOWN. Failure of the CONSULTANT to obtain the TOWN's approval, or to satisfy the TOWN in this matter of Insurance Certificates, shall be grounds for termination of the Agreement as specified in **Article XVII**. It is also understood and agreed that it is the CONSULTANT's sole burden and responsibility to coordinate activities between itself, the TOWN, and the CONSULTANT's insurer(s) so that the Insurance Certificates are acceptable to and accepted by the TOWN within the time limits described in this Subsection.

### **2.4 TOWN's Right to Inspect Policies**

The CONSULTANT shall, upon thirty (30) Business Days' written request from the TOWN, deliver copies to the TOWN of any or all insurance policies that are required in this Agreement. Provided that CONSULTANT shall be entitled to redact all confidential information on copies of all such policies of insurance that are delivered to the TOWN. It being the intent of the parties that the TOWN shall have copies of all policies in order to determine appropriate and relevant coverage, limits, deductibles, insurance exclusions and other information related thereto.

## **2.5 Miscellaneous**

- (a) The insurance provided by CONSULTANT pursuant to this Agreement shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the TOWN or the TOWN's members, officials, officers or employees.
- (b) Except where prior written approval has been obtained hereunder, the insurance maintained by CONSULTANT shall apply on a first dollar basis without application of a deductible or self-insured retention. CONSULTANT shall pay on behalf of the TOWN or the TOWN's members, officials, officers and employees any deductible or self-insured retention applicable to a claim against the TOWN or the TOWN's members, officials, officers, agents and employees.
- (c) The insurance provided by the CONSULTANT shall be endorsed to provide that the Insurer waives its rights against the TOWN and the Town's members, officials, officers and employees.
- (d) Compliance with these insurance requirements shall not limit the liability of CONSULTANT. Any remedy provided to the TOWN by the insurance provided by CONSULTANT shall be in addition to and not in lieu of any other remedy (including but not limited to, as an indemnitee of CONSULTANT) available to the TOWN under this Agreement or otherwise.
- (e) Neither approval nor failure to disapprove insurance furnished by CONSULTANT shall relieve CONSULTANT from responsibility to provide insurance as required by this Agreement.

**2.5.1** CONSULTANT shall ensure that any company issuing insurance to cover the requirements contained in this Agreement and/or any TASK ORDER(S) issued hereunder agrees that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance. All required insurance policies shall preclude any insurer's rights of recovery or subrogation against the TOWN with the express intention of the parties being that the required insurance coverage protect both parties as the primary coverage for any and all losses covered by the above-described insurance. Violation of the terms of this paragraph and its subparts shall constitute a breach of the Agreement, and the TOWN, at its sole discretion, may cancel the Agreement and all rights, title and interest of the CONSULTANT shall thereupon cease and terminate. The TOWN reserves the right to require or adjust any of the insurance coverage it deems necessary depending upon the company, the Services to be provided under this Agreement and/or any TASK ORDER(S) issued hereunder, or the potential exposures. The CONSULTANT shall not commence performance of duties under this Agreement and/or any TASK ORDER(S) issued hereunder until the CONSULTANT has obtained all insurance coverage required under this paragraph and this Agreement and all Insurance Certificates have been approved by the TOWN, nor shall the CONSULTANT allow any sub-consultant to commence performance of duties under any TASK ORDER with the TOWN until all similar such insurance coverage and Insurance Certificates required of the sub-consultant have been obtained and approved by the TOWN or the TOWN Representative.

### **Item 3. No Waiver of Sovereign Immunity/Limits of Liability**

Nothing herein is intended to act as a waiver of the TOWN's sovereign immunity and/or limits of liability as set forth in section 768.28, Florida Statutes regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise.

## **ARTICLE XVI. CONFIDENTIALITY**

Subject to Florida Law, CONSULTANT agrees it will maintain the confidentiality of material it receives from TOWN, which TOWN has clearly identified as "confidential", and will not disclose, distribute, or publish to any third party such confidential information without the prior permission of TOWN. Notwithstanding the foregoing, CONSULTANT shall have no confidentiality obligation with respect to information that:

(a) becomes generally available to the public other than as a result of disclosure by CONSULTANT or its agents or employees;

(b) was available to CONSULTANT on a non-confidential basis prior to its disclosure by TOWN; or

(c) becomes available to CONSULTANT from a third party who is not, to the knowledge of CONSULTANT, bound to retain such information in confidence.

In the event CONSULTANT is compelled by subpoena, court order, or administrative order to disclose any confidential information, CONSULTANT shall promptly notify TOWN and shall cooperate with TOWN prior to disclosure so that TOWN may take necessary actions to protect such confidential information from disclosure.

## **ARTICLE XVII. SUSPENSION AND/OR TERMINATION OF WORK**

Any Services being performed under this Agreement and/or any TASK ORDER(S) issued hereunder may be suspended as follows:

### **Item 1. By Town**

By written notice to CONSULTANT, TOWN may suspend all or a portion of the Services provided under this Agreement and/or any TASK ORDER(S) issued hereunder if unforeseen circumstances beyond TOWN's control make normal progress of the Services provided under this Agreement and/or any TASK ORDER(S) issued hereunder impracticable. If suspension is greater than sixty (60) business days, then CONSULTANT shall have the right to terminate this Agreement in accordance with Article XVIII of this Agreement. TOWN's suspension of any Services provided under this Agreement and/or any TASK ORDER(S) issued hereunder shall be without prejudice to any other remedy of TOWN at law or equity.

### **Item 2. By CONSULTANT**

By written notice to TOWN, CONSULTANT may suspend the Services provided under this Agreement and/or TASK ORDER(S) issued hereunder if CONSULTANT reasonably determines that working conditions at the site and/or location (outside CONSULTANT's control) are unsafe, or in violation of applicable laws. CONSULTANT's suspension of any Services provided under this Agreement and/or any TASK ORDER(S) issued hereunder shall be without prejudice to any other remedy of CONSULTANT at law or equity.

## **ARTICLE XVIII. TERMINATION OF AGREEMENT**

**Item 1.** This Agreement may be terminated by TOWN as follows: (1) for its convenience on 30 Calendar Days' written notice to CONSULTANT, or (2) for cause, if CONSULTANT or any entity utilized by CONSULTANT to provide services under this Agreement and/or any TASK ORDER(s) issued hereunder materially breaches this Agreement and/or any TASK ORDER(s) issued hereunder through no fault of TOWN and CONSULTANT neither cures such material breach nor makes reasonable progress toward cure within 15 Business Days after TOWN has given written notice of the alleged breach to CONSULTANT.

**Item 2.** This Agreement and/or any TASK ORDER(s) issued hereunder may be terminated by CONSULTANT as follows: (1) for cause, if TOWN materially breaches this Agreement through no fault of CONSULTANT and TOWN neither cures such material breach nor makes reasonable progress toward cure within 15 business days after CONSULTANT has given written notice of the alleged breach to TOWN, or (2) upon five (5) Business Days' notice if Services provided under this Agreement and/or any TASK ORDER(S) issued hereunder have been suspended by either TOWN or CONSULTANT for more than 60 calendar days in the aggregate.

### **Item 3. Payment upon Termination**

In the event of termination, CONSULTANT shall perform such additional Services as is reasonably necessary for the orderly closing of the Services being performed under this Agreement and/or any TASK ORDER(S) issued hereunder. CONSULTANT shall be compensated for all Services performed prior to the effective date of termination, plus Services required ( as were authorized under this Agreement and/or any TASK ORDER(S) issued hereunder for the orderly closing of the Services being performed under this Agreement and/or any TASK ORDER(S) issued hereunder, including: (1) authorized Services performed up to the termination date; (2) all efforts necessary to document the Services completed or in progress; and (3) any termination reports requested by TOWN in writing.

## **ARTICLE XIX. ASSIGNMENT**

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. This Agreement may not be assigned by TOWN or CONSULTANT without prior, written consent of the other.

## **ARTICLE XX. NO BENEFIT FOR THIRD PARTIES**

The services to be performed by CONSULTANT are intended solely for the benefit of TOWN, and no benefit shall be conferred on, nor contractual relationship shall be established with any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely on CONSULTANT's services, opinions, recommendations, plans, or reports without the express written consent of CONSULTANT. No right to assert a claim against the CONSULTANT, its officers, employees, agents, or CONSULTANTs shall accrue to any subcontractor, supplier, manufacturer, lender, insurer, surety, or any other third party as a result of this Agreement or the performance or nonperformance of the CONSULTANT's Services under this Agreement and/or any Task Order issued hereunder.

## **ARTICLE XXI. APPLICABLE LAW; STATE LAW COMPLIANCE**

### **Item 1. Compliance with Applicable Law.**

The CONSULTANT shall comply with any and all applicable federal, state, and local rules, regulations, resolutions, ordinances and/or laws as they relate to the provisions of this Agreement and/or any TASK ORDER(s) issued hereunder; and CONSULTANT specifically acknowledges the applicability of the public record provisions of Florida Law. The CONSULTANT represents and warrants unto the TOWN that no elected official, officer, employee, or agent of the TOWN has any interest, either

directly or indirectly, in the business of the CONSULTANT to be conducted hereunder. The CONSULTANT further represents and warrants to the TOWN that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid, or agreed to pay, or given or offered any fee, commission, percentage, gift, loan, or anything of value (Value) to any person, company, corporation, individual, or firm, other than bona fide personnel working solely for the CONSULTANT, in consideration for or contingent upon, or resulting from the award or making of this Agreement. Further, the CONSULTANT also acknowledges that it has not agreed, as an expressed or implied condition for obtaining this Agreement, to employ or retain the services of any person, company, individual or firm in connection with carrying out this Agreement. It is absolutely understood and agreed by the CONSULTANT that, for the breach or violation of this Subsection, the TOWN shall have the right to terminate this Agreement without liability and at its sole discretion, and to deduct from any amounts owed, or to otherwise recover, the full amount of any value paid by the CONSULTANT. The CONSULTANT shall also require, by contract, that all subconsultants shall comply with the provisions of this Subsection.

**Item 2. State Law Compliance.**

(a) ***Scrutinized Companies.*** Section 287.135 of the Florida Statutes states that a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with the TOWN for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the *Scrutinized Companies that Boycott Israel List*, created pursuant to Section 215.4725 of the Florida Statutes or is engaged in a boycott of Israel; or for One Million Dollars (\$1,000,000.00) or more if, at the time of bidding on submitting a proposal for, or entering into or renewing a contract, the company is on the *Scrutinized Companies with Activities in Sudan List*, the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*, created pursuant to Section 215.473 of the Florida Statutes, or is engaged in business operations in Cuba or Syria. By executing this Agreement, CONSULTANT certifies that it does not and did not at any time since the submission of a response to the initial solicitation participate in a boycott of Israel; that it is not on the *Scrutinized Companies that Boycott Israel List*, *Scrutinized Companies with Activities in Sudan List*, or the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*; and that it does not engage in business operations in Cuba or Syria. CONSULTANT understands that a false certification may subject it to civil penalties, attorneys' fees and costs pursuant to Section 287.135 of the Florida Statutes and that the TOWN may terminate this Agreement at the TOWN's option if the CONSULTANT is found to have submitted a false certification.

(b) ***Public Entity Crimes; Convicted Vendor List.*** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. By executing this Agreement, CONSULTANT certifies that it is not on the convicted vendor list.

(c) ***Drug-Free Workplace.*** By executing this Agreement, CONSULTANT certifies that it has a drug-free workplace and has a substance abuse policy in accordance with and pursuant to Section 440.102 of the Florida Statutes.

(d) ***E-Verify.*** By entering into this Agreement, the CONSULTANT becomes obligated to comply

with the provisions of Section 448.095(5)(a), Florida Statutes, to register with and use the E-Verify system to verify the work authorization status of all new employees of the CONSULTANT and any subcontractor hired by the CONSULTANT. If the CONSULTANT enters into a contract with a subcontractor, the subcontractor must provide the CONSULTANT with an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of the statute by the CONSULTANT, the CONSULTANT may not be awarded a public contract for a period of one (1) year after the date of termination.

(e) ***No Consideration of Social, Political, and Ideological Interests.*** CONSULTANT acknowledges receipt of notice from the TOWN of the provisions of Section 287.05701 of the Florida Statutes which prohibits local governments from giving preference to a prospective contractor based on the prospective contractor's social, political or ideological interests or requesting documentation from, or considering, a prospective contractor's social, political, or ideological interests when determining if the prospective contractor is a responsible vendor. CONSULTANT affirms and agrees that the TOWN did not request any documentation about, or give any consideration to, the CONSULTANT's social, political, or ideological interests in the award of this Agreement.

(f) ***Contracting with Foreign Entities.*** By executing this Agreement, CONSULTANT certifies that it is not owned by the government of the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic (collectively "Foreign Countries of Concern"), nor is it owned by any agency of or any other entity of significant control of any such government. Further, CONSULTANT certifies that no government of a Foreign Country of Concern has a "controlling interest" in CONSULTANT as the term is defined in Section 287.138(1)(a) of the Florida Statutes, nor is the CONSULTANT organized under the laws of a Foreign Country of Concern, nor does the CONSULTANT have its principal place of business located in a Foreign Country of Concern. If this Agreement permits the CONSULTANT to access the personal identifying information of any individual, CONSULTANT agrees to notify the TOWN in advance of any contemplated transaction that would cause CONSULTANT to be disqualified from such access under Section 287.138 of the Florida Statutes. CONSULTANT agrees to furnish the TOWN with an affidavit signed by an officer or representative of the CONSULTANT under penalty of perjury at any time and upon request that the statements in this paragraph are true and correct.

## **ARTICLE XXII. FORCE MAJEURE**

CONSULTANT shall not be responsible for delays caused by circumstances beyond its reasonable control, including, but not limited to (1) strikes, lockouts, work slowdowns or stoppages, or accidents, (2) acts of God, (3) failure of TOWN to furnish timely information or to approve or disapprove CONSULTANT's instruments of service promptly, and (4) faulty performance or nonperformance by TOWN, TOWN's independent CONSULTANTs or contractors, or governmental agencies. CONSULTANT shall not be liable for damages arising out of any such delay, nor shall the CONSULTANT be deemed to be in breach of this Agreement as a result thereof.



**ARTICLE XXIII. SEVERABILITY**

If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances shall to any extent, be deemed by a court of competent jurisdiction to be lawfully invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, and condition of this Agreement shall be valid and enforced to the fullest extent permitted by law. The TOWN and CONSULTANT further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

**ARTICLE XXIV. VENUE**

Each of the parties hereto hereby irrevocably (i) agrees that any suit, action or other legal proceeding against any of them arising with respect to this Agreement and/or any TASK ORDER(S) issued hereunder shall be brought exclusively in the State Courts of Polk County, State of Florida, in the 10<sup>th</sup> Judicial Circuit; and (ii) waives any and all objections any of them might otherwise now or hereafter have to the laying of the venue of any such suit, action or proceeding in any of the courts referred to in this Section hereof or to service of any writ, summons or other legal process in accordance with applicable law.

**ARTICLE XXV. ATTORNEYS' FEES**

In the event either the TOWN or the CONSULTANT brings an action against the other to interpret and/or enforce this Agreement and/or any TASK ORDER(S) issued hereunder and/or any condition, covenant and/or provision herein, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs, including, without limitation, any such fees or costs related to appellate or bankruptcy proceedings.

**ARTICLE XXVI. NOTICES**

All notices, demands, requests, consents, approvals, and other communications (collectively, "Notices"), required or permitted to be given hereunder shall be in writing and sent by either: (i) registered or certified mail, postage prepaid, return receipt requested; or, (ii) special delivery service (e.g. Federal Express, DHL, UPS, etc.); addressed to the party to be so notified as follows:

CONSULTANT: [ \_\_\_\_\_ ]

TOWN:

Trevor Douthat, Town Clerk  
Town of Dundee  
Attn: RFP 23-01  
202 East Main Street  
PO BOX 1000  
Dundee, FL 3383

With a copy to:

*(which shall not constitute notice)*  
Frederick J. Murphy, Jr., Esquire  
Town Attorney  
Boswell & Dunlap LLP  
Post Office Drawer 30

Notice shall be effective upon delivery to the above addresses. Either party may notify the other that a new person has been designated by it to receive notices, or that the address for the delivery of such notices has been changed, provided that, until such time as the other party receives such notice in the manner provided for herein, any notice addressed to the previously-designated person and/or delivered to the previously-designated address shall be effective.

## **ARTICLE XXVII. MISCELLANEOUS PROVISIONS**

**Item 1.** Documents, drawings, specifications, and electronic information/data, including computer aided drafting and design (“CADD”), prepared by CONSULTANT pursuant to this Agreement are not intended or represented to be suitable for reuse by TOWN or others on extensions of the Project or on any other project. Any use of completed documents for other projects and any use of incomplete documents without specific written authorization from CONSULTANT will be at TOWN’s sole risk and without liability to CONSULTANT. Electronic data delivered to TOWN shall be for TOWN’s convenience only and shall not include the professional stamp or signature of an engineer or architect.

**Item 2.** TOWN agrees that in accordance with generally accepted construction practices, unless otherwise set forth in a specific TASK ORDER, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the PROJECT, including safety of all persons and property, and that this requirement shall be made to apply continuously and not be limited to normal working hours. CONSULTANT shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, as these are solely the responsibility of the construction contractor. CONSULTANT shall not have the authority to stop or reject the work of the construction contractor.

**Item 3.** Any opinion of the Construction Cost prepared by CONSULTANT represents its judgment as a design professional and is supplied for the general guidance of TOWN. Since CONSULTANT has no control over the cost of labor and material, or over competitive bidding or market conditions, CONSULTANT does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to TOWN.

### **Item 4. Waiver of Claim**

The CONSULTANT and the TOWN hereby mutually waive any claim against each other, their elected or appointed officials, agents, and employees, for any loss of anticipated profits caused by any suit or proceedings brought by any third party directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable, or delaying the same, or any part thereof, from being carried out.

### **Item 5. TOWN’s Agent**

The TOWN will assign an agent based upon the Department/Division requesting the work. The assigned agent shall act as the TOWN’s agent with respect to the Services to be rendered by the CONSULTANT hereunder, and shall transmit instructions, receive information, and communicate the TOWN’s policies and decisions to the CONSULTANT.

### **Item 6. CONSULTANT’s Project Team**

Subject to the approval of the TOWN or TOWN Representative, the CONSULTANT shall assign members of its staff as the CONSULTANT'S principal-in-charge, project manager and key personnel (hereafter the "Project Team"), who shall collectively devote such working time and attention as may be reasonably required to ensure that the Services are properly, economically, and efficiently performed. The CONSULTANT shall indicate to the TOWN and the TOWN or TOWN Representative shall approve in writing, as a part of each TASK ORDER, the authority and powers that the CONSULTANT'S Project Team shall possess during the life of that TASK ORDER. The CONSULTANT acknowledges that the TOWN shall have the right to approve the CONSULTANT'S Project Team, and that the CONSULTANT shall not change any member of its Project Team without the written approval of the TOWN or the TOWN Representative. Furthermore, if any member of the CONSULTANT's Project Team is removed from his TASK ORDER duties, or his employment is otherwise terminated or curtailed by the CONSULTANT, or if the CONSULTANT's Project Team member terminated his employment with the CONSULTANT, then the CONSULTANT shall promptly replace its Project Team member with a person of comparable experience and expertise, who shall also be subject to the TOWN or the TOWN Representative's written approval. The TOWN agrees that its approval shall not be unreasonably withheld.

#### **Item 7. Non-Exclusive Agreement**

This Agreement is non-exclusive, and may be terminated at the TOWN's convenience with the proper notice having been given to the CONSULTANT pursuant to **Article XVIII**. It is understood and acknowledged that the rights granted herein to the CONSULTANT are non-exclusive, and the TOWN shall have the right, at any time, to enter into similar agreements with other environmental consultants, subconsultants, and so forth, to have them perform such professional services as the TOWN may desire.

#### **Item 8. Licenses**

The CONSULTANT shall, during the life of this Agreement, procure and keep in full force, effect, and good standing all necessary licenses, registrations, certificates, permits, and other authorizations as are required by local, state, or federal law, in order for the CONSULTANT to render its Services performed under this Agreement and/or any TASK ORDER(S) issued hereunder. The CONSULTANT shall also require all subconsultants to comply by contract with the provisions of this Subsection.

#### **Item 9. Compliance With New Regulations**

The CONSULTANT agrees that at such time as the local, state, or federal agencies modify their grant procedures in order for the TOWN or the CONSULTANT to qualify for local, state or federal funding for the Services to be rendered by the CONSULTANT, then the CONSULTANT shall consent to and make such modifications or amendments in a timely manner. If the CONSULTANT is unable to comply with applicable local, state, or federal laws and regulations governing the grant of such funds for Services to be rendered herein, then the TOWN shall have the right, by written notice to the CONSULTANT, to terminate this Agreement for convenience. Furthermore, if the CONSULTANT's compliance with such laws, regulations, rules, or procedures causes a material change to a term or condition of this Agreement, and/or to any TASK ORDER(S) issued hereunder, then the TOWN agrees, upon sufficient proof of material changes as may be presented to it by the CONSULTANT, to amend all related TOWN/CONSULTANT contractual obligations, and to revise such TASK ORDER budgets accordingly.

#### **Item 10. License Fee and Royalties**

The CONSULTANT agrees that any invention, design, process, product, devise, proprietary system, or proprietary process for which an approval (of any type) may be necessary, shall be paid for by the TOWN, but shall be secured by the CONSULTANT (or, at the CONSULTANT's direction, by the Contractor during the CONSULTANT's construction phase services as may be memorialized in a TASK ORDER before the completion of any TASK ORDER.

## **ARTICLE XXVIII. SUBORDINATION OF TASK ORDERS**

The provisions of this Agreement are superior to any provision(s) set forth in a subsequent TASK ORDER entered into pursuant to the terms of this Agreement. In the event of any discrepancy between the language of this Agreement and any subsequent TASK ORDER, the provisions of any such TASK ORDER are subject and subordinate to the provisions of this Agreement and the language of this Agreement shall prevail.

## **ARTICLE XXIX. HEADINGS**

Any section or paragraph headings appearing in this Agreement have been inserted for the sole purpose of convenience and ready reference of the parties. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the sections and paragraphs to which they may pertain.

## **ARTICLE XXX. GOVERNING LAW**

The validity, interpretation, construction, and effect of this agreement shall be in accordance with and governed by the laws of the State of Florida, only.

## **ARTICLE XXXI. REMEDIES AND COSTS**

Subject to the provisions in **Article XV** of this Agreement, all remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of, exclusive of each other or of any other remedy available to either party, at law or in equity. No delay or omission to exercise any TOWN right or TOWN power accruing upon any event of default shall impair any TOWN right or TOWN power nor shall it be construed to be a waiver of any event of default or acquiescence in it, and every TOWN right and TOWN power may be exercised from time to time as often as may be deemed expedient.

## **ARTICLE XXXII. TIMELINESS**

The TOWN and the CONSULTANT acknowledge and understand that time is of the essence in this Agreement, and that the Services shall be performed in as expeditious a manner as may be in accord with the nature of each Project.

## **ARTICLE XXXIII. PUBLIC ENTITY CRIME**

Any person or affiliate, as defined in Section 287.133 of the Florida Statutes, shall not be allowed to contract with the TOWN, nor be allowed to enter into a subcontract for work on this Agreement, if such person or affiliate has been convicted of a public entity crime within three (3) years of the date this Agreement was advertised for proposals, or if such person or affiliate was listed on the State's convicted vendor list within three (3) years of the date this Agreement was advertised, whichever time period is greater. A public entity crime means a violation of any state or federal law with respect to and directly related to the transaction of business with any public entity or agency (federal, state or local), involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, forgery, falsification of records, receiving stolen property or material representation. Any Agreement with the TOWN obtained in violation of this Section shall be subject to termination for cause. A sub-consultant who obtains a subcontract in violation of this Section shall be removed from the TASK ORDER and/or Services provided thereunder and promptly replaced by a sub-consultant acceptable to the TOWN.

**ARTICLE XXXIV. ENTIRETY OF AGREEMENT**

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other Agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.

**ARTICLE XXXV. AUTHORIZATION**

Both the TOWN and CONSULTANT represent to the one another that all the necessary actions to execute this Agreement have occurred and that both parties possess the legal authority to enter into this Agreement and undertake all the obligations imposed herein.

**ARTICLE XXXVI. REPRESENTATIONS AND WARRANTIES**

Each party signing this Agreement on behalf of TOWN and CONSULTANT represents and warrants that he or she has read, understands and acknowledges any and all of the conditions and requirements as set forth herein.

**ARTICLE XXXVII. GENDER NEUTRAL**

For purposes of this Agreement, any and all gender specific references, classifications and/or language shall be interpreted to be gender neutral.

**ARTICLE XXXVIII. CONSTRUCTION**

The TOWN and CONSULTANT acknowledge that the Agreement has been fairly negotiated by each party's respective legal counsel and at arm's length; and, as such, the Agreement shall be interpreted in accordance with the terms contained herein.

**ARTICLE XXXIV. CALCULATION OF TIME**

The calculation of the number of days that have passed during any time period prescribed shall be based on calendar days (unless specified otherwise in this Agreement). Unless otherwise specified in this Agreement, the calculation of the number of days that have passed during any time period prescribed in or by this Agreement shall commence on the day immediately following the event triggering such time period. If the tolling of such a time period is not contingent upon an action or event, the calculation of the number of days that have passed during such time period prescribed in or by this Agreement shall commence on the day immediately following the Effective Date. For purposes of this Agreement, unless otherwise specified herein, the tolling of any such time period(s) shall be in "calendar days" which means any and all days in a 365 Day calendar year; and "business days" shall mean each calendar day which is not a Saturday, Sunday or a recognized holiday by the TOWN. In the event any time period or deadline identified in this Agreement expires and/or falls on a Saturday, Sunday or recognized holiday by the TOWN, said expiration and/or deadline shall be automatically tolled until 5:00 pm on the next available business day which the TOWN is open for business to the public.

**ARTICLE XXXX. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with, or any rights in favor of, any third party, including any subcontractor.

## **ARTICLE XXXXI. INDEPENDENT CONTRACTOR**

Notwithstanding any provision of this Agreement and/or any TASK ORDER issued hereunder the CONSULTANT and TOWN agree that the CONSULTANT is an independent contractor for all purposes and when performing any Services under this Agreement and/or any TASK ORDER(S) issued hereunder.

## **ARTICLE XXXXII. EXHIBITS**

All exhibits annexed hereto are incorporated by reference and made a part of the Agreement.

## **ARTICLE XXXXIII. DUTY TO COOPERATE AND ACT IN GOOD FAITH**

The TOWN and CONSULTANT acknowledge and agree that it is in their best interests and the best interests of the public that this Agreement and any and all TASK ORDER(S) issued hereunder be performed in accordance with the terms, covenants and conditions contained herein; and both the TOWN and CONSULTANT shall, in all instances, cooperate and act in good faith in complying with all of the terms, covenants and conditions contained herein.

## **ARTICLE XXXXIV. PUBLIC RECORDS**

Public Records. CONSULTANT agrees to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes 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 Agreement term and following completion of the Agreement and/or any TASK ORDER(S) issued hereunder if the CONSULTANT does not transfer the records to the public agency.
4. Upon completion of the Agreement and/or any TASK ORDER(S) issued hereunder, transfer, at no cost, to the public agency all public records in possession of the CONSULTANT or keep and maintain public records required by the public agency to perform the service. If the CONSULTANT transfers all public records to the public agency upon completion of the Agreement and/or any TASK ORDER(S) issued hereunder, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement and/or any TASK ORDER(S) issued hereunder, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**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 AGREEMENT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS, TREVOR DOUTHAT, TOWN CLERK, (863) 438-8330, EXT. 222,**

[tdouthat@townofdundee.com](mailto:tdouthat@townofdundee.com) , 202 EAST MAIN STREET, DUNDEE, FLORIDA 33838.

If the CONSULTANT does not comply with a public records request, TOWN shall enforce the Agreement and/or any TASK ORDER(S) provisions which may include immediate termination of Agreement and/or any TASK ORDER(S) issued hereunder. **This Section shall survive the termination of this Agreement.**

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**Consultant:**

[\_\_\_\_\_]
By: \_\_\_\_\_
\_\_\_\_\_, *Managing Member*

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Date*

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as \_\_\_\_\_, on its behalf, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



*Town of Dundee:*

TOWN OF DUNDEE

By: \_\_\_\_\_  
Sam Pennant, Town Mayor

ATTEST:

\_\_\_\_\_  
Trevor Douthat, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Frederick J. Murphy, Jr., Town Attorney



## **Scope of Services**

### **Dundee Alternative Water Supply (AWS) Receiving Facility (Part I) At Hickory Walk**

Pursuant to this Agreement, the Town of Dundee has requested that the Consultant provide certain professional services in support of an AWS Receiving Facility (Project) as further detailed in this Scope of Services.

#### **A. Project Background and Description**

The Polk Regional Water Cooperative (PRWC) is developing sustainable and drought resistant AWS projects for the participating member communities. The Town of Dundee (Dundee) is recognized as a participant of the PRWC Second Amended and Restated Implementation Agreement for the Southeast Wellfield Project. The Hickory Walk Water Treatment Plant (WTP) is one of the locations that AWS will be delivered to via a transmission pipeline that is scheduled to be online by 2027. The infrastructure being constructed by the PRWC requires the members to plan, design and construct facilities by 2027 to receive the water as a base load, adjust the water quality as needed, and provide that water to their customers. Dundee has received funding through the Heartland Alliance funding requests for planning thru construction of the facilities necessary. Dundee has requested Dewberry Engineers Inc. (Consultant) provide the required engineering services in support of the Project.

Upon authorization to proceed from Dundee, the Consultant will provide the following identified services. The Consultant shall ensure that all design, bid, and construction documents produced by the Consultant or their subconsultants for Dundee will be consistent with the Dundee's standards. This authorization shall be in full force and effect until the Consultant completes all services as described in this authorization and any subsequent modifications hereto.

#### **Phase 100 – Project Management**

##### **Task 101 – Project Management**

This task consists of overall management of the Project including contract administration, budget management, invoicing, monthly status reports, scheduling, and coordination with Dundee and Consultant's subconsultants.

## **Task 102 – Kick-off Meeting and Review Meetings**

The Consultant will attend one kickoff meeting with Dundee. The Consultant will prepare a meeting agenda and meeting minutes. Meeting minutes shall be distributed within three working days of the date of the meeting.

The Consultant will attend the following additional meetings with Dundee. The Consultant will prepare a meeting agenda and meeting minutes. Meeting minutes shall be distributed within three working days of the date of the meeting.

- Review of Water Quality and Blending Analysis Technical Memorandums (1 review meeting for technical memorandums)
- 30% preliminary design report review

## **Phase 200 – Support Services**

### **Task 201 – Land Survey Services**

We will perform a Topographic Survey of the site in accordance with the Standards of Practice set forth in Chapter 5J17-052 of the Florida Administrative Code. We will collect spot elevations at fifty (50) foot intervals within the site and at all grade breaks therein. Utilities will be located by above ground evidence and as detailed at manhole and structure locations within the limits of survey. Manhole and structure details will include top elevation, inverts, sizes, material and direction when accessible. We will provide final drawings that reflect one (1) foot contours. This survey will be prepared in accordance with the Standards of Practice set forth in Chapter 5J17-052 of the Florida Administrative Code. two (2) certified copies and electronic file in PDF and AutoCAD formats.

### **Task 202 – Subsurface Utility Investigation Engineering Services (SUE)**

Dewberry will perform Subsurface Utility Engineering (SUE) investigation within the limits of the project using the methods and procedures outlined below for up to seven (7) test holes.

Per Florida Statutes, we will place a Sunshine One Call request to have the subsurface utilities marked on the ground by the subsurface utility owner or their representatives. During the call we will provide the project limits and other important information necessary for the response to this call. We will also coordinate with the utility representatives, in the field, to clarify the project limits and our scope of work.

Once this has been accomplished, and in compliance with the two (2) business day waiting period, we will begin our SUE activity.

We will then verify the subsurface utility markings made by the utility company representatives using the American Society of Civil Engineers (ASCE) “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data”.

#### SUE Quality Level “B”

Information obtained through the application of appropriate surface geophysical methods to determine the existence and approximate horizontal position of subsurface utilities.

Through the use of electronic radio wave measuring devices, we will verify and expand on the markings made as a result of the Sunshine One Call made for this project. This investigative tool is applicable to conductive, “toneable” subsurface utilities only. We are unable to designate subsurface utilities such as Polyvinylchloride (PVC) pipe. We will attempt to identify non-conductive subsurface utilities through direct non-invasive subsurface utility vacuum excavation. No guarantee can be made that all subsurface utilities will be identified within the project limits. The resulting information will then be surveyed using the project survey control and performed to the Standards of Practice as set forth in Florida Statutes 61G17-6.

#### SUE Quality Level “A”

Precise horizontal and vertical location of subsurface utilities obtained by the actual exposure (or verification of previously exposed and surveyed utilities) and subsequent measurement of subsurface utilities, at the specific point at which the test holes are made.

We will then attempt to obtain from the exposed utility the size, type and measurement down to the subsurface utility. Minimally intrusive soft vacuum excavation equipment will be used to reduce the potential for subsurface utility damage. No guarantee can be made that all subsurface utilities will be identified within the project limits. The resulting information will then be surveyed using the project survey control and performed to the Standards of Practice as set forth in Florida Statutes 61G17-6.

### **Task 203 – Water Quality Sampling**

Dewberry will host a kickoff conference call with Dundee to review project goals and objectives, schedule, sampling program, and information request.

Dewberry will collect water samples from the Hickory Walk WTP, once a week, for four consecutive weeks. The water samples will be tested by a National Environmental Laboratory Accreditation Program (NELAP) certified lab, retained by Dewberry, for analysis and reporting. The parameters for analysis and test method are provided in the following list. These parameters will be modified if the data collection indicates that the water quality data already exists in Dundee's records.

- Chloride EPA 300.0
- Fluoride EPA 300.0
- Sulfate EPA 300.0
- Sodium,EPA 200.7,ICP,Drinking Water
- Iron,EPA 200.7,ICP,Drinking Water
- Iron,EPA 200.7,ICP,Dissolved
- Manganese,EPA 200.8,ICPMS,Drinking Water
- COLOR,2120C,WA
- .PH,SM4500H+B,Drinking Water
- Total Dissolved Solids,SM2540C,WA
- Alkalinity,2320B,Aqueous
- Ammonia,350.1,Aqueous
- Calcium,EPA 200.7,ICP,Drinking Water
- TOC,5310B ,Aqueous
- Hardness, Total (SM 2340B)
- Magnesium,EPA 200.7,ICP,Drinking Water
- Arsenic,EPA 200.8,ICPMS,Drinking Water
- NO3,NO2 4500NO3F,Aqueous
- Total Inorganic Carbon
- Total Sulfide (field test)

## **Phase 300 – Preliminary Design**

### **Task 301 – Data Collection / Site Visits**

The Consultant shall review the collected historic data and readily available documentation related to the Hickory Walk WTP and distribution system. It is assumed Dundee will provide record drawings for the WTP, existing water quality data, WTP flow data. The Consultant will include one (1) site visit to the Hickory Walk WTP to confirm data.

### **Task 302 – Blending Analysis Technical Memorandum**

After receiving the water quality results from Task 203, Dewberry will perform a blending analysis with the predicted SELFA WPF water quality. The projected water quality for the

SELFA WPF will be based on data provided in the Draft February 2023 Technical Memorandum 1 Water Quality and Compatibility Recommendations. The analysis will focus on the same corrosion control metrics reviewed in the Draft February 2023 report (Langelier Saturation Index, Larson Index, Ryznar Stability Index, Chloride-to-Sulfate Mass Ratio, Calcium Carbonate Precipitation Potential, Total Hardness, Alkalinity) only. The analysis will investigate up to six water quality blending ratios between the two water supplies.

The results of this analysis along with recommendations for water quality adjustments will be presented in a draft Technical Memorandum (TM). Dewberry will attend a Teams call with Dundee to review the water blending memorandum. The final TM will be provided to Dundee following the review call. The TM will be included in the Preliminary Design Report as an appendix.

### **Task 303 –Preliminary Design Report (PDR)**

Upon completion of the TM's identified in Task 302, the Consultant will prepare a PDR for the Project. The PDR will summarize the findings and decisions of the TMs as well as provide the basis for permitting and identification of Project elements for final design and construction: The PDR will have the following chapters and sections:

- 1.0 Introduction
- 2.0 Permitting Requirements
- 3.0 Capacity analysis
- 4.0 Water Quality and Treatment Requirements
- 5.0 Design Criteria
  - 5.1 General
  - 5.2 Raw Water Wells and Well Pumps
  - 5.3 High Service Distribution Pump Station
  - 5.4 Ground Storage Reservoir
  - 5.5 Chemical Feed and Storage System
  - 5.6 Site Plan and Yard Piping
  - 5.7 Civil/Stormwater
  - 5.8 Structural
  - 5.9 Electrical
  - 5.10 Instrumentation and Controls
  - 5.11 Plumbing/HVAC – No restrooms
  - 5.12 Site Demolition and Abandonment
  - 5.13 Maintenance of Plant Operation
- 6.0 Schedule and Construction Sequence
- 7.0 Engineer's opinion of probable construction cost

Three (3) hard copies and one (1) electronic copy in Portable Document Format of the report shall be submitted to Dundee.

### **Phase 400 – Final Design Documents**

No services under this task are included for Part 1.

### **Phase 500 – Permitting Services**

#### **Task 501 Pre-Application Meetings**

This phase consists of the preparation and submittal of the forms and documents that are required for obtaining regulatory and construction permits / approvals for the Project. It is anticipated for this scope of services that only pre-application meetings will be held to provide the necessary information for the development of the PDR. The Consultant will prepare an agenda and the necessary documents to convey the intent of the design and to have meaningful dialog to identify the permitting requirements. The following preapplication meetings are anticipated:

- Specific Permit to Construct Public Water System Components (Polk County Health Department / Department of Health)
- Environmental Resource Permit - stormwater, jurisdiction wetlands / waters of the State, sovereign submerged lands, etc. (Southwest Florida Water Management District)
- Sand Skink Incidental Take Permit (Fish and Wildlife Service) if required
- Gopher Tortoise Relocation Permit (Fish and Wildlife Service) if required

### **Phase 600 – Bid Phase Services**

No services under this task are included for Part 1.

### **Phase 700 – Construction Administration Services**

No services under this task are included for Part 1.

### **Phase 800 – Resident Project Representative Services**

No services under this task are included for Part 1.



## **Deliverables**

The Consultant shall prepare and submit to Dundee, including electronic format when applicable, the following deliverables:

<b>Task</b>	<b>Activity</b>	<b>Deliverable</b>
102	Meetings	Meeting agenda and minutes
201-204	Support Services	Three (3) hard copies of reports / drawings (signed / sealed for survey documents); one (1) electronic copy (Portable Document Format and / or AutoCAD)
302	Basis of Design Report or Preliminary Design Report	Three (3) hard copies (one signed / sealed) and one (1) electronic copy

## **B. Schedule**

Consultant will proceed with the services identified herein immediately upon receipt of an executed copy of this Agreement and a formal Notice-to-Proceed from Dundee. An updated electronic version of the Project schedule in Microsoft Project will be provided to Dundee within 10 working days from the issuance of the Notice-to-Proceed. Delivery of the schedule may be in other electronic formats so long as they accurately portray the approved scope of services with sufficient detail subject to staff approval.

## **C. Compensation**

This Agreement establishes a not-to-exceed cost of \$156,782.06 for Part 1 Services. Compensation for the services performed under this Agreement shall be on an hourly, not-to-exceed basis using the current hourly rate schedule as set forth in the Master Agreement. A summary of the estimated labor costs is provided in Attachment A-2 for reference only. Each invoice submittal shall include a tabular summary of the originally estimated labor costs by phase in accordance with Attachment A-2, fees invoiced to date, and the balance remaining per phase.

#### **D. Dundee's Responsibilities**

Dundee will provide the following information to the Consultant and / or perform the following services related to the Project:

- Project Manager and single point of contact
- Timely reviews of deliverables (2 weeks) with consolidated comments
- Access to existing potable water facilities

#### **E. Services Not Included**

The following services are not included in the Scope of Services for the Project:

- Submissions for Development Review (To be part of Final Design scope if needed)

#### **F. Assumptions**

The Scope of Services and compensation arrangement outlined in this Consultant Services Authorization are based on the following assumptions:

- Dundee will provide record drawings for Hickory Walk WTP.
- Dundee will provide available data on anticipated future flows for Hickory Walk WTP.
- The site has no wetlands and requires minimal environmental review.
- No permitting fees are required as applications are not part of this scope of services.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date first above written.

**X**

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Matt O'Connor PE, Senior Associate  
Dewberry Engineers Inc

**X**

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Tandra Davis, Town Manager  
Town of Dundee

ATTEST:

**X**

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Trevor Douthat, Town Clerk  
Town of Dundee