

**MASTER CONTINUING PROFESSIONAL CONSULTING AGREEMENT FOR
ARCHITECTURAL, ENGINEERING, PLANNING, AND VARIOUS CONSULTING
PROFESSIONAL SERVICES BETWEEN THE CITY OF LAKE ALFRED, 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 19th day of February, 2024 (hereafter the "Effective Date"), by and between The City of Lake Alfred, Florida, a Florida municipal corporation (hereafter the "CITY"), and Robert A. Stevens & Associates, Inc. (hereafter the "CONSULTANT").

FACTUAL RECITALS

WHEREAS, the City as required by Florida Law advertised a Request for Qualifications 23/24-01 ("RFQ 23/24-01") for the provision of architectural, engineering, planning, and various professional consulting services; and

WHEREAS, the CITY 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 CITY to areas within the Corporate CITY Limits and to the unincorporated area(s) in Polk County; and

WHEREAS, the CITY 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 23/24-01, sections:

2.6 TYPES OF PROJECTS: The project areas listed below are the discipline areas for the services. The work TASK ORDER(S) may include services that will assist in the completion of the assigned CITY projects in accordance with the *Agreement*, as follows:

2.6.1 Services Related to Utility Systems:

- Potable water treatment, transmission, and distribution
- Sanitary sewer treatment, transmission, and collection
- Reclaimed water treatment, transmission, and distribution
- Stormwater treatment, transmission, and distribution
- Hydrological modeling services
- Water quality services
- GeoDesign and green infrastructure systems
- Water Use Permits
- Stormwater planning and modeling

2.6.2 Services Related to Transportation Systems:

- Roads, bridges, sidewalks, intersections, signalization design, and drainage
- Transportation
- Urban and Multi-Modal Transportation
- Traffic signage
- Traffic control device(s) and instrumentation
- Streetscaping

- Pedestrian enhancements on existing streets
- Complete streets and multimodal projects
- Traffic engineering and intersection studies
- Advanced traffic management system
- Truck routes and alternate means of transportation
- Trails and greenways

2.6.3 Services Related to Solid Waste/Recycling:

- Waste stream studies
- Other solid waste/recycling-related services
- Route studies
- Solid waste operation(s) planning

2.6.4 Services Related to Parks and Recreation:

- Landscape Irrigation design services
- Facility and site lighting
- Playgrounds, recreational facilities, and site design

2.6.5 Services Related to Other City Departments or Projects:

- Landscape Irrigation design services
- Facility and site lighting
- Playgrounds, recreational facilities, and site design
- Environmental studies – Phase I and Phase II
- Stormwater planning and modeling
- Land Use Planning
- FEMA Community Rating System updates
- Policy Analysis
- Economic Impact Analysis
- Land use, zoning, land development, and building application review
- Project outreach and communication
- Facility citing (city hall, police, fire, etc.)
- Financial Studies
- Departmental application development
- Historic venue(s) and historic restoration

Any other associated municipal functions within the CITY’s service area(s) as further described in the CITY’s Scope of Work set forth in RFQ 23/24-01 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 CITY 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 CITY in support of its expressed desires; and

WHEREAS, as a result of the aforementioned mutual understanding, the CITY 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 CITY upon the terms and conditions hereinafter set forth; and

WHEREAS, it is intended that funds, if available, will be provided in the CITY'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 CITY for the CITY 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 CITY's annual appropriations process, the CITY 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 23/24-01, 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 CITY 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 City of Lake Alfred Charter, City of Lake Alfred Code of Ordinances, City of Lake Alfred Unified 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, City of Lake Alfred, and any and all other public authority which may be applicable.

"CITY" means the City of Lake Alfred, 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 CITY 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.

"CITY Code" means the City of Lake Alfred Code of Ordinances and the City of Lake Alfred Unified Land Development Code.

"CITY Commission" means the duly elected City of Lake Alfred CITY Commission and/or governing body of the City of Lake Alfred.

"CITY Representative" means the CITY Manager, or her/his designated appointee, who is authorized to act on behalf of the CITY in the administration of this Agreement. The CITY 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 City of Lake Alfred, Florida.

"Contract Documents" means the RFQ XX-XX; 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 XX-XX; 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 CITY Commission at a duly noticed public meeting.

“*Indemnification*” means, for purposes of this Agreement, CONSULTANT shall hold harmless, indemnify, and defend the CITY, 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 CITY 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 CITY 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 CITY 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 CITY 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 CITY 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 CITY 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 CITY, agrees to provide and perform such professional architectural, engineering, planning, and various professional consulting services as the CITY 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 23/24-01 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 CITY 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 CITY as a result of the services), and (6) the services, information, and data that can be provided by the CITY to CONSULTANT.
- 1.2 The CITY 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 CITY 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 CITY, a representative of the CONSULTANT shall attend meetings of the CITY to advise and assist in matters within the scope of the CONSULTANT's profession as well as to clarify and help define the CITY'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 CITY.
- 1.6 The CONSULTANT shall be available for office consultation at the CONSULTANT's place of business in Florida and maintain liaison with CITY 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 CITY with a preliminary study and report to determine the feasibility of a proposed TASK ORDER, the CONSULTANT shall:

- 2.1 Consult with the CITY to clarify and define the CITY's requirements under the TASK ORDER.
- 2.2 Obtain from the CITY, 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 CITY as to the necessity of the CITY'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 CITY'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 CITY.
- 2.5 Provide a general economic analysis of the CITY'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 CITY.

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 CITY.
- 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 CITY 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 CITY to discuss preliminary submittal reviews by the CITY.
- 3.5 Provide services to investigate existing conditions of facilities or to verify the accuracy of drawings or other information furnished by the CITY or others to the CONSULTANT. Such verification services shall be set forth in the applicable TASK ORDER(S).
- 3.6 Advise the CITY if additional data or services are necessary for preliminary design and assist the CITY 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 CITY.
- 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 CITY 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 CITY 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 CITY).
- 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 CITY 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 CITY or by contractors of any level. When such delays beyond the CONSULTANT's reasonable control occur, the CITY 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 CITY in acquiring the approval from Local, State and Federal Regulatory Agencies. The CONSULTANT shall also assist the CITY 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 CITY in order that all phases of the work may be properly scheduled and coordinated. At this Final Design Phase, the CONSULTANT will furnish the CITY 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 CITY for reference and file.
- 4.8 Report the status of TASK ORDER(S) to the CITY Manager or her/his designee upon request, and hold the drawings, calculations, and related work open to the inspection of the CITY Manager or her/his authorized agent or designee at any time.
- 4.9 Submit to the CITY 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 CITY in writing with each submittal of the estimated project construction cost.

- 4.10 Submit to the CITY 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 CITY. Additional copies required shall be furnished at actual cost of reproduction if requested by the CITY. 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 CITY 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 CITY 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 CITY and furnish a copy for each set of *Contract Documents* at actual cost of reproduction. Distribution will be made by the CITY.
- 5.3 Consult with and advise the CITY 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 CITY 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 CITY 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 CITY and act as its representative as provided in the CITY's Standard Construction Contract Documents (Construction Contract Documents). The CITY 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 CITY with representatives of the Contractor(s), subcontractor(s), utility companies, etc., for each Project

as determined necessary by the CITY.

- 6.3 Consult with the CITY 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 CITY 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 CITY 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 CITY, and shall be submitted to the CITY 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 CITY 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 CITY informed of the progress of the work, shall

endeavor to guard the CITY 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 CITY 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 CITY 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 CITY'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 CITY'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 CITY 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 CITY, 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 CITY 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 CITY of the release of progress payments for the work in question.

- 6.10 Conduct a site visit, in company with the CITY 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 CITY as to interpretations of the Contract Documents in any disputes between the CITY 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 CITY 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 CITY, 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 CITY and the design and construction contract principals; other local, state, or federal parties (when directed by the CITY); or private entities that may also be involved. Upon identification of a potential Contractor claim, the CONSULTANT shall immediately notify the CITY 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 CITY 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 CITY 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 CITY

In addition to payment for the Services performed under this Agreement, CITY 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 CITY's representative with respect to the work to be performed under this Agreement (hereafter the "CITY Representative"). The CONSULTANT may rely upon the fact that the CITY's Representative has complete authority to transmit instructions, receive information, interpret and define CITY's policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this Agreement. The CITY Representative shall also (1) communicate the CITY'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 CITY's nonperformance of any obligations under this Agreement and/or any TASK ORDER(S) issued hereunder. All determinations made by the CITY 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 CITY in regard to appeals to a court of competent jurisdiction.

Item 3. Furnish CONSULTANT with reasonably available technical and other data in CITY'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 CITY 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 CITY.

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 CITY properties, and provide assistance with access to properties not owned by the CITY as required to perform and complete the Services.

Item 6. If CONSULTANT's scope of work includes services during construction, CITY 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.

CITY 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 CITY or the contractor to protect work in progress or any materials, supplies, or equipment purchased for installation

therein.

CITY 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 CITY 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 CITY shall have sole responsibility as between CITY 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, CITY 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 CITY 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 CITY prior to its effective date. The revised hourly rate schedule shall take effect unless written notice is received from the CITY 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 CITY 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 CITY shall reimburse the CONSULTANT for certain direct out-of-pocket expenses (see itemized list below). Such direct charges shall be submitted to the CITY 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 CITY or included in the TASK ORDER.

Item 1. Travel and Subsistence

The actual cost of travel and subsistence expense(s) incurred while performing authorized CITY business. Travel performed in the CONSULTANT's vehicle shall be at the calculation rate authorized by the CITY for its employees from time to time pursuant to CITY 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 CITY Manager or CITY'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 CITY'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 CITY 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 CITY 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 CITY may withhold payment otherwise due and payable to the CONSULTANT; provided, however, that the CITY shall not unreasonably withhold other payment(s) that may not otherwise be in dispute. Any payment so withheld may be retained by the CITY for such period as it deems advisable, in its sole and absolute discretion, to protect the CITY against any loss or deprivation that the CITY 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 CITY and no person shall have any right against the CITY and/or its employees and officials by reason of the CITY's withholding of payment(s). Interest [one percent (1%) simple interest, per month] shall only be payable by the CITY on any amounts withheld under this provision if the CITY has acted without justification. This provision is not intended to limit or in any way prejudice any other right the CITY may have in this regard or any right or defense that the CONSULTANT might choose to exercise against the CITY.

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 CITY 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 CITY 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 CITY. 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 CITY is exempt from sales taxes imposed upon professional services when the CITY 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 CITY 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 CITY 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 CITY, through the CITY Manager, his designee or CITY 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 CITY. The CONSULTANT shall be responsible for advising the CITY when the validity, completeness or accuracy of information is of concern.

Item 3. CONSULTANT's Opinion of Costs

CITY 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. CITY 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 CITY 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 CITY 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 CITY 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 CITY in its audit process and the CITY 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 CITY.

ARTICLE XIII. SPECIAL PROJECTS

Periodically, the CITY 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 CITY bond issues. The CITY, 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 CITY 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 CITY 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 CITY and CONSULTANT are public records and subject to public records requests.

CONSULTANT and CITY 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. CITY's alteration of CONSULTANT's work product or its use by CITY for any other purpose shall be at CITY's sole risk, and CITY 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 CITY, 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. CITY agrees to hold harmless, indemnify and defend CONSULTANT from any claims arising out of or relating to any unauthorized change or alteration by the CITY of electronic copies.

If requested, solely as an aid and accommodation to CITY, 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. CITY 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. CITY 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 CITY to indemnify CONSULTANT, the CITY does not intend to waive any sovereign immunity. Further regardless of whether any such obligations which are the subject of any indemnification by the CITY hereunder are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the CITY 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 CITY and CONSULTANT.

ARTICLE XV. INDEMNIFICATION AND INSURANCE

Item 1. CONSULTANT'S F.S. § 725.08 Indemnifications

1.1 CONSULTANT shall indemnify and hold harmless the CITY, its elected officials, officers, agents, and employees, from and against any and all claims, costs, losses, damages – including but not limited to all fees and charges of attorneys, and other professionals, and all court or other dispute resolution costs, both trial and appellate – liabilities, expenditures, or causes of action of any kind, including negligent, reckless, or willful or intentional acts or omissions of CONSULTANT and any person or organization directly or indirectly employed by CONSULTANT to perform or furnish any work or anyone for whose acts any of them may be liable, arising from, relative to, or caused by the performance of any services as may be described or provided in this *Agreement*, any services pursuant to any TASK ORDER(S) issued hereunder, or in the project or any work order. Such indemnification shall specifically include, but not be limited to, claims, damages, losses, liabilities and expenses arising out of or from:

- (a) any act, omission or default of the CONSULTANT or its employees or agents, including negligent, reckless, willful or intentional acts or omissions;
- (b) any and all bodily injuries, sickness, disease or death;
- (c) injury to or destruction of tangible property, including 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*, any TASK ORDER(S) issued hereunder or any project, task or work performed thereunder; and
- (e) the violation of any federal, state, county or CITY laws, by-laws, ordinances or regulations by CONSULTANT or its employees, or agents.

For purposes of compliance with Florida law, CONSULTANT acknowledges that the indemnifications given in this paragraph shall be deemed a part of the services pursuant to any TASK ORDER(S) issued hereunder, or in the project or any work order project specifications and Contract Documents and are given pursuant to and to the maximum extent allowed by §725.08, Florida Statutes (2023).

1.2 CONSULTANT'S F.S. § 725.06 Indemnifications

CONSULTANT shall indemnify, defend, and hold harmless the CITY, its elected officials, officers, agents and employees, from liability for damages to persons or property caused in whole or in part by any act, omission, or default of CONSULTANT, specifically including negligent, grossly negligent, intentional, willful and reckless acts, done, made or failed to be done or made in the performance of any services as may be described or provided in this *Agreement*, any services pursuant to any TASK ORDER(S) issued hereunder, or in the project or any work order which relates to, pertains to, or arises from this *Agreement*. CONSULTANT also agrees to indemnify, defend, save and hold harmless the CITY, 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 that may be brought against the CITY, 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. **For purposes of compliance with Florida law, CONSULTANT acknowledges that the indemnifications in this provision shall be deemed a part of the project specifications and Contract Documents and are given pursuant to and to the maximum extent allowed by the provisions of §725.06, Florida Statutes (2023). Indemnification shall have a monetary limitation of no less than the sum of five million dollars and zero cents (\$5,000,000.00) per occurrence, which the parties declare to bear a reasonable commercial relationship to this *Agreement*.**

1.3 Payment of Claims

In the event of any liabilities, damages, losses, costs, expenditures, fines or fees which fall within the indemnities set forth above in **Article XV**, paragraphs 1.1 and 1.2 of this *Agreement*, payment of any amount due pursuant thereto shall, after receipt of written notice by CONSULTANT from the CITY that such amount is due, be made by CONSULTANT prior to the CITY being required to pay same, or in the alternative, the CITY, at the CITY'S option, may make payment of an amount so due and CONSULTANT shall promptly reimburse the CITY for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the day of the CITY'S payment.

1.4 Defense of CITY; Attorneys' Fees, Costs and Expenses

CONSULTANT agrees, at its own expense, after receipt of written notice from the CITY, to defend any action against the CITY that falls within the scope of the indemnities set forth above in **Article XV**, paragraphs 1.1 and 1.2 of this *Agreement*. At its option, the CITY may elect to secure its own attorney to defend any such action and the reasonable costs and expenses of such attorney incurred in defending such action shall be payable by CONSULTANT. Additionally, if CONSULTANT, after receipt of written notice from the CITY, fails to make any payment due hereunder to the CITY, CONSULTANT shall pay any reasonable attorney's fees or costs incurred by the CITY in securing any such payment from CITY. 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 CITY'S favor.

1.5 Consideration for Indemnifications

CONSULTANT acknowledges that Five Hundred Dollars (\$500.00) of the amount paid to it under this *Agreement* is in consideration, for all contractual indemnifications given by it to the CITY in **Article XV** and deems such sum to be adequate consideration.

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 CITY, 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 CITY 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 CITY and the CITY'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 CITY.

Until such coverage is no longer required by this Agreement, CONSULTANT shall provide the CITY 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 CITY 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 CITY 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 CITY and the CITY'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 CITY 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 CITY 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 CITY at least ten (10) Calendar Days after the final execution of this Agreement. The Insurance Certificates shall be fully acceptable to the CITY 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 CITY. 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 CITY [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 CITY, demonstrating that the particular coverage has either been reinstated, or has been provided through another insurer(s) that is (are) acceptable to the CITY. Failure of the CONSULTANT to obtain the CITY's approval, or to satisfy the CITY 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 CITY, and the CONSULTANT's insurer(s) so that the Insurance Certificates are acceptable to and accepted by the CITY within the time limits described in this Subsection.

2.4 CITY's Right to Inspect Policies

The CONSULTANT shall, upon thirty (30) Business Days' written request from the CITY, deliver copies to the CITY 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 CITY. It being the intent of the parties that the CITY 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 CITY or the CITY'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 CITY or the CITY's members, officials, officers and employees any deductible or self-insured retention applicable to a claim against the CITY or the CITY'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 CITY and the CITY's members, officials, officers and employees.

(d) Compliance with these insurance requirements shall not limit the liability of CONSULTANT. Any remedy provided to the CITY 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 CITY 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 CITY 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 CITY 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 CITY, at its sole discretion, may cancel the Agreement and all rights, title and

interest of the CONSULTANT shall thereupon cease and terminate. The CITY 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 CITY, nor shall the CONSULTANT allow any sub-consultant to commence performance of duties under any TASK ORDER with the CITY until all similar such insurance coverage and Insurance Certificates required of the sub-consultant have been obtained and approved by the CITY or the CITY Representative.

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

Nothing herein is intended to act as a waiver of the CITY'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 CITY, which CITY has clearly identified as "confidential", and will not disclose, distribute, or publish to any third party such confidential information without the prior permission of CITY. 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 CITY; 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 CITY and shall cooperate with CITY prior to disclosure so that CITY 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 CITY

By written notice to CONSULTANT, CITY 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 CITY'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. CITY'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 CITY at law or equity.

Item 2. By CONSULTANT

By written notice to CITY, 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 CITY 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 CITY and CONSULTANT neither cures such material breach nor makes reasonable progress toward cure within 15 Business Days after CITY 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 CITY materially breaches this Agreement through no fault of CONSULTANT and CITY 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 CITY, 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 CITY 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 CITY 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 CITY 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 CITY, 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 CITY that no elected official, officer, employee, or agent of the CITY 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 CITY 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 CITY 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 CITY 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 CITY may terminate this Agreement at the CITY'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 CITY 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 CITY 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 CITY 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 CITY 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)

With a copy to:

(which shall not constitute notice)
Frederick J. Murphy, Jr., Esquire
CITY Attorney
Boswell & Dunlap LLP
Post Office Drawer 30
245 South Central Avenue
Bartow, Florida 33831-0030
Fax: (863) 533-7412

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 CITY 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 CITY’s sole risk and without liability to CONSULTANT. Electronic data delivered to CITY shall be for CITY’s convenience only and shall not include the professional stamp or signature of an engineer or architect.

Item 2. CITY 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 CITY. 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 CITY.

Item 4. Waiver of Claim

The CONSULTANT and the CITY 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. CITY's Agent

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

Item 6. CONSULTANT's Project Team

Subject to the approval of the CITY or CITY 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 CITY and the CITY or CITY 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 CITY 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 CITY or the CITY 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 CITY or the CITY Representative's written approval. The CITY 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 CITY'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 CITY 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 CITY 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 CITY 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 CITY 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 CITY agrees, upon sufficient proof of material changes as may be presented to it by the CONSULTANT, to amend all

related CITY/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 CITY, 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 CITY right or CITY power accruing upon any event of default shall impair any CITY right or CITY power nor shall it be construed to be a waiver of any event of default or acquiescence in it, and every CITY right and CITY power may be exercised from time to time as often as may be deemed expedient.

ARTICLE XXXII. TIMELINESS

The CITY 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 CITY, 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 CITY 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 CITY.

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 CITY and CONSULTANT represent to 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 CITY 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 CITY 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 CITY. 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 CITY, said expiration and/or deadline

shall be automatically tolled until 5:00 pm on the next available business day which the CITY 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 CITY 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 CITY 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 CITY 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 CITY'S CUSTODIAN OF PUBLIC RECORDS, LINDA BOURGEOIS, CITY CLERK, (863) 291-5270, EXT. 106, LBourgeois@mylakealfred.com, 155 E. POMELO STREET, LAKE ALFRED, FLORIDA, 33850.

If the CONSULTANT does not comply with a public records request, CITY 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 A. Stevens & ASSOC. INC.

By: Robert Stevens
Managing Member

As president

Grace Conn
Witness

Kenneth R. Conn
Witness

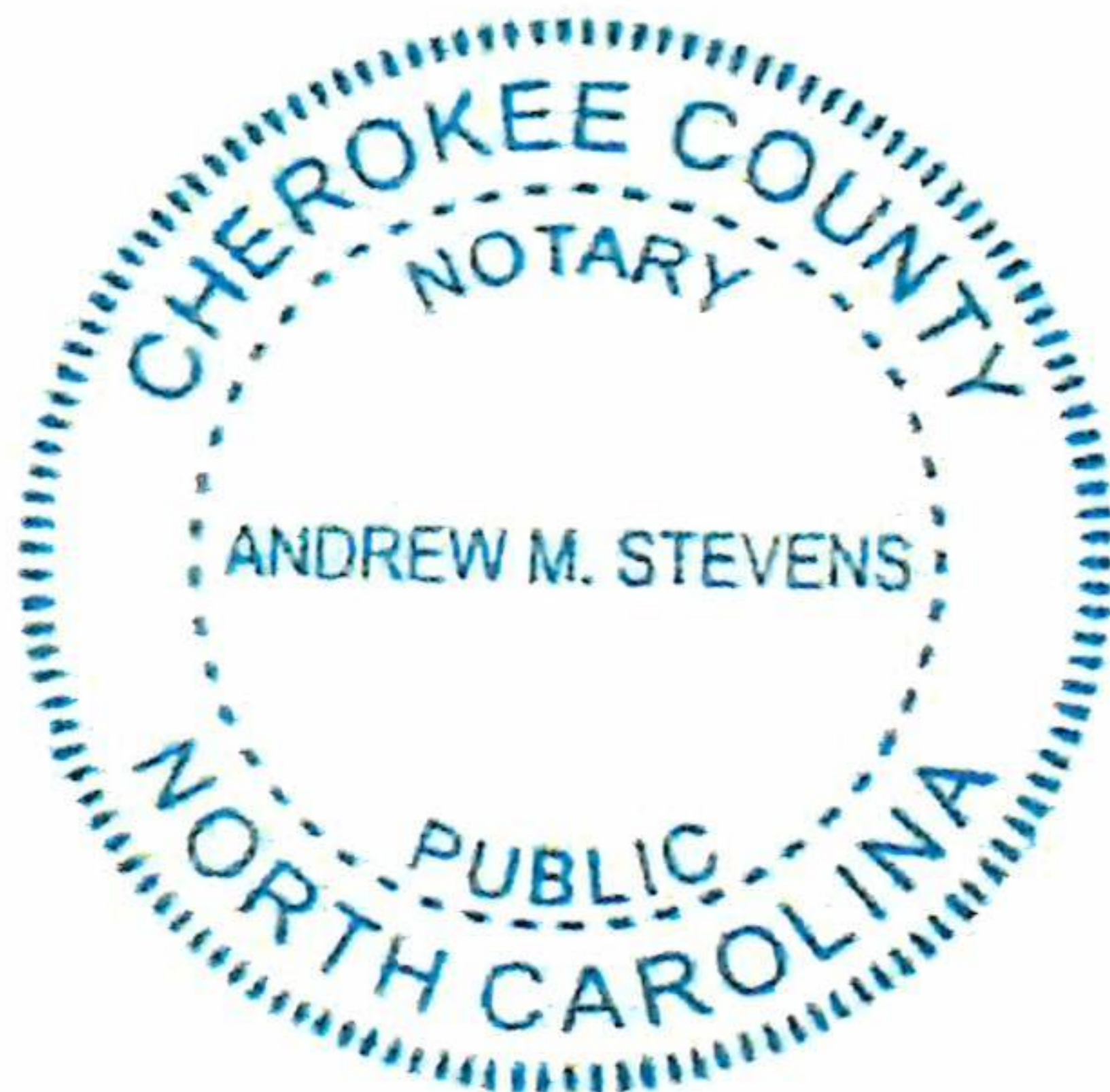
2/14/24
Date

North Carolina

STATE OF ~~FLORIDA~~
COUNTY OF Cherokee

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 17th day of February, 2024, by Robert Stevens as President, on its behalf, who is personally known to me or who has produced N/A as identification.

Andrew M. Stevens
Notary Public, State of Florida North Carolina
Printed Name: Andrew M. Stevens
My commission expires: 7/26/26



CITY OF LAKE ALFRED

By: 
Ryan Leavengood, City Manager

ATTEST:


Linda Bourgeois, City Clerk BAS, MMC,

2/8/24

APPROVED AS TO FORM:


Frederick J. Murphy, Jr., City Attorney

