

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

THIS MASTER CONTINUING PROFESSIONAL CONSULTING AGREEMENT FOR PROFESSIONAL PLANNING AND VISIONING SERVICES (hereafter the “Agreement”) is made and entered into on this 9th day of July, 2024 (hereafter the “Effective Date”), by and between The Town of Dundee, Florida, a Florida municipal corporation (hereafter the “TOWN”), and AYERS, (hereafter the “CONSULTANT”).

FACTUAL RECITALS

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

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

WHEREAS, the TOWN has recognized a need for professional planning and visioning consulting services on both a continuing and special project basis with regard to RFQ 24-01, sections:

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 TOWN projects in accordance with this *Agreement*, as follows:

General Scope of Services: (*services include obtaining necessary public participation*)

- Redevelopment Planning
- Regional Planning
- Neighborhood Planning
- Capital Facilities Planning
- Comprehensive Planning
- Concurrency Planning
- Downtown Revitalization
- Land Planning
- Mixed-Use Planning
- Transit Planning
- Transportation and Multi-Modal Planning
- Transportation Disadvantaged Planning
- Transportation Improvement Planning
- Historic Preservation Planning
- Municipal Planning and Planning Services
- Policy Planning
- ADA Compliance Planning
- Strategic Short and Long Range Planning
- Systems Planning
- On-Call Planning Services
- Sub-Area/Special Project/Corridor Planning

General Scope of Projects: (*projects include obtaining necessary public participation*)

- Project and Community Outreach and Communication
- Creation of Citizen Boards
- Create, Revise, and Update Land Development Regulation(s)
- Development of Capital Projects
- Development of Submittal and Review Processes for Development Permits
- Development of Submittal and Review Requirements for Development Orders
- Establishing Community Redevelopment Agency(ies)
- Establishing New Historic Districts
- Reclaimed Water Treatment and Distribution Systems
- Potable Water Treatment, Transmission, and Distribution Systems
- Sanitary Sewer Treatment, Transmission, and Collection Systems
- Community Parks, Community Playgrounds, and Community Recreation
- GeoDesign and Green Infrastructure Systems
- GIS/Mapping Services and Develop Town Database
- Streetscaping
- Pedestrian Enhancements on and/or for Existing Streets
- Urban and Multi-Modal Transportation
- Traffic Management
- Transportation Concurrency Monitoring System
- Economic Impact Analysis
- Economic Policy Analysis
- Financial Impact Studies
- Historic Venue Restoration
- FEMA Community Rating System
- Grant Funding
- Employment Analysis and Studies
- Employee Salary Analysis and Studies
- Employee Retention Analysis and Studies

Any other associated municipal functions within the TOWN's service area(s) as further described in the TOWN's Scope of Work set forth in RFQ 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 TOWN selected the CONSULTANT in 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 planning and visioning professional consulting services required for the services to be performed under this Agreement and/or any proposed TASK ORDER(s) issued hereunder, and having expressed its desire and willingness to provide such services, and having presented its qualifications to the TOWN in support of its expressed desires; and

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

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

WHEREAS, it is intended that funds, if available, will be provided in the TOWN's budgets as needed

to pay the costs of the planning and visioning professional consulting services; and

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

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the exchange of which is both acknowledged and deemed sufficient by the parties as binding, and *subject always* to availability of funding as determined by the TOWN's annual appropriations process, the TOWN agrees to retain the CONSULTANT and the CONSULTANT agrees to perform the agreed upon consulting work, both for a continuing nature and special project basis, as described in RFQ 24-01, and upon the following terms and conditions:

ARTICLE I. INCORPORATION OF RECITALS; DEFINITIONS

The above-referenced factual recitals (WHEREAS clauses) and referenced exhibits are incorporated herein as true and correct statements which form a factual and material basis for the entry into this Agreement, and the Town Commission of the Town of Dundee, Florida, hereby adopts the above-referenced factual recitals as the legislative findings supporting the entry into this Agreement between the TOWN and CONSULTANT.

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

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

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

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

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

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

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

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

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

"Contract Documents" means the RFQ 24-01; Terms and Conditions; Contract; Bond; Performance Bond; Maintenance Bond; Contract Bond; Special Provisions; Specifications; Technical Specifications; Proposal and Bid Form; Engineering Plans and/or Drawings; Addenda issued before, during and after the bidding period for the RFQ 24-01; Change Orders issued after the Agreement is let;

and any other document incorporated by reference and/or annexed hereto.

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

“*Indemnification*” means, to the fullest extent permitted by law, and in consideration of the amount stated on any Task Order issued pursuant to this RFQ 24-01, Consultant shall indemnify and hold harmless the Town and its officers and employees, from all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys’ fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of this Agreement and in each Task Order issued hereunder.

Without limiting the generality of the foregoing, the Town and the Consultant agree that, as used in this indemnification:

- (1) The phrase “*liabilities, damages, losses, and costs*” shall include by way of explanation and not of limitation: (1) any and all charges or expenses for professional services inclusive of the professional services of others; (2) any and all charges or expenses incurred in court and dispute resolution proceedings including the charges and expenses of mediators; (3) any and all monetary, tangible and real liabilities, judgments, required payments and voluntary settlement payments for bodily injuries, sickness, disease, death, and injury to or destruction of tangible property including the loss of use resulting therefrom; and (4) any and all monetary, tangible and real liabilities, damages, losses and costs incurred, received, or sustained by any person or persons during or on account of any operations or matters connected with the Contract, any Task Order issued hereunder, and any service, project, task or work performed hereunder;
- (2) The phrase “*reasonable attorneys’ fees*” shall include by way of explanation and not of limitation any and all fees, charges, and expenses for the professional services of attorneys and their offices in any and all pre-suit, trial, appellate and bankruptcy proceedings or otherwise; and
- (3) The phrase “*negligence, recklessness, or intentionally wrongful conduct*” shall include by way of explanation and not of limitation the negligent, reckless, or intentional violation of any applicable federal, state, county, or local law, by-law, statute, ordinance or regulation and the negligent, reckless, or intentional acts or omissions of the Consultant, any person or organization directly or indirectly employed by the Consultant, and 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 Task Order issued hereunder, or in any service, project, task or work performed hereunder.

In any and all claims against the Town, or any of its officers and employees, by any person employed or utilized by the Consultant in the performance of the Contract or in the performance of any Task Order issued hereunder, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any other person or organization under workers’ or workmen’s compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the Town, the Consultant or any other person or organization.

The Town and the Consultant agree that to the extent the written terms of this indemnification conflict with any provisions of Florida laws or statutes, in particular Sections 725.06 and 725.08, Florida Statutes, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes, to contain any limited conditions or limitations of liability, and to not contain any unenforceable or prohibited term or terms, such that this indemnification shall be enforceable in accordance with and to

the greatest extent permitted by Florida law.

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

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

ARTICLE III. BASIC SERVICES OF THE CONSULTANT

This Agreement provides the general terms, obligations and conditions which shall control all work identified and/or described in this Agreement and/or any TASK ORDER(S) issued hereunder. The CONSULTANT, when so authorized by the TOWN, agrees to provide and perform such professional planning and visioning consulting services as the TOWN may require, from time to time, including but not limited to, providing professional planning and visioning professional consulting consultation and advice as set forth in the Scope of Work for RFQ 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 TOWN shall, from time to time, in its sole and absolute discretion, authorize the CONSULTANT in writing to provide services by means of a TASK ORDER under the terms of this Agreement. A TASK ORDER shall, by mutual agreement of the parties hereto, set forth (1) the scope of services, (2) the time period(s) for performance, (3) method and amount of compensation, (4) the provisions of Articles I and II of this Agreement which are applicable, (5) the deliverables, if any (which are the items to be provided to the TOWN as a result of the services), and (6) the services, information, and data that can be provided by the TOWN to CONSULTANT.
- 1.2** The TOWN does not guarantee, warrant, or represent that any number and/or any particular type of services will be assigned to the CONSULTANT under the terms of this Agreement and/or under any TASK ORDER(S) issued hereunder. Furthermore, the purpose of this Agreement is not to

authorize a specific TASK ORDER, but to set forth certain duties, obligations, rights, and responsibilities that may be incorporated by reference into any TASK ORDER(S) that may be mutually agreed to by the parties. The TOWN shall have the sole discretion to select the service(s), if any, which may be assigned to the CONSULTANT.

- 1.3 All references to drawings shall mean both traditionally drafted as well as computer-based, and all submissions of drawings will include paper, mylar, and computer file versions as appropriate.
- 1.4 When so authorized and instructed by the TOWN, a representative of the CONSULTANT shall attend meetings of the TOWN to advise and assist in matters within the scope of the CONSULTANT's profession as well as to clarify and help define the TOWN's requirements for a particular project within the scope of this Agreement.
- 1.5 The CONSULTANT shall provide minor reports and opinions of probable cost which do not contemplate the full professional services required under **ARTICLE III**, items 2 through 6, and which do not occupy a substantial amount of time of the CONSULTANT's representative delegated to serve the TOWN.
- 1.6 The CONSULTANT shall be available for office consultation at the CONSULTANT's place of business in Florida and maintain liaison with TOWN officials.
- 1.7 The CONSULTANT shall provide services as required by fiscal and legal advisors to bond financing, except when these services are provided under **ARTICLE IV**, Items 2 through 7.
- 1.8 The CONSULTANT shall provide services as CONSULTANT or engineer as may be required under bond indentures, except when services are provided under **ARTICLE IV**, Items 2 through 7.

Item 2. Studies and Reports

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

- 2.1 Consult with the TOWN to clarify and define the TOWN's requirements under the TASK ORDER.
- 2.2 Obtain from the TOWN, or its designated representative, available reports, records, property maps, drawings, opinions of probable cost, financial data, field survey notes, and other data that may be reasonably available at the time of authorization to proceed.
- 2.3 Advise the TOWN as to the necessity of the TOWN's providing or its need for obtaining any other services reasonably required in the CONSULTANT's judgment from others.
- 2.4 Provide special analysis of the TOWN's needs, preliminary studies, regional planning reports, feasibility investigations, evaluations, comparative studies, appraisals, rate studies, operational-management services, or any other program as authorized by the TOWN.
- 2.5 Provide a general economic analysis of the TOWN's requirements applicable to various alternatives, which includes a broad estimate of construction cost and method of financing.
- 2.6 Prepare a Preliminary Report with findings and recommendations.
- 2.7 Furnish three (3) printed copies and one (1) electronic, if requested, of the Preliminary Report to the TOWN.

Item 3. Preliminary Design Plans

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

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

Item 4. Final Design Phase

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

- 4.1 On the basis of the preliminary design documents for a defined TASK ORDER(S), prepare and furnish the *Contract Documents*.
- 4.2 Advise the TOWN of additional services of others, if required, and arrange for, and furnish if authorized, all necessary additional tests, borings, soils investigations for the TASK ORDER(S). (The actual cost of said tests, borings, etc. shall be paid for by the TOWN).

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

Item 5. Bidding or Negotiating Phase

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

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

ARTICLE IV. RESPONSIBILITIES OF TOWN

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

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

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

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

supplied by TOWN.

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

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

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

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

TOWN will furnish contractor's certificates of insurance evidencing that CONSULTANT, its officers, employees, agents, and CONSULTANTS are named as additional insureds on contractor's general liability and property insurance applicable to the Project. Contractor's policies shall be primary and any such insurance carried by the CONSULTANT shall be excess and noncontributory.

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

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

ARTICLE V. AMERICANS WITH DISABILITIES ACT

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

ARTICLE VI. COMPENSATION

For the Services described in each TASK ORDER, TOWN agrees to pay, and CONSULTANT agrees to accept the total compensation in accordance with compensation terms included in the TASK ORDER. CONSULTANT may re-allocate compensation between tasks, provided total compensation is not exceeded without written approval (e-mail is sufficient) of TOWN Representative. For each defined service, or separately authorized TASK ORDER, a mutually acceptable fee shall be negotiated when the scope of such proposed authorization has been defined. In the event that a specific fee is not established, the hourly rate schedule contained in **Exhibit "B"** attached hereto shall control. The rate schedule shall be revised

annually and furnished to the TOWN prior to its effective date. The revised hourly rate schedule shall take effect unless written notice is received from the TOWN Representative that the revised rates are not accepted. Provided further that CONSULTANT agrees that the rates on its hourly rate schedule shall not be increased above three percent (3%) of existing accepted rates per calendar year during the term of this Agreement. Compensation shall be billed monthly in summary form. For other than lump-sum contracts, the TOWN shall only be obligated to pay for those Services that the CONSULTANT can demonstrate are reasonable, provable, and within the scope of services of any TASK ORDER(S).

ARTICLE VII. DIRECT AND REIMBURSABLE EXPENSES

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

Item 1. Travel and Subsistence

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

Item 2. Printing and Reproduction

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

Item 3. Services of Others

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

Item 4. Miscellaneous

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

ARTICLE VIII. PAYMENTS

Item 1. Payment for Authorized Services

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

Item 2. Payment Withheld

When the TOWN has reasonable ground for belief, or information to believe that: (1) the CONSULTANT will be unable to perform the Services set forth under this Agreement and/or any TASK ORDER(S) issued hereunder; or (2) a meritorious claim exists against the CONSULTANT or the TOWN arising out

of the CONSULTANT's negligence or the CONSULTANT's breach of any provision of this Agreement or any TASK ORDER(S) issued hereunder; then the TOWN may withhold payment otherwise due and payable to the CONSULTANT; provided, however, that the TOWN shall not unreasonably withhold other payment(s) that may not otherwise be in dispute. Any payment so withheld may be retained by the TOWN for such period as it deems advisable, in its sole and absolute discretion, to protect the TOWN against any loss or deprivation that the TOWN may incur pursuant to this Subsection or as may be determined by a court of competent jurisdiction.

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

Item 3. Termination

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

Item 4. Final Payment

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

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

ARTICLE IX. SCHEDULE OF WORK

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

ARTICLE X. RESPONSIBILITY OF CONSULTANT

Item 1. Standard of Care Professional Services

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

Item 2. Reliance upon Information Provided by Others

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

Item 3. CONSULTANT'S Opinion of Costs

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

ARTICLE XI. AUDIT RIGHTS

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

ARTICLE XII. ASSIGNMENT

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

ARTICLE XIII. SPECIAL PROJECTS

Periodically, the TOWN may require professional consulting services on special projects which are

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

ARTICLE XIV. CONSULTANT'S WORK PRODUCT

Item 1. Scope

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

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

Item 2. Electronic Copies

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

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

Item 3. Limitation on Indemnity

To the extent this Agreement calls for the TOWN to indemnify CONSULTANT, the TOWN does not intend to waive any sovereign immunity. Further regardless of whether any such obligations which are the subject of any indemnification by the TOWN hereunder are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the TOWN and any indemnification

provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to Section 768.28, Florida Statutes, as amended from time to time, as between the TOWN and CONSULTANT.

ARTICLE XV. INDEMNIFICATION AND INSURANCE

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

1.1 CONSULTANT shall indemnify and hold harmless the TOWN, 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 TOWN 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 TOWN, 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 TOWN, its elected officials, officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against the TOWN, its elected officials, officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent or for the infringement of any and all copyrights or patent

rights claimed by any person, firm, or corporation. **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 TOWN that such amount is due, be made by CONSULTANT prior to the TOWN being required to pay same, or in the alternative, the TOWN, at the TOWN'S option, may make payment of an amount so due and CONSULTANT shall promptly reimburse the TOWN for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the day of the TOWN'S payment.

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

CONSULTANT agrees, at its own expense, after receipt of written notice from the TOWN, to defend any action against the TOWN 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 TOWN 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 TOWN, fails to make any payment due hereunder to the TOWN, CONSULTANT shall pay any reasonable attorney's fees or costs incurred by the TOWN in securing any such payment from TOWN. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist in the TOWN'S favor.

1.5 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 TOWN 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 TOWN, the types and amounts of insurance conforming to the minimum requirements set forth herein. As evidence of compliance with the insurance required herein, CONSULTANT shall furnish the TOWN with:

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

coverage;

- (b) the original of the policy(ies); and/or
- (c) other evidence satisfactory to the TOWN.

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

2.2 Types of Insurance and Limits of Liability

2.2.1 Workers' Compensation/Employers' Liability

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

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

2.2.2 Commercial General Liability Insurance

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

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

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

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

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

2.2.3 Automobile Liability Insurance

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

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

2.2.4 Professional Liability

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

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

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

2.3 Insurance Administration

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

2.4 TOWN's Right to Inspect Policies

The CONSULTANT shall, upon thirty (30) Business Days' written request from the TOWN, deliver copies to the TOWN of any or all insurance policies that are required in this Agreement. Provided that

CONSULTANT shall be entitled to redact all confidential information on copies of all such policies of insurance that are delivered to the TOWN. It being the intent of the parties that the TOWN shall have copies of all policies in order to determine appropriate and relevant coverage, limits, deductibles, insurance exclusions and other information related thereto.

2.5 Miscellaneous

(a) The insurance provided by CONSULTANT pursuant to this Agreement shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the TOWN or the TOWN's members, officials, officers or employees.

(b) Except where prior written approval has been obtained hereunder, the insurance maintained by CONSULTANT shall apply on a first dollar basis without application of a deductible or self-insured retention. CONSULTANT shall pay on behalf of the TOWN or the TOWN's members, officials, officers and employees any deductible or self-insured retention applicable to a claim against the TOWN or the TOWN's members, officials, officers, agents and employees.

(c) The insurance provided by the CONSULTANT shall be endorsed to provide that the Insurer waives its rights against the TOWN and the TOWN's members, officials, officers and employees.

(d) Compliance with these insurance requirements shall not limit the liability of CONSULTANT. Any remedy provided to the TOWN by the insurance provided by CONSULTANT shall be in addition to and not in lieu of any other remedy (including but not limited to, as an indemnitee of CONSULTANT) available to the TOWN under this Agreement or otherwise.

(e) Neither approval nor failure to disapprove insurance furnished by CONSULTANT shall relieve CONSULTANT from responsibility to provide insurance as required by this Agreement.

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

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

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

ARTICLE XVI. CONFIDENTIALITY

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

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

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

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

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

ARTICLE XVII. SUSPENSION AND/OR TERMINATION OF WORK

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

Item 1. By TOWN

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

Item 2. By CONSULTANT

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

ARTICLE XVIII. TERMINATION OF AGREEMENT

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

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

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

ARTICLE XIX. ASSIGNMENT

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

ARTICLE XX. NO BENEFIT FOR THIRD PARTIES

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

ARTICLE XXI. APPLICABLE LAW; STATE LAW COMPLIANCE

Item 1. Compliance with Applicable Law.

The CONSULTANT shall comply with any and all applicable federal, state, and local rules, regulations, resolutions, ordinances and/or laws as they relate to the provisions of this Agreement and/or any TASK ORDER(s) issued hereunder; and CONSULTANT specifically acknowledges the

applicability of the public record provisions of Florida Law. The CONSULTANT represents and warrants unto the TOWN that no elected official, officer, employee, or agent of the TOWN has any interest, either directly or indirectly, in the business of the CONSULTANT to be conducted hereunder. The CONSULTANT further represents and warrants to the TOWN that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid, or agreed to pay, or given or offered any fee, commission, percentage, gift, loan, or anything of value (Value) to any person, company, corporation, individual, or firm, other than bona fide personnel working solely for the CONSULTANT, in consideration for or contingent upon, or resulting from the award or making of this Agreement. Further, the CONSULTANT also acknowledges that it has not agreed, as an expressed or implied condition for obtaining this Agreement, to employ or retain the services of any person, company, individual or firm in connection with carrying out this Agreement. It is absolutely understood and agreed by the CONSULTANT that, for the breach or violation of this Subsection, the TOWN shall have the right to terminate this Agreement without liability and at its sole discretion, and to deduct from any amounts owed, or to otherwise recover, the full amount of any value paid by the CONSULTANT. The CONSULTANT shall also require, by contract, that all subconsultants shall comply with the provisions of this Subsection.

Item 2. State Law Compliance.

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

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

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

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

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

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

ARTICLE XXII. FORCE MAJEURE

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

ARTICLE XXIII. SEVERABILITY

If any term, covenant, or condition of this Agreement or the application thereof to any person or

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

ARTICLE XXIV. VENUE

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

ARTICLE XXV. ATTORNEYS' FEES

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

ARTICLE XXVI. NOTICES

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

CONSULTANT: Ayers & Associates
Attn: Binoy Panicker
8875 Hidden River Parkway, Ste 200
Tampa, FL 33637
Phone: (813) 558-3321
Fax: (813) 978-9369

TOWN: Tandra Davis, Town of Dundee
Attn: RFP 23-01
PO Box 1000
Dundee FL 33838
Phone: (863) 438-8330

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

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

ARTICLE XXVII. MISCELLANEOUS PROVISIONS

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

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

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

Item 4. Waiver of Claim

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

Item 5. TOWN’s Agent

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

Item 6. CONSULTANT'S Project Team

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

Item 7. Non-Exclusive Agreement

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

Item 8. Licenses

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

Item 9. Compliance With New Regulations

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

Item 10. License Fee and Royalties

The CONSULTANT agrees that any invention, design, process, product, devise, proprietary system, or proprietary process for which an approval (of any type) may be necessary, shall be paid for by the TOWN, but shall be secured by the CONSULTANT (or, at the CONSULTANT'S direction, by the Contractor

during the CONSULTANT's construction phase services as may be memorialized in a TASK ORDER before the completion of any TASK ORDER.

ARTICLE XXVIII. SUBORDINATION OF TASK ORDERS

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

ARTICLE XXIX. HEADINGS

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

ARTICLE XXX. GOVERNING LAW

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

ARTICLE XXXI. REMEDIES AND COSTS

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

ARTICLE XXXII. TIMELINESS

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

ARTICLE XXXIII. PUBLIC ENTITY CRIME

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

ARTICLE XXXIV. ENTIRETY OF AGREEMENT

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

ARTICLE XXXV. AUTHORIZATION

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

ARTICLE XXXVI. REPRESENTATIONS AND WARRANTIES

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

ARTICLE XXXVII. GENDER NEUTRAL

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

ARTICLE XXXVIII. CONSTRUCTION

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

ARTICLE XXXIV. CALCULATION OF TIME

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

ARTICLE XXXX. NO THIRD PARTY BENEFICIARIES

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

ARTICLE XXXXI. INDEPENDENT CONTRACTOR

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

ARTICLE XXXXII. EXHIBITS

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

ARTICLE XXXXIII. DUTY TO COOPERATE AND ACT IN GOOD FAITH

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

ARTICLE XXXXIV. PUBLIC RECORDS

Public Records. CONSULTANT agrees to:

1. Keep and maintain public records required by the Town to perform in accordance with the terms of this RFQ and Contract Documents.
2. Upon request from the Town's custodian of public records, provide the Town 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/term of this Agreement and following completion of this Agreement and/or any amendment(s) issued hereunder if the Consultant does not transfer the records to the Town.
4. Upon completion of this Agreement and/or any amendment(s) issued hereunder, transfer, at no cost, to the Town all public records in possession of the Consultant or keep and maintain public records required by the Town to perform the service. If the Consultant transfers all public records to the public agency upon completion of this Agreement and/or any amendment(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 this Agreement and/or any amendment(s) issued hereunder, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

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 CONTRACT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS, TREVOR DOUTHAT, AT 863-438-8330, EXT. 238, TDouthat@townofdundee.com, 202 EAST MAIN STREET, DUNDEE, FLORIDA 33838.

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

[Remainder of page intentionally left blank]

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

Consultant:

Subrata
By: Subrata Bandy VP, SE Operations
_____, Managing Member

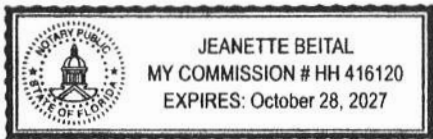
Wally Smith
Witness

Chh Fernandez
Witness

6/27/24
Date

STATE OF FLORIDA
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 27th day of June, 2024, by Subrata Bandy, as VP, Southeast Operations, on its behalf, who is personally known to me or who has produced _____ as identification.



Jeanette Beital
Notary Public, State of Florida
Printed Name: Jeanette Beital
My commission expires: 10/28/2027

TOWN:

TOWN OF DUNDEE

By: _____
Sam Pennant, Mayor

ATTEST:

Trevor Douthat, Town Clerk

APPROVED AS TO FORM:

Frederick J. Murphy, Jr., Town Attorney

EXHIBIT A

THE TOWN OF DUNDEE, FLORIDA

Town of Dundee



REQUEST FOR QUALIFICATIONS
RFQ 24-01

Continuing Professional Planning & Visioning Services Contracts

Responses are due by
Wednesday, May 1, 2024 at 4:00 pm

MAIL OR DELIVER RESPONSES TO:

Town of Dundee
Attn: RFQ 24-01
202 East Main Street
PO BOX 1000
Dundee, FL 33838

Contact:

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

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SAMPLE AGREEMENT (*Addendum to RFQ*) (*Published at later date*)

LEGAL ADVERTISEMENT

**REQUEST FOR QUALIFICATIONS
RFQ-24-01**

Sealed proposals will be received by the Town of Dundee until **11:00 A.M., Wednesday, May 1, 2024**, at the office of the Town of Dundee Town Clerk, 202 East Main Street, Dundee, Florida 33838, for the following:

“Continuing Professional Planning and Visioning Services Contracts”

Copies of the RFQ are available at the following website:

www.townofdundee.com/purchasing-procurement/

A Pre-submittal Conference will be held at Town Hall, Town of Dundee, 202 E. Main St., Dundee, 33838 at 11:00am, Wednesday, April 3, 2024, for the purpose of answering questions in reference to this solicitation.

The responses specified shall be furnished in accordance with the RFQ 24-01, Specifications, and any other documents prepared for this submittal. The evaluation committee will meet at 1:00pm to open and review bids for completeness and at 11:00am on Wednesday, May 2, 2024 for review of qualifications. The Town of Dundee reserves the right to reject any and all bids, waive informalities, re- advertise, and the Town of Dundee may enter into a contract determined, in the sole discretion of the Town of Dundee, to be in its best interest, in accordance with the Terms and Conditions referenced herein above.

Please Note: From time to time, the Town of Dundee may issue addenda to this solicitation. Any such addenda will be posted on the Town’s website, www.townofdundee.com/purchasing-procurement/, from which you obtained this solicitation. Before submitting your qualifications, you should check the Town’s website in order to download any addenda that may have been issued.

Sincerely,

TOWN OF DUNDEE

Trevor Douthat
Town Clerk

Advertise: Wednesday, March 27, 2024

Town of Dundee
REQUEST FOR QUALIFICATIONS
RFQ-24-01

Sealed responses marked “**Continuing Professional Planning and Visioning Services Contracts**”, with the attached label, will be received by the Town of Dundee until **4:00 P.M., Wednesday, May 1, 2024**, at the office of the Town Clerk, 202 East Main Street, Dundee, Florida 33838, for the following:

“Continuing Professional Planning and Visioning Services Contracts”

At 11:00 am on May 2, 2024, responses will be publicly opened and read aloud in the Town Hall, Town of Dundee.

A Pre-submittal Conference will be held at Town Hall, Town of Dundee, 202 East Main Street, Dundee, Florida 33838 at 11:00 A.M., Wednesday, April 13, 2024, for the purpose of answering questions in reference to this solicitation.

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

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

Questions may be submitted to the Town Clerk until 4:00 pm on Wednesday, April 10, 2024. For more information regarding this RFQ 24-01, please contact Trevor Douthat, Town Clerk, (863) 438-8330 or by e-mail at tdouthat@townofdundee.com.

The Town of Dundee welcomes your response to this RFQ 24-01. The Town of Dundee reserves the right to reject any responses found to be non-responsive, vague, non-conforming, or irresponsible. The Town of Dundee may withdraw all or part of this RFQ 24-01 at any time to protect its best interest. The desire of the Town of Dundee to pursue qualifications shall in no way obligate the Town of Dundee to compensate you for your efforts or to execute a contract. All responses are to be thorough yet concise in the response to this RFQ 24-01. The failure to provide a response in the manner prescribed herein shall be grounds for disqualification.

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

The responses shall be furnished in accordance with the RFQ 24-01, requirements, and any other documents prepared for this RFQ 24-01. **W-9** should be attached to any response when returned by the responding vendor. Payment will be rendered to the name and ID appearing on the W-9.

Sincerely,

TOWN OF DUNDEE

Trevor Douthat
Town Clerk

1.0 INTRODUCTION

- 1.1 **RFQ PROCESS:** The Town of Dundee's Selection Process for consultants' services is in accordance with Section 287.055, Florida Statutes, Consultants' Competitive Negotiations Act. The Selection Committee(s) will review the qualifications of all submitting firms. The Town of Dundee ("Town") reserves the right to determine, in its sole discretion, whether the statement of qualifications ("SOQs") satisfactorily meets the criteria established in this RFQ 24-01 ("RFQ"), and the right to seek clarification from any firm(s) submitting qualifications.
- 1.2 **INTERESTED PARTIES:** All interested parties must submit the requested information within the time provided herein.
- 1.3 **SELECTION:** It is the intent of the Town to select and negotiate Continuing Professional Consulting Agreements with one (1) or more firms. The Town may employ several different consultants to perform the work described. No consultant shall be employed as the exclusive consultant. Consultants will be chosen based on the expertise and experience listed as it pertains to the work described. Selection of a qualified firm under this RFQ is not a guarantee of work.
- 1.4 **RFQ SCHEDULE:** The following identifies the RFQ process schedule:

RFQ PROCESS	DATE
RFQ Solicitation Issued	March 27, 2024
Non-Mandatory Pre-submittal Conference	April 3, 2024 11:00A
Deadline to Submit - Request for Additional Information	April 10, 2024 4:30P
Proposals Due	May 1, 2024 11:00A
Proposal Opening and Review(<i>Incomplete Proposals Not Considered</i>)	May 1, 2024 1:00P
Evaluation Committee Meeting (<i>Noticed Meeting</i>)	May 2, 2024 11:00A
Town Commission Award – Tentative	May 14, 2024

1.5 TERM OF CONSULTANT CONTINUING AGREEMENT:

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

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

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

2.0 SCOPE OF SERVICES

- 2.1 **OVERVIEW:** It is the intent of this Request for Qualifications 24-01 (“RFQ”) to hire a consulting firm or consulting firms (hereinafter the “Consultants”) to provide professional services for the Town of Dundee, Florida (hereinafter the “Town”), for ***municipal planning and visioning***. The Town reserves the rights to choose multiple firms based on the criteria set forth in this RFQ.
- 2.2 **SERVICES:** It is the Town’s intent that Consultants provide a full complement of general services with in-house capabilities. The use of subcontractors is acceptable, but the use of subcontractors shall not be included in this RFQ. The Consultants are expected to perform complex tasks requiring specific expertise.
- 2.3 **MINIMUM REQUIRED SERVICES:** The general planning and visioning services listed below are the minimum requirements. The written task order(s) may include services that will assist in the completion of assigned Town projects in accordance with the Agreement.
- 2.3.1 **General Scope of Services:** (*services include obtaining necessary public participation*)
- Redevelopment Planning
 - Regional Planning
 - Neighborhood Planning
 - Capital Facilities Planning
 - Comprehensive Planning
 - Concurrency Planning
 - Downtown Revitalization

- Land Planning
- Mixed-Use Planning
- Transit Planning
- Transportation and Multi-Modal Planning
- Transportation Disadvantaged Planning
- Transportation Improvement Planning
- Historic Preservation Planning
- Municipal Planning and Planning Services
- Policy Planning
- ADA Compliance Planning
- Strategic Short and Long Range Planning
- Sub-Area/Special Project/Corridor Planning
- Systems Planning
- On-Call Planning Services

2.3.2 General Scope of Projects: (*projects include obtaining necessary public participation*)

- Project and Community Outreach and Communication
- Creation of Citizen Boards
- Create, Revise, and Update Land Development Regulation(s)
- Development of Capital Projects
- Development of Submittal and Review Processes for Development Permits
- Development of Submittal and Review Requirements for Development Orders
- Establishing Community Redevelopment Agency(ies)
- Establishing New Historic Districts
- Reclaimed Water Treatment and Distribution Systems
- Potable Water Treatment, Transmission, and Distribution Systems
- Sanitary Sewer Treatment, Transmission, and Collection Systems
- Community Parks, Community Playgrounds, and Community Recreation
- GeoDesign and Green Infrastructure Systems
- GIS/Mapping Services and Develop Town Database
- Streetscaping
- Pedestrian Enhancements on and/or for Existing Streets
- Urban and Multi-Modal Transportation
- Traffic Management
- Transportation Concurrency Monitoring System
- Economic Impact Analysis
- Economic Policy Analysis
- Financial Impact Studies
- Historic Venue Restoration
- FEMA Community Rating System
- Grant Funding
- Employment Analysis and Studies
- Employee Salary Analysis and Studies
- Employee Retention Analysis and Studies

3.0 REQUIREMENTS & CONTENTS FOR SUBMISSION:

Only those firms or individuals (the “Proposer”) submitting *letters of interest* (“LOIs”) and *statements of qualifications* (“SOQs”) that meet the requirements specified herein will be considered. The submittals should not contain information in excess of that requested, should be concise, and should specifically address the services which are the subject of this RFQ.

- 3.1 **PREPARATION:** Submit one (1) unbound, single-sided original, one electronic copy on disc or flash drive, and eight (8) copies, including a cover letter, requested documents, and

information. The submittal should be prepared simply and economically, providing a straightforward, concise description of the proposer's ability to fulfill the requirements of this RFQ, and shall not exceed forty (40) pages in length (excluding resumes and required forms). The page count criteria are listed in Section 3.2 of this RFQ.

3.2 **FORMAT OF RESPONSE:** To provide a degree of consistency in the review of the written proposals, firms are requested to prepare their proposals in the standard format specified below (see Sections 3.2.1 – 3.3). The page count for the proposals shall not exceed 40 pages in length (two-sided pages shall count as two (2) pages). The page count shall not include required forms listed in Section 9 of this RFQ, section dividers, or Items 3.2.1 through 3.2.3 of this section, as follows:

3.2.1 **TITLE PAGE:** The Proposer should identify the RFQ subject, name and title of contact person, address, telephone number, fax number, email address, and date of submission.

3.2.2 **COVER LETTER:** The cover letter shall not be more than two (2) pages long and include, at a minimum, the following:

- A brief statement of the Proposer's understanding of the services.
- A positive commitment to perform the services on a consistent and timely basis.
- Contact information for the person(s) authorized to represent the Proposer.

3.2.3 **TABLE OF CONTENTS:** The table of contents shall include a complete identification by section and page number (#) of the materials submitted.

3.2.4 **EXECUTIVE SUMMARY:** The purpose of the Executive Summary is to provide an overview of the Proposer's qualifications to perform the services which are the subject of this RFQ. At a minimum, the Executive Summary shall include, but not be limited to, the following:

- Description of the Proposer's legal structure (e.g., corporation, subcontractors); and
- The general and specific capabilities and experience of the Proposer's team that the Proposer believes will benefit the Town.

3.2.5 **STATEMENT OF UNDERSTANDING:** The Proposer shall submit a brief narrative outlining the firm's understanding of the Town's goals and types of projects that may be encountered within the context of the proposed planning services which are the subject of this RFQ.

3.2.6 **SIMILAR PROJECT EXPERIENCE:** Provide examples demonstrating experience for the type of work listed within the last five (5) years. Each Proposer shall provide proof of experience in providing general consulting services for Town and County governments within the State of Florida under the Consultants' Competitive Negotiations Act.

3.2.7 **WORK PLAN & AVAILABILITY OF RESOURCES:** The Proposer shall submit an outline of the firm's approach in the planning, design, permitting, visioning, and other key elements of the services and projects which are the subject of this RFQ.

3.2.7.1 This item shall also include information concerning the Proposer's current and future workloads, resource allocations, and the effect of said workloads and resource allocations on the ability to meet the requirements of this RFQ and any Agreement entered into as a result of this RFQ.

3.2.8 **TEAM MEMBERS:** Identify the team members which may include, but shall not be limited to, any applicable subcontractor(s). All discipline leads shall be licensed in the State of Florida. If the team member(s) include subcontractor(s), the Proposer shall provide the resume(s) and include the professional credentials and experience of the key members.

3.2.8.1 For each team member, the Proposer shall provide:

- Title/Name of member
- Area of Specialty
- Office Location(s) for previous two (2) years.
- Total years of experience
- Specific involvement/role in the services and projects.
- Summary of experience (shall not exceed one (1) page)

3.2.8.2 The Proposer's proposed organizational chart.

3.2.8.3 This item shall also include a short descriptive summary of the firm's key member's experience in each of the areas outlined in **Section(s) 2.2 and 2.3** of this RFQ.

3.2.9 **LICENSURE:** Firms shall be certified to practice in the State of Florida pursuant to the applicable provisions of the Florida Statutes.

3.2.10 **REFERENCES:** Please list business reference and provide the following information:

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

The Town reserves the right to conduct reference checks for firms submitting qualifications. In the event that information obtained from the reference checks reveal concerns about the firm's past performance or their ability to successfully perform the Agreement to be executed based on this RFQ and subsequent work, **the Town may, at its sole discretion, determine that the firm is not the most qualified firm and may select the next highest-ranked firm whose reference checks validate the ability of the firm to successfully perform the work.**

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

3.2.11 **MINORITY BUSINESS / WOMAN-OWNED / DISABLED VETERAN / VETERANOWNED ENTERPRISES:** Identify whether any of the Proposer's team qualifies pursuant to §288.703, Florida Statutes (2023). Eligible firms must currently be certified as such through the State of Florida Office of Supplier Diversity to qualify for this criterion.

3.2.12 **PRIMARY OFFICE LOCATION:** Identify the location of the primary office that will perform the majority of the work on this contract.

3.3 **ADDITIONAL INFORMATION:** Please provide any other information that you feel would help the Evaluation Committee evaluate your SOQs in response to this RFQ.

3.4 COMMUNICATIONS AND INQUIRIES:

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

Trevor Douthat, Town Clerk
Email: TDouthat@TownofDundee.com

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

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

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

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

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

3.4.4.3 Oral answers shall not be binding and/or authoritative.

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

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

4.0 SUBMISSION OF STATEMENT OF QUALIFICATIONS (SOQ):

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

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

4.2 SUBMITTAL COPIES:

Sealed SOQs shall include the following:

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

4.3 RESPONSE SUBMITTAL DEADLINE AND DELIVERY ADDRESS:

Sealed SOQs and/or proposal(s) **shall not** be accepted after May 1, 2024, at 4:00 PM. Each sealed SOQ and/or proposal(s) shall be submitted in a sealed envelope, packet, or box marked with the RFQ number, the title of the RFQ, and RFQ opening date.

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

SOQ's shall be addressed as follows:

**Trevor Douthat, Town Clerk
Town of Dundee
Attn: RFQ 24-01
202 East Main Street
Post Office Box 1000
Dundee, FL 33838**

4.3.2 Submitted envelopes should be marked:

“RFQ 24-01 Continuing Professional Planning and Visioning Services Contracts”

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



SEALED RFQ#: 24-01
RFQ TITLE: Professional Planning and Visioning Services
DUE DATE/TIME: 05/01/2024 :00 PM – Eastern Time

This area left intentionally blank.

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

5.0 EVALUATION PROCESS

- 5.1 **EVALUATION COMMITTEE:** An Evaluation Committee consisting of at least three (3) members assembled by the Town will review and evaluate each proposal. Proposals will be evaluated to determine those that best meet the needs of the Town. The proposals will be evaluated on both qualifications and the technical merits of the firm. Proposals will be evaluated in accordance with the rating system listed in **Section 6** (see below).
- 5.2 **RATING SYSTEM:** The Evaluation Committee will rate all proposals utilizing the Weighted Rating System is shown in **Section 6.2** (see below). The average of the Total Weighted Ratings assigned by the Evaluation Committee members will be used to rank the proposals.
- 5.3 **EVALUATION COMMITTEE MEETING(S):** The Evaluation Committee will hold duly noticed public meetings to discuss and evaluate the SOQs and/or proposal(s). The first meeting shall be held at 11:00am on Wednesday, May 2, 2024 at **202 East Main Street, Dundee, Florida 33838**.
- 5.4 **SUBMITTAL RANKING:** The Evaluation Committee will select those submissions, in their sole determination, that best meets the Town's need based upon its evaluation(s).
- 5.5 **PRESENTATIONS:**
- 5.5.1 At the sole determination of the Town, firms may be required to make a presentation of their proposal. This will provide an opportunity to clarify or elaborate on the proposal, but will not, in any way provide an opportunity to change any items in the original proposal.
- 5.5.2 If presentations are determined to be necessary, the Town Clerk shall coordinate presentations and notify the selected firms.
- 5.5.3 Each proposer will be notified in writing at least ten (10) days in advance of presentation date if a presentation is necessary.
- 5.6 **REJECTION OF PROPOSALS:** The Town reserves the right to reject all proposals. In the event the Town does reject all proposals, the Town shall provide, in writing, to all proposers the reason(s) for its rejection.
- 5.7 **MODIFICATIONS TO PROPOSALS:** The Town reserves the right to request at any time that the proposer modify their proposal to more fully meet the needs of the Town. The Town also reserves the right to negotiate with the proposer, any changes it deems necessary, and to waive minor irregularities in the bid process.
- 5.8 **REQUESTS FOR ADDITIONAL INFORMATION:** The proposer shall furnish such additional information as the Town of Dundee may reasonably require. The Town

reserves the right to make investigations related to and/or arising out of the SOQs and/or qualifications of proposers as it deems necessary and appropriate.

6.0 EVALUATION CRITERIA

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

6.2 **QUALIFICATION STATEMENT EVALUATION FORMS:**

SUBMITTAL EVALUATION & SCORING

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

Firm Name: _____

EVALUATION FORM		
EVALUATION CRITERIA	WEIGHT	SUBTOTAL
Meeting the Minimum Requirements of the RFQ	5 points 0-5	
Adequacy of Personnel & Organizational Resources	10 points 0-10	
Work Experience & Past Public-Sector Performance	25 points 0-25	
Work Approach	25 points 0-25	
Team Member Qualifications	20 points 0-20	
Adherence to Time Budget Requirements	10 points 0-10	
MOB/WOB/Disabled Veteran & Veteran-Owned Business Utilization	5 points 0-5	
TOTAL WEIGHTED RATING:	100	

Evaluator: _____

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

7.0 CONDITIONS OF PROPOSALS

- 7.1 **LATE PROPOSALS:** Proposals received by the Town after the time specified for receipt shall not be considered. The proposers shall assume full responsibility for the timely delivery of the proposals to the location designated for receipt of proposals.
- 7.2 **COMPLETENESS:** All information required by this RFQ shall be supplied by the Proposer in order to constitute a complete and responsive proposal.
- 7.3 **PROPOSER'S CERTIFICATION(S)/STANDARD FORM(S):**
- 7.3.1 Each proposer shall complete the **Proposer's Standard Form(s)** included with this RFQ (see **Attachments A – J**) and submit the form(s) with the proposal. The form(s) shall be acknowledged before a notary public and have the notary seal affixed. Proposals shall be rejected if the Proposer's Certification(s)/Standard Form(s) is not submitted with the proposal.
- 7.3.2 By submitting a proposal, the Proposer certifies they have fully read and understand the proposal method and have full knowledge of the scope, nature, and quality of work to be performed.
- 7.4 **DRUG-FREE WORKPLACE CERTIFICATION FORM:** By submitting the **Drug-Free Workplace Form** as part of this RFQ, the Proposer certifies that the company is a drug-free workplace in accordance with § 287.087 of the Florida Statutes.
- 7.5 **PROPOSER'S WARRANTY:** The Proposer acknowledges and warrants that no one was paid a fee, commission, gift, or other consideration contingent upon receipt of an award for the services specified in this RFQ.
- 7.6 **PUBLIC OPENING:** All proposals shall be publicly opened and the list of proposers read aloud at the Dundee Town Hall, Town of Dundee, 202 E Main St, Dundee, Florida 33838, at the time specified and will be made available for public inspection within thirty (30) days after the proposal opening or when an award decision is made, whichever is earlier.
- 7.7 **PROPERTY OF THE TOWN:** All proposals received from proposers in response to this RFQ shall become the property of the Town of Dundee and will not be returned to the proposers. In the event of a contract award, all documentation produced as part of the Agreement shall become the exclusive property of the Town.
- 7.8 **AWARD PRESENTATION:** The Town may provide the staff recommendation to the Town Commission, at a duly noticed public meeting, on Tuesday, May 14, 2024, to enter into the Agreement with the top-ranked firm(s) or to reject all proposals.

8.0 GENERAL TERMS AND CONDITIONS

8.1 GENERAL CONDITIONS:

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

- a) The proposers shall thoroughly examine the specifications, instructions, and all other Contract Documents (as defined by **Section 8.2**), visit the site of this project (if applicable), and fully acquaint themselves, at their own risk, with all conditions which may affect the completion of the services and/or projects which are the subject of this RFQ. The proposers and subcontractors,

if any, are encouraged to attend a pre-bid conference – if announced in the advertisement for this RFQ. Attendees further agree to indemnify and hold the Town of Dundee harmless from any and all claims of personal injury arising from their participation in any site visit arising out of the services and/or projects which are the subject of this RFQ.

- b) These Terms and Conditions and any Contract Documents (as defined by **Section 8.2**) related hereto are subject and subordinate to any existing or future state, federal, or local law, regulation, or written policy, which may be applicable hereto.
- c) Notwithstanding anything in this RFQ to the contrary, the obligation of the Town to furnish payment is expressly subject to appropriation(s) of sufficient public funds by the Town Commission of the Town of Dundee, Florida. In the event the Town Commission of the Town of Dundee fails to appropriate sufficient funds to satisfy the payment obligations of any kind or type, the Town and/or successful proposer may immediately terminate the Agreement entered into pursuant to this RFQ and be released from any future responsibility or liability thereunder.

d) **PUBLIC RECORDS:**

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

Public Records. Consultant/Proposer agrees to:

- i) Keep and maintain public records required by the Town to perform in accordance with the terms of this RFQ and Contract Documents (as defined by **Section 8.2**).
- ii) Upon request from the Town's custodian of public records, provide the Town with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or as otherwise provided by law.
- iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration/term of the Contract (as defined by **Section 8.2**) and following completion of the Contract and/or any amendment(s) issued hereunder if the Consultant does not transfer the records to the Town.
- iv) Upon completion of the Contract and/or any amendment(s) issued hereunder, transfer, at no cost, to the Town all public records in possession of the Consultant or keep and maintain public records required by the Town to perform the service. If the Consultant transfers all public records to the public agency upon completion of the Contract and/or any amendment(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 Contract and/or any amendment(s) issued hereunder, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

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 CONTRACT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS, TREVOR DOUTHAT, AT 863-438-8330, EXT. 258, TDouthat@townofdundee.com, 202 EAST MAIN STREET, DUNDEE, FLORIDA 33838.

- e) If the Consultant does not comply with a public records request, the Town shall enforce the

Contract and/or any amendment(s) issued hereunder which may include immediate termination of Contract and/or any amendment(s) issued hereunder. **This Section shall survive the termination of this Agreement.**

- f) It shall be understood and agreed that by the submission of a proposal, to the fullest extent permitted by laws and regulations and inconsideration of the amount(s) stated in any written task order(s), the Consultant, if awarded a contract, shall save harmless and fully indemnify the Town and any of its officers, or agents from any and all damages that may, at any time, be imposed or claimed for infringement of any patent right, trademark, or copyright of any person or persons, association, or corporation, as the result of the use of such articles by the Town, or any of its officers, agents, or employees, and of which articles the Consultant is not the patentee, assignee, licensee, or lawfully entitled to sell same.
- g) It is the intent of the Town that this RFQ promotes competitive bidding. It shall be the proposers' responsibility to advise the Town at the address noted on the cover letter, if any language, requirements, etc. inadvertently limits the requirements stated in this RFQ to a single source. Such notification shall be received in writing not later than ten (10) days prior to the bid opening date.
- h) The proposers must possess any applicable business and/or occupational licenses at the time of submission of the bid. The Town may request proof of such licensure. The proposers shall also obtain all permits required for the services and/or projects which are the subject of this RFQ.
- i) The Town shall be entitled to rely on the written representations of the proposers. No claims shall be paid by the Town unless in writing and approved by the Town. Additionally, sovereign immunity is not waived as to any verbal representations or comments made by the Town.
- j) Unless detailed elsewhere in the Contract Documents (as defined in **Section 8.2**), proof of insurance naming the Town as an **additional insured** shall be required of the successful proposer (on and/or for any service(s) and project(s)) with the following minimum coverage: workers compensation, general liability, and automobile insurance in an amount and form acceptable to the Town, with limits of not less than one million dollars and zero cents (\$1,000,000.00).

8.2 DEFINITIONS:

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

- a) **ACCEPTANCE:** The Seller shall be bound by the purchase order and its terms and conditions when it delivers the goods ordered or renders the services ordered by the Town.
- b) **APPLICABLE LAW:** Any contract entered into pursuant to this Request For Qualifications 24-01 shall be construed in accordance with the laws of the State of Florida. The venue for any action or proceeding concerning this RFQ and/or any contract entered into pursuant to this RFQ shall be in the State Courts of Polk County, Florida.
- c) **CHANGES:** The Town, without invalidating the Contract (as defined in **Section 8.2**), may order changes, including additions, deletions, or modifications. The parties recognize that said changes may affect price and time for performance, in which event appropriate adjustments will be considered. All such changes in the work, services, and/or projects shall be authorized in writing, signed by the Town Manager or her/his designee, or the Town Clerk in a manner consistent with Contract Documents. The price and the time for performance may be changed only by Change Order Request. By written instructions to the Consultant, the Town may make minor changes in the work, services, and/or projects which are consistent with the purpose

of same and which do not change the contract price or time for completion. However, changes shall not be binding upon the Town unless and until evidenced by a Change Order Request issued and signed by the Town Manager.

- d) **TOWN:** The Town of Dundee, Florida, or its authorized representative.
- e) **CONTRACT/AGREEMENT:** The Master Continuing Professional Consulting Agreement which is approved by the Town Commission of the Town of Dundee, Florida, and executed by the Town and the Consultant, and shall include all Contract Documents.
- f) **CONSULTANT:** The successful proposer(s) which enter into the Agreement with the Town to provide the services and/or projects which are the subject of this RFQ.
- g) **DEFAULT:** Default in promised delivery of services, completion of project, or failure to meet specifications authorizes the Town to terminate the Consultant's right to proceed with the work, services, and/or projects by giving the Consultant written notice. The defaulting Consultant may, at the discretion of the Town, be charged the increase in costs of obtaining the services elsewhere.
- h) **CONTRACT DOCUMENTS:** This RFQ 24-01; Terms and Conditions; Contract/Agreement; Bond; Performance Bond; Maintenance Bond; Contract Bond; Special Provisions; Specifications; Technical Specifications; Proposal and Bid Form; Engineering Plans and/or Drawings; Addenda issued before, during and after the bidding period for the RFQ; Task Order(s); Change Orders issued after the Contract is let; and any other document incorporated by reference and/or annexed to documents identified herein.
- i) **INDEMNIFICATION:** To the fullest extent permitted by law, and in consideration of the amount stated on any Task Order issued pursuant to this RFQ, Consultant shall indemnify and hold harmless the Town and its officers and employees, from all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the Contract and in each Task Order issued hereunder.

Without limiting the generality of the foregoing, the City and the Consultant agree that, as used in this indemnification:

- (1) The phrase "*liabilities, damages, losses, and costs*" shall include by way of explanation and not of limitation: (1) any and all charges or expenses for professional services inclusive of the professional services of others; (2) any and all charges or expenses incurred in court and dispute resolution proceedings including the charges and expenses of mediators; (3) any and all monetary, tangible and real liabilities, judgments, required payments and voluntary settlement payments for bodily injuries, sickness, disease, death, and injury to or destruction of tangible property including the loss of use resulting therefrom; and (4) any and all monetary, tangible and real liabilities, damages, losses and costs incurred, received, or sustained by any person or persons during or on account of any operations or matters connected with the Contract, any Task Order issued hereunder, and any service, project, task or work performed hereunder;
- (2) The phrase "*reasonable attorneys' fees*" shall include by way of explanation and not of limitation any and all fees, charges, and expenses for the professional services of attorneys and their offices in any and all pre-suit, trial, appellate and bankruptcy proceedings or otherwise; and
- (3) The phrase "*negligence, recklessness, or intentionally wrongful conduct*" shall include by way of explanation and not of limitation the negligent, reckless, or intentional violation of any applicable federal, state, county, or local law, by-law, statute, ordinance or regulation and the

negligent, reckless, or intentional acts or omissions of the Consultant, any person or organization directly or indirectly employed by the Consultant, and 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 the Contract, any Task Order issued hereunder, or in any service, project, task or work performed hereunder.

In any and all claims against the Town, or any of its officers and employees, by any person employed or utilized by the Consultant in the performance of the Contract or in the performance of any Task Order issued hereunder, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the Town, the Consultant or any other person or organization.

The Town and the Consultant agree that to the extent the written terms of this indemnification conflict with any provisions of Florida laws or statutes, in particular Sections 725.06 and 725.08, Florida Statutes, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes, to contain any limited conditions or limitations of liability, and to not contain any unenforceable or prohibited term or terms, such that this indemnification shall be enforceable in accordance with and to the greatest extent permitted by Florida law.

- j) **INSPECTION:** The services purchased are subject to the inspection and approval of the initiating department. The Town reserves the right to reject services that do not conform to provisions of the Contract and/or any Task Order issued hereunder.
- k) **INSURANCE:** As specified in the Contract Documents.
- l) **LIMITATION ON MUNICIPAL INDEMNITY:** To the extent that the Contract calls for the Town to indemnify any party thereto, the following sentence shall be appended to the indemnity and shall control the indemnity as if set forth therein:
 - i) "Provided, however, that regardless of whether any such obligations incurred hereunder are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the Town of Dundee under this indemnification provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to section 768.28, Florida Statutes, as that section existed at the inception of this Contract or Agreement." Provided further, no waiver of the Town's sovereign immunity is intended to be made herein.
 - ii) The addition of this language shall not be construed to create Town indemnifications where none are expressly made in the terms and conditions of the Contract.
- m) **STATEMENT OF ASSURANCE:** No proposals submitted shall be considered unless the Proposer warrants that upon execution of a Contract with the Town, it will:
 - i) not engage in employment practices that have the effect of discriminating against employees or prospective employees because of race, color, religion, sex, national origin, age, disability, marital status, or any other protected class; and
 - ii) will submit such reports as the Town may thereafter require to assure compliance.
- n) **SUB-CONTRACTOR:** An individual, firm, company, corporation, association, society, or group that enters into a contract with the Consultant to do a portion of the work, services, and/or projects which are the subject of this RFQ.

- o) **TITLE:** To the extent applicable, the risk of loss of goods covered by any Purchase Order shall remain with the Seller until the goods have been delivered to a designated site and actually received by the Town. Any damage to the material and equipment, or loss of any kind, occasioned in transit shall be borne by the Seller.
- p) **WARRANTY:** The Consultant shall not incorporate in the work of a project any materials or equipment subject to a chattel mortgage, a conditional sales contract, or any other agreement permitting a Vendor to retain an interest. The Consultant shall warrant clear title to all materials and equipment incorporated in the work; when the project is completed, the Consultant shall deliver to the Town the improvements it has incorporated free of any lien or claim. The provisions of this section shall be included in all contracts with Vendors and Subcontractors. Vendors who furnish materials without a formal contract shall be given notice by the Consultant that this provision exists.

8.3 INTERPRETATIONS OR ADDENDA:

- a) No oral interpretation shall be made to any Proposer as to the meaning of the Contract Documents or any part thereof--to include any error, omission, discrepancy, or vagueness. Every request for such an interpretation shall be made in writing to the Town Clerk. Any inquiry received prior to the cut-off time and date for questions will be given consideration. Where necessary, interpretations made to a Proposer will be in the form of an Addendum to the Contract Documents, and when issued, will be on file in the office of the Town Clerk. In addition, all Addenda will be posted for review by the General Public on the Town's website.
- b) Notification will be emailed to all proposers who are registered for this RFQ.
- c) The Town shall not be responsible for the safe delivery of the Addenda/email notification. It shall be the Proposer's responsibility to make inquiries as to the Addenda issued. All such Addenda shall become part of the Contract Documents and all Proposers shall be bound by such Addenda, whether received or not.

8.4 PROTEST PROCEDURES:

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

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

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

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

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

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

The formal written protest shall contain the following:

- i) Town RFQ number and/or title (if applicable);
 - ii) Name and/or address of the Town department, division, or agency affected;
 - iii) The name and address of the affected party;
 - iv) The title and position of the person submitting the protest;
 - v) A statement of disputed issues of material fact;
 - vi) If there are no disputed material facts, the written letter must so indicate;
 - vii) Concise statement of the facts alleged;
 - viii) Statement identifying with specificity the rule(s), regulation(s), statute(s), ordinance(s), and/or constitutional provision(s) entitling the affected party to the relief requested;
 - ix) Statement identifying with specificity the relief which an entitlement is alleged; and
 - x) Such other information as the affected party deems to be material to the issue.
- f) **PROTEST MEETING:** The Town will notify all parties and schedule a protest meeting. The protest will be presented to the Protest Committee, which shall be made up of three (3) members consisting of the Town Manager or his/her designee who shall serve as the Chairperson, the Town of Dundee Finance Director or his/her designee and a designated member of the Purchasing Review Committee. The Town Attorney or designee shall be present and act in an advisory capacity to the Protest Committee.
- g) The Protest Committee shall meet with the protesting party within fourteen (14) business days of receipt of the formal written protest. The response time may be extended, if necessary. All affected parties will be notified of the location, date, and time of the bid protest meeting and will be allowed the opportunity to make their presentation to the Bid Protest Committee. The parties may bring a representative if they so choose.

- h) The Town Manager shall present the background for the protest to the RFQ Protest Committee. The purpose of the protest meeting is: (1) to question and review the basis of the protest; (2) to evaluate the facts and merits of the protest; and (3) to gather information in order to make a decision.
- i) The agenda for the bid protest meeting will be:
 - i) The background as to why the recommendation for the award was made or why the vendor was not selected.
 - ii) The protesting party or their representative will speak to how they were adversely affected by the decision of the Town.
 - iii) Any other affected parties or their representative will be given the opportunity for rebuttal and to present any facts that they deem relevant to the protest.
 - iv) During the meeting, the Bid Protest Committee may ask questions of all parties as necessary.
- j) The RFQ Protest Committee will render their decision in writing within five (5) business days of the RFQ protest meeting.
- k) The Town Manager may conduct an evidentiary hearing if there are disputed issues of material fact. The Town Manager will conduct a review and make a final written decision within ten (10) business days after the rendering of the decision of the RFQ Protest Committee. **The Town Manager's decision shall be final and binding. No further protests of the action in question will be heard by the Town.**
- l) Any person who is aggrieved by the final and binding decision of the Town Manager shall be entitled to a review of the final and binding decision by the 10th Judicial Circuit Court of Polk County, Florida, by filing an appropriate petition with the Clerk of the Court within 30 calendar days following the rendering of the Town Manager's final and binding decision.

8.5 RESPONSES:

- a) Submittals must be received no later than the time and date, and at the location specified for submission in the Contract Documents. No proposal will be accepted after the specified deadline or at any location other than that specified in the Contract Documents. Any proposal received late or because of submittal to another location will be maintained unopened in the bid file. Proposals properly received will be opened at the time and place stated in the Contract Documents.
- b) The Town Clerk or designee may elect to cancel or postpone a bid at any time prior to the time and date set to open proposals.
- c) Sealed bids, proposals, or replies received by the Town pursuant to a Request for Qualifications/Request for Proposals are exempt from disclosure under s.119.07(1) and s.24(a), Art. I of the State Constitution until such time as the Town provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.
- d) If the Town rejects all bids, proposals, or replies submitted in response to a Request for Qualifications/Request for Proposals and the Town concurrently provides notice of its intent to reissue the Request for Qualifications/Request for Proposals, the rejected bids, proposals, or replies remain exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the Town provides notice of an intended decision concerning the reissued Request for Qualifications/Request for Proposals or until the Town withdraws the reissued Request for Qualifications/Request for Proposals. A bid, proposal, or reply is not exempt for longer than 12 months after the initial Town notice rejecting all bids, proposals, or replies.

- e) A proposal and a non-collusion affidavit shall be submitted on forms furnished by the Town and completed by the Proposer without additions, modifications, deletions, and erasures. Proposals not submitted on the attached bid form shall be rejected. Proposals must be typed or printed in ink. All corrections made by the Proposer to their proposal must be initialed. Each Proposer shall deliver its sealed proposal to the location specified on the Request for Qualifications, in an envelope bearing the name of the Proposer, the name of the RFQ, and the time and date of the initial opening. It is the Proposer's responsibility to ensure that its proposal is delivered at the proper time and place of the proposal opening. Proposals that are not received, as set forth herein, shall not be considered. **The official time shall be the time that is displayed on the telephone of the Town of Dundee Town Clerk.**
- f) Telegraph, telephone, e-mail, electronically transmitted, or facsimile (FAX) bids will not be considered. Proposals may be modified, in writing, provided such modification is received at the location specified for submission in the Contract Documents prior to the time and date set for the proposal opening. Each Proposer shall be solely responsible for the costs associated with the preparation and submittal of its proposal.
- g) **RESPONSES RECEIVED AFTER THE TIME AND DATE SET FOR THE PROPOSAL OPENING WILL NOT BE CONSIDERED.**

8.6 OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES:

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

8.7 MISTAKES; INACCURACIES; INCOMPLETE INFORMATION:

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

8.8 STATEMENT OF QUALIFICATIONS:

- a) Each proposer shall, upon request of the Town, submit a statement of the proposer's qualifications, its experience record in furnishing a particular service embraced in the Agreement, its organization, and resources available for the work, services, and/or projects contemplated, and, when specifically requested by the Town, appropriate financial information which would assist in determining the proposer's ability and solvency to perform work, services, and/or projects contemplated by the Agreement. The Proposer may also be requested to furnish references which the Town may use to verify claims of competency. The Town shall have the right to take such steps as it deems necessary to determine the ability of the Proposer to perform its obligations under the Contract, and the Proposer shall furnish the Town all such

information and data for this purpose as it may request. The right is reserved to reject any proposal where an investigation of the available evidence or information does not satisfy the Town that the Proposer is qualified to carry out properly the terms of the Contract.

8.9 STATE LAW COMPLIANCE:

The Contract shall comply with Florida State Statutes:

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

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

c. *Drug-Free Workplace.* By executing the Contract, the 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 the Contract, 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 Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this Contract is terminated for a violation of the statute by the 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.* The Consultant acknowledges receipt of notice from the Town of the provisions of Section 287.05701 of the Florida Statutes which prohibits local governments from giving preference to a prospective contractor based on the prospective contractor's social, political, or ideological interests or requesting documentation from, or considering, a prospective contractor's social, political, or ideological interests when

determining if the prospective contractor is a responsible vendor. Contractor affirms and agrees that the Town did not request any documentation about, or give any consideration to, the Contractor's social, political, or ideological interests in the award of the Contract.

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

8.10 EQUAL EMPLOYMENT OPPORTUNITY:

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

8.11 *NOTICE*

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

8.12 UNAUTHORIZED ALIEN(S):

- a) The Contractor agrees that unauthorized aliens shall not be employed nor utilized in the**

performance of the requirements of this solicitation. The Town shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the Town. As part of the response to this solicitation, the successful vendor will complete and submit the attached form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS".

- b) Employers may avail themselves of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine the employment eligibility of new hires and the validity of their Social Security numbers.
- c) If your company wishes to avail themselves of this program, you can register online for E-Verify at <https://www.vis-dhs.com/EmployerRegistration>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of the agreement between you as the employer, the SSA, and DHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit www.dhs.gov/e-verify or contact USCIS at **1-888-464-4218**.

8.13 ACCIDENT PREVENTION:

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

8.14 ASSIGNMENT OR NOVATION:

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

8.15 PATENT INFRINGEMENT:

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

8.16 PROGRESS OF WORK:

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

8.17 CONSULTANT/CONTRACTOR PROVIDED INSURANCE:

- i) The Consultant/Contractor shall, at its own expense, procure and maintain, with insurers acceptable to the Town (Owner), the types and amounts of insurance conforming to the minimum requirements set forth herein. The Consultant/Contractor shall not commence work until the required insurance is in force and evidence of insurance acceptable to the Owner has been provided to and approved by the Owner. As evidence of compliance with the insurance required herein, Consultant/Contractor shall furnish the Owner with:
 - (a) a fully completed satisfactory Certificate of Insurance (ACORD Form 25 or equivalent) evidencing all coverage required herein, with a copy of the actual notice of cancellation endorsement(s) as issued on the policies and a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of Owner's officials, officers and employees as Additional Insureds in the Commercial General Liability coverage;
 - (b) the original of the policy(ies); or
 - (c) other evidence satisfactory to the Owner. Such evidence shall include thirty (30) days written notice of cancellation to the Owner for all coverage. With respect to Property Insurance, an appropriate Evidence of Property Insurance form (ACORD Form 28 or equivalent), or a copy of the policy itself shall be satisfactory evidence of insurance. Until such insurance is no longer required by this Contract, the Consultant/Contractor shall provide the Owner with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.
- (1) Workers' Compensation Insurance:
- (a) Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council of Compensation Insurance, without restrictive endorsements. In addition to coverage for the Florida Workers' Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal

or State law. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

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

(2) General Liability Insurance:

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

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

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

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

(3) Automobile Liability Insurance:

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

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

(4) Professional Liability Insurance:

(a) Such insurance shall be on a form acceptable to the Owner and shall cover the Consultant/Contractor for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required in the agreement. Coverage must either be on an occurrence basis; or, if on a claim-made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. The

policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. The minimum limits (inclusive of any amount provided by an umbrella or excess policy) shall be:

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

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

- ii) All insurance policies provided by the Consultant/Contractor shall be endorsed to provide that the Insurer waives its rights against the Owner and the Owner's officials, officers, and employees.
- iii) Compliance with these insurance requirements shall not limit the liability of the Consultant/Contractor or its Subcontractors. Any remedy provided to the Owner by the insurance provided by the Consultant/Contractor and its Subcontractors shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the Consultant/Contractor) available to the Owner under this Contract or otherwise.
- iv) Neither approval nor failure to disapprove insurance furnished by the Consultant/Contractor shall relieve the Consultant/Contractor from responsibility to provide insurance as required by this Contract.
- v) The insurance provided by the Consultant/Contractor shall apply on a primary basis. Any insurance, or self-insurance, maintained by the Town of Dundee shall be in excess of, and shall not contribute with, the insurance provided by the Consultant/Contractor.
- vi) Except where prior written approval has been obtained hereunder, the insurance maintained by Consultant/Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention. Consultant/Contractor shall pay on behalf of the Owner and Owner's officials, officers, and employees any deductible or self-insured retention applicable to a claim against the Owner and Owner's officials, officers, and employees.
- vii) Certificates of Insurance must be completed as follows:
 - 1. Certificate Holder
Town of Dundee
202 East Main Street
Dundee, FL 33838
 - 2. Additional Insured for General Liability
The Town of Dundee and its officials, officers, and employees

8.18 INDEMNIFICATION BY CONSULTANT/CONTRACTOR:

- a) The Consultant/Contractor shall indemnify and hold harmless the Town (Owner), and its officers and employees, from liabilities, damages, losses, and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Consultant/Contractor and persons employed or utilized by the Consultant/Contractor in the performance of this Contract.
- b) The remedy provided to an indemnitee by Paragraph a), shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.
- c) The remedy provided to an indemnitee by this Contract shall survive this Contract and shall

not be limited in any manner by acceptance, final completion or final payment.

- d) A claim for indemnity pursuant to this Contract shall be commenced within the period established under Florida law for commencement of an action founded on the design, planning or construction of an improvement to real property.
- e) The provisions of this Article are severable and if, for any reason, any one or more of the provisions contained in the Article shall be held by a court of competent jurisdiction to be invalid, illegal, against public policy or unenforceable in any respect, the invalidity, illegality, being against public policy or unenforceability shall not affect any other provision of this Article which shall remain in effect and be construed as if the invalid, illegal, against public policy or unenforceable provision had never been contained in the Article.

8.19 LIENS:

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

8.20 CONSTRUCTION AND CONSULTING EVALUATION:

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

9.0 STANDARD FORMS

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

- 9.1 RFQ 24-01 SUBMITTAL COVER PAGE, **Attachment A**
- 9.2 ADDENDUM PAGE, **Attachment B**
- 9.3 LOBBYING CERTIFICATION FORM, **Attachment C**
- 9.4 NON-COLLUSION AFFIDAVIT OF PRIME BIDDER, **Attachment D**
- 9.5 AFFIDAVIT CERTIFICATION-IMMIGRATION LAWS, **Attachment E**
- 9.6 CERTIFICATION OF DRUG-FREE WORKPLACE, **Attachment F**
- 9.7 CONFLICT OF INTEREST STATEMENT, **Attachment G**
- 9.8 ACCEPTANCE OF PROPOSAL TERMS AND CONDITIONS, **Attachment H**

NOTE: PLEASE ENSURE THAT ALL OF THESE DOCUMENTS ARE COMPLETED AND SUBMITTED WITH YOUR PROPOSAL. FAILURE TO DO SO MAY RESULT IN YOUR PROPOSAL NOT BEING CONSIDERED FOR AWARD.

9.1 ATTACHMENT A

RFQ-24-01 Submittal Cover Page (this does not count as part of the maximum page limit)

Date

Name of Company

Authorized Signature

Printed Name

Title/Position

Physical Address

Town

State

Zip

Email address

Telephone Number / Fax Number

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

Key Team members and addresses of the principal office:

9.2 ATTACHMENT B

ADDENDUM PAGE (RFQ 24-01)

The undersigned acknowledges receipt of the following addenda to the Request for Qualifications 24-01 (Give the number and date of each):

Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____

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

NAME OF BUSINESS: _____

BY: _____

SIGNATURE

NAME & TITLE, TYPED OR PRINTED: _____

9.3 ATTACHMENT C

LOBBYING - 31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

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

Signature of Proposer's Authorized Official

Name and Title of Proposer's Authorized Official

Date: _____

9.4 ATTACHMENT D

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

STATE OF _____)

COUNTY OF _____)

Before me, the undersigned authority personally appeared _____, who was duly sworn, deposed, and stated:

(1) He/She is _____ of _____, the _____
(Title) Company Proposer/Bidder that has submitted the attached proposal/bid;

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

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

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

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

Affiant Signature

Typed or Printed Name of Affiant

Title

OATH OR AFFIRMATION

Sworn to (or affirmed), and subscribed before me by means of physical presence or online notarization, this _____ day of _____, 202__ by _____ (name of person making statement).

Signature of Notary Public – State of Florida

Print, Type, or Stamp the Name of the Notary

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

9.5 ATTACHMENT E

AFFIDAVIT CERTIFICATION
IMMIGRATION LAWS

STATE OF _____)

COUNTY OF _____)

Before me, the undersigned authority personally appeared _____, who was duly sworn, deposed, and stated:

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

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

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

Affiant Signature

Typed or Printed Name of Affiant

Title

OATH OR AFFIRMATION

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this _____ day of _____, 202__ by _____ (name of person making statement).

Signature of Notary Public – State of Florida

Print, Type, or Stamp the Name of the Notary

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

9.6 ATTACHMENT F

CERTIFICATION OF DRUG-FREE WORKPLACE

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

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

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

DATE

NAME OF FIRM

TELEPHONE NUMBER

STREET ADDRESS

VENDOR'S SIGNATURE

TOWN STATE ZIP

9.7 ATTACHMENT G

CONFLICT OF INTEREST STATEMENT

STATE OF _____)

COUNTY OF _____)

Before me, the undersigned authority personally appeared _____, who was duly sworn, deposed, and stated:

- A. I am the _____ of _____ with a local office in _____ and principal office in _____.
- B. Said entity is submitting this proposal/offer to RFQ #24-01.
- C. The AFFIANT has made a diligent inquiry and provided the information in this statement affidavit based upon its full knowledge.
- D. The AFFIANT states that only one submittal for this solicitation has been submitted and tendered by the appropriate date and time and that said above-stated entity has no financial interest in other entities submitting a proposal for the work contemplated hereby.
- E. Neither the AFFIANT nor the above-named entity has directly or indirectly entered into any agreement, participated in any collusion or collusion activity, or otherwise taken any action which in any way restricts or restraint the competitive nature of this solicitation including but not limited to the prior discussion of terms, conditions, pricing, or other offer parameters required by this solicitation.
- F. Neither the entity nor its affiliates, nor anyone associated with them, is presently suspended or otherwise prohibited from participation in this solicitation or any contracting to follow thereafter by any government.
- G. Neither the entity nor its affiliates, nor anyone associated with them, have any potential conflict of interest because and due to any other clients, contracts, or property interests in this solicitation or the resulting project.
- H. I hereby also certify that no member of the entity's ownership or management or staff has a vested interest in any Town Division, Department, or Office.
- I. I certify that no member of the entity's ownership or management is presently applying, actively seeking, or has been selected for an elected position within the Town of Dundee government.
- J. In the event that a conflict of interest is identified in the provision of services, I, the undersigned will immediately notify the Town in writing.

Affiant Signature

Typed or Printed Name of Affiant

Title

OATH OR AFFIRMATION

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this _____ day of _____, 202__ by _____ (name of person making statement).

Signature of Notary Public – State of Florida

Print, Type, or Stamp the Name of the Notary

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

9.8 ATTACHMENT H

ACCEPTANCE OF PROPOSAL TERMS AND CONDITIONS

STATE OF _____)

COUNTY OF _____)

Before me, the undersigned authority personally appeared _____, who was duly sworn, deposed, and stated:

I/we, the undersigned, do hereby accept in total all the terms and conditions stipulated and referenced in this RFQ document, and Master Continuing Professional Consultant Agreement, and do hereby agree that if a contract is offered or negotiated it will abide by the terms and conditions presented in the RFQ document and the Master Continuing Professional Consultant Agreement pursuant thereto. The signature(s) below are an acknowledgment of our full understanding and acceptance of all the terms and conditions set forth in this RFQ document or as otherwise agreed to between the parties in writing.

Affiant Signature

Title

Typed or Printed Name of Affiant

Date

OATH OR AFFIRMATION

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this _____ day of _____, 202__ by _____ (name of person making statement).

Signature of Notary Public – State of Florida

Print, Type, or Stamp the Name of the Notary

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

9.9 ATTACHMENT H

Proposers Incorporation Information (Submittal Page)

The following section should be completed by all bidders/proposers and submitted with their bid/proposal submittal:

Company Name: _____

DBA/Fictitious Name (if applicable): _____

TIN #: _____

Address: _____

City: _____

State: _____

Zip Code: _____

County: _____

Note: Company name must match legal name assigned to the TIN number. A current **W9** shall be submitted with your bid submittal.

Contact Person: _____

Phone Number: _____

Cell Phone Number: _____

Email Address: _____

Type of Organization (select one type)

- Sole Proprietorship
- Partnership
- Non-Profit
- Sub Chapter
- Joint Venture
- Corporation
- LLC
- LLP
- Publicly Traded
- Employee Owned

State of Incorporation: _____

The selected Consultant(s) must complete and submit this form prior to award. The selected Consultant(s) shall invoice using the company name listed above.

PLEASE COMPLETE AND SUBMIT WITH PROPOSAL

>>>>Failure to submit all forms with your PROPOSAL may disqualify your response. <<<<