



**CONTRACT FOR PROFESSIONAL  
CONSULTING SERVICES**

This Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023 by and between CITY OF MILTON, FLORIDA (“CITY”), a political subdivision of the State of Florida, located at 6738 Dixon Street, Milton, Florida 32570, and \_\_\_\_\_, whose principal place of business is at \_\_\_\_\_ (the “Consultant”), whose Federal I.D. number is \_\_\_\_\_, in connection with City Request for Proposal No. \_\_\_\_\_ and the professional services set forth therein.

**WITNESSETH**

**WHEREAS**, the City has pursued the professional services selection process contemplated under section 287.055, Florida Statutes; and

**WHEREAS**, City desires to obtain the professional consulting services of the Consultant concerning said services being more fully described in the exhibits attached to this Contract.

**NOW, THEREFORE**, in consideration of the mutual promises herein, the City and the Consultant agree as follows:

**ARTICLE ONE  
CONSULTANT’S RESPONSIBILITY**

1.1. Consultant shall provide to City continuing professional engineering consulting services for the duration of the Contract.

1.2. The Services required under this Contract to be performed by Consultant shall be those set forth in Article Two and Contract Manuel as Exhibit A and shall be issued periodically as Notice to Proceeds. The basis of compensation to be paid Consultant by the City for Services is set forth in Article Five and Schedule A, “Basis of Compensation” attached to each Notice to Proceed, which is attached hereto and incorporated herein. Work Authorization requests will be made to Consultant as may be warranted, including but not limited to updates of plans, designs of improvements, field and construction services, acquisition analysis, and permitting activities as may be reasonably contemplated hereunder.

1.3. The Consultant agrees to obtain and maintain throughout the period of this Contract all such licenses as are required to do business in the State of Florida, including, but not limited to,

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all licenses required by the respective state boards, and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Contract.

1.4. The Consultant agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

1.5. Consultant agrees that the Project Manager for the term of this Contract shall be:

**INSERT NAME**

The Consultant agrees that the Project Manager shall devote whatever time is required to satisfactorily manage the services to be provided and performed by the Consultant hereunder. The person selected by the Consultant to serve as the Project Manager shall be subject to the prior approval and acceptance of the City, such approval or acceptance shall not be unreasonably withheld.

1.6. Consultant agrees, within fourteen (14) calendar days of receipt of a written request from the City, to promptly remove and replace from the project team the Project Manager, or any other personnel employed or retained by the Consultant, or any subconsultants or subcontractors or any personnel of any such subconsultants or subcontractors engaged by the Consultant to provide and perform services or work pursuant to the requirements of this Contract, whom the City shall request in writing to be removed, which request may be made by the City with or without cause.

1.7. The Consultant has represented to the City that it has expertise in the type of professional services that will be required for the Project. The Consultant agrees that all services to be provided by Consultant pursuant to this Contract shall be subject to the City's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by Consultant hereunder. In the event of any conflicts in these requirements, the Consultant shall notify the City of such conflict and utilize its best professional judgment to advise City regarding resolution of the conflict.

1.8. Consultant agrees not to divulge, furnish or make available to any third person, firm or organization, without City's prior written consent, or unless incident to the proper performance of the Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant hereunder, and Consultant shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph.

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1.9. Evaluations of the City's adopted capital improvement budget, preliminary estimates of construction cost and detailed estimates of construction cost prepared by the Consultant represent the Consultant's best judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that bids or negotiated prices will not vary from any estimate of construction cost or evaluation prepared or agreed to by the Consultant. Notwithstanding anything above to the contrary, Consultant shall revise and modify Construction Documents and assist in the rebidding of the work at no additional cost to City, if all responsive and responsible bids exceed the estimates of construction costs prepared by Consultant.

1.10. Consultant shall not be responsible for means, methods, techniques, sequences or procedures of construction selected by contractors or the safety precautions and programs incident to the work of contractors.

### **ARTICLE TWO SERVICES OF CONSULTANT**

2.1. As authorized or required by the City in a Notice to Proceed, and agreed to by Consultant, Consultant shall furnish or obtain from other Services of the types listed in the Proposal submitted date, attached as **Exhibit B**. These services will be paid for by the City as indicated in Article Five and Schedule A and as confirmed in each Notice to Proceed.

### **ARTICLE THREE CITY'S RESPONSIBILITIES**

3.1. The City shall designate in writing a representative to act as City's representative with respect to the services to be rendered under this Contract (hereinafter referred to as the "City's Representative"). The City's Representative shall have City transmit instructions, receive information, interpret and define City's policies and decisions with respect to Consultant's services for the Project. However, the City's Representative is not authorized to issue any verbal or written orders or instructions to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- a. The scope of services to be provided and performed by the Consultant hereunder;
- b. The time the Consultant is obligated to commence and complete all such services;  
or
- c. The amount of compensation the City is obligated or committed to pay the Consultant.

3.2. The City's Representative shall:

- a. Review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed in accordance with this Contract;

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- b. Provide all criteria and information requested by Consultant as to City's requirements, for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations;
  - c. Upon request from Consultant, assist Consultant by placing at Consultant's disposal all available information in the City's possession pertinent to the Project, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data relative to design or construction of the Project;
  - d. Arrange for access to and make all provisions for Consultant to enter the Project site to perform the services to be provided by Consultant under this Contract; and
  - e. Provide notice to Consultant of any deficiencies or defects discovered by the City with respect to the services to be rendered by Consultant hereunder.
- 3.3. Consultant acknowledges that access to the Project Site, to be arranged by City for Consultant, may be provided during times that are not the normal business hours of the Consultant.
- 3.4. City shall be responsible for the acquisition of all easements, property sites, rights-of-way, or other property rights required for the Project and for the costs thereof, including the costs of any required land surveys in connection with such acquisition.
- 3.5. For the purposes of this Contract, the City's Representative shall be:

Randy Jorgenson, City Manager

### **ARTICLE FOUR TIME**

- 4.1. Services to be rendered by Consultant shall be commenced subsequent to the execution of any Notice to Proceeds issued pursuant to this Contract, after receiving written Notice to Proceed from City for all or any designated portion of the Project and shall be performed and completed in accordance with the Project Schedule attached to the Notice to Proceed for the Project.
- 4.2. Should Consultant be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of Consultant, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the City, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then Consultant shall notify City in writing within five (5) working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Consultant may have had to request a time extension.

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4.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of Consultant's services from any cause whatsoever, including those for which City may be responsible in whole or in part, shall relieve Consultant of its duty to perform or give rise to any right to damages or additional compensation from City. Consultant's sole remedy against City will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of the Consultant, the services to be provided hereunder have not been completed within the schedule identified in the Notice to Proceed, the Consultant's compensation shall be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by Consultant.

4.4. Should the Consultant fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the City hereunder, the City at its sole discretion and option may withhold any and all payments due and owing to the Consultant until such time as the Consultant resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the City's satisfaction that the Consultant's performance is or will shortly be back on schedule.

### **ARTICLE FIVE COMPENSATION**

5.1. Compensation and the manner of payment of such compensation by the City for services rendered hereunder by Consultant shall be as prescribed in Schedule A, entitled "Basis of Compensation," and **Exhibit C** which are attached hereto and made a part hereof.

5.2. The total amount to be paid by the City under this Contract for all services and materials, including "out of pocket" expenses and any approved subcontracts, shall not exceed the amount set forth in the approved Notice to Proceeds without prior approval of the City. The Consultant shall notify the City's Representative in writing when 90% of the "not to exceed amount" has been reached.

5.3. Invoices received by the City from the Consultant pursuant to this Contract will be reviewed and approved in writing by the City's Representative, who shall indicate whether services have been rendered in conformity with the Contract, and then sent to the City's Office of Management and Budget for processing payment. All invoices shall contain a detailed breakdown of the services provided for which payment is being requested. Invoices shall be paid within thirty (30) days following the City Representative's approval, who shall process all payments in accordance with the Florida Prompt Payment Act or advise Consultant in writing of reasons for not processing same. In addition to detailed invoices, upon request of the City's Representative, Consultant will provide City with detailed periodic Status Reports on the project.

5.4. "Out-of-pocket" expenses shall be reimbursed in accordance with Florida law and Schedule A. All requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the City's Representative. Such documentation shall be sufficient to

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establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Contract.

5.5. In order for both parties herein to close their books and records, the Consultant will clearly state "final invoice" on the Consultant's final/last billing to the City for each Notice to Proceed. This final invoice shall also certify that all services provided by Consultant have been performed in accordance with the applicable Notice to Proceed and all charges and costs have been invoiced to the City. Because this account will thereupon be closed, any and other further charges not included on this final invoice are waived by the Consultant. Acceptance of final payment by Consultant shall constitute a waiver of all claims and liens against City for additional payment.

### **ARTICLE SIX WAIVER OF CLAIMS**

6.1. Consultant's acceptance of final payment shall constitute a full waiver of any and all claims related to the obligation of payment by it against City arising out of this Contract or otherwise related to the Project, except those previously made in writing and identified by Consultant as unsettled at the time of the final payment. Neither the acceptance of Consultant's services nor payment by City shall be deemed to be a waiver of any of City's rights against Consultant.

### **ARTICLE SEVEN TRUTH IN NEGOTIATION REPRESENTATIONS**

7.1. Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Contract and that Consultant has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract.

7.2. In accordance with provisions of Section 287.055(5)(a), Florida Statutes, the signature of this Contract by the Consultant shall also act as the execution of a truth in negotiation certificate certifying that the wage rates, overhead charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the Consultant's most favored customer for the same or substantially similar service. Should the City determine that said rates and costs were significantly increased due to incomplete, noncurrent or inaccurate representation, then said rates and compensation provided for in this Contract shall be adjusted accordingly.

### **ARTICLE EIGHT TERMINATION OR SUSPENSION**

8.1. Consultant shall be considered in material default of this Contract and such default will be considered cause for City to terminate this Contract, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Contract within

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a reasonable time after issuance of the Notice(s) to Proceed of a Notice to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by City pursuant to this Contract, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by Consultant or by any of Consultant's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Contract, or (f) for any other just cause. The City may so terminate this Contract, in whole or in part, by giving the Consultant seven (7) calendar days' written notice.

8.2. If, after notice of termination of this Contract as provided for in paragraph 8.1 above, it is determined for any reason that Consultant was not, in default, or that its default was excusable, or that City otherwise was not entitled to the remedy against Consultant provided for in paragraph 8.1, then the notice of termination given pursuant to paragraph 8.1 shall be deemed to be the notice of termination provided for in paragraph 8.3 below and Consultant's remedies against City shall be the same as and limited to those afforded Consultant under paragraph 8.3 below.

8.3. City shall have the right to terminate this Contract, in whole or in part, without cause upon seven (7) calendar days' written notice to Consultant. In the event of such termination for convenience, Consultant's recovery against City shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Consultant that are directly attributable to the termination, but Consultant shall not be entitled to any other or further recovery against City, including, but not limited to, anticipated fees or profits on work not required to be performed.

8.4. Upon termination, the Consultant shall deliver to the City all original papers, records, documents, drawings, models, and other material set forth and described in this Contract.

8.5. The City shall have the power to suspend all or any portions of the services to be provided by Consultant hereunder upon giving Consultant two (2) calendar days prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, the Consultant's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in Article Four herein.

### **ARTICLE NINE PERSONNEL**

9.1. The Consultant is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Consultant's sole direction, supervision, and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant's relationship and the relationship of its employees to the City shall be that of an Independent Contractor and not as employees or agents of the City.

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9.2. The Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City, nor shall such personnel be entitled to any benefits of the City including, but not limited to, pension, health and workers' compensation benefits.

9.3. All of the services required hereunder shall be performed by the Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

9.4. Any changes or substitutions in the Consultant's key personnel, as may be listed in Consultant's statement of qualifications, must be made known to the City's Representative and written approval must be granted by the City's Representative before said change or substitution can become effective, said approval for which shall not unreasonably be withheld.

9.5. The Consultant warrants that all services shall be performed by skilled and competent personnel to professional standards applicable to firms of similar local and national reputation.

9.10. The Consultant warrants that it fully complies with all Federal Executive Orders, statutes and regulations regarding the employment of undocumented workers and others and that all employees performing work under this Agreement meet the citizenship or immigration status requirements set forth in Federal Executive Orders, statutes and regulations. Consultant shall indemnify, defend and hold harmless the City, its officers and employees from and against any sanctions and any other liability which may be assessed against the Contractor in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

9.11. The employees and agents of each party, shall while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

### **ARTICLE TEN SUBCONTRACTING**

10.1. Consultant shall not subcontract any services or work to be provided to City without the prior written approval of the City's Representative. The City reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The City's acceptance of a subcontractor shall not be unreasonably withheld. The Consultant is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

### **ARTICLE ELEVEN FEDERAL AND STATE TAX**



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11.1. The City is exempt from payment of Florida state sales and use taxes. The Consultant shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Consultant authorized to use the City's tax exemption number in securing such materials.

11.2. The Consultant shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

### **ARTICLE TWELVE OWNERSHIP OF DOCUMENTS**

12.1. Upon completion or termination of this Contract, all records, documents, tracings, plans, specifications, maps, evaluations, reports, computer assisted design or drafting disks and other technical data, other than working papers, prepared or developed by Consultant under this Contract shall be delivered to and become the property of City. Consultant, at its own expense, may retain copies for its files and internal use.

12.2. The City and the Consultant shall comply with the provisions of Chapter 119, Florida Statutes, pertaining to public records. Consultant assumes no liability for the use of such documents by the City or others for purposes not intended under this Contract.

### **ARTICLE THIRTEEN MAINTENANCE OF RECORDS & PUBLIC RECORDS**

13.1. Consultant will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by Consultant for a minimum of three (3) years from the date of termination of this Contract or the date the Project is completed, whichever is later. City, or any duly authorized agents or representatives of City, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Contract and during the three (3) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

13.2. Contractor must comply with the public records laws, Florida Statute chapter 119, specifically Contractor must:

- a) Keep and maintain public records required by the City to perform the service.
- b) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119 Florida Statutes or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City.
- d) Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the public agency

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upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the public agency, upon the request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT [CITYCLERK@MiltonFL.ORG](mailto:CITYCLERK@MiltonFL.ORG).**

13.3. The City reserves the right to unilaterally cancel this Contract for refusal by the Contractor or any contractor, sub-contractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Contract unless the records are exempt.

### **ARTICLE FOURTEEN INSURANCE**

14.1. During the life of the Contract the Consultant shall provide, pay for, and maintain, with companies satisfactory to the City, the types of insurance as set forth in attached **Exhibit D**.

### **ARTICLE FIFTEEN INDEMNIFICATION**

15.1. The Consultant shall indemnify and hold harmless the City, 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 and other persons employed or utilized by the Consultant in the performance of the Contract.

15.2. Consultant acknowledges that the general conditions of any construction contract shall include language, satisfactory to the City's attorney, in which the contractor agrees to hold harmless and to defend City, Consultant, their agents and employees, from all suits and actions, including attorney's fees, and all costs of litigation and judgments of any name and description arising out of or incidental to the performance of the construction contract or work performed thereunder. City acknowledges that Consultant shall be expressly named as an indemnified party, and shall be held harmless, in the general conditions of any construction contract, and shall be named as an additional insured in any contractor's insurance policies.

15.3. The first ten dollars (\$10.00) of remuneration paid to Consultant under this Contract shall be in consideration for the indemnification provided for in this section.

Consultant under this Contract shall be in consideration for the indemnification provided for in this section.

**ARTICLE SIXTEEN  
SUCCESSORS AND ASSIGNS**

16.1. The City and the Consultant each binds itself and its successors, executors, administrators and assigns to the other party of this Contract and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the City nor the Consultant shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Consultant.

**ARTICLE SEVENTEEN  
REMEDIES**

17.1. This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract shall be held in Santa Rosa County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**ARTICLE EIGHTEEN  
CONFLICT OF INTEREST**

18.1. The Consultant represents that it has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in the Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes). The Consultant further represents that no person having any interest shall be employed for said performance.

18.2. The Consultant shall promptly notify the City Representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Consultant may undertake and request an informed determination from the City Representative as to whether the association, interest or circumstance would be viewed by the City Representative as constituting a conflict of interest if entered into by the Consultant. The City Representative agrees to notify the Consultant of its opinion by certified mail within thirty (30) days of receipt of notice by the Consultant. Such determination may be appealed to the City Council by the Consultant within thirty (30) days of the City Representative's notice to the Consultant. If, in the opinion of the City Representative or City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Consultant, the City Representative or City shall so state in the notice and the Consultant shall, at its option, enter into

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said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Consultant under the terms of this Contract.

### **ARTICLE NINETEEN DEBT**

19.1. The Consultant shall not pledge the City's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

### **ARTICLE TWENTY NONDISCRIMINATION**

20.1. The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation. Including those set forth in **Exhibit E** hereto and incorporated herein by reference (TITLE VI).

20.2. Additionally, (As per Executive Order 11246) Contractor may not discriminate against any employee or applicant for employment because of age, race, color, creed, sex, disability or national origin. Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, race, color, creed, sex, disability or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship.

### **ARTICLE TWENTY-ONE ENFORCEMENT COSTS**

21.1. The consultant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision, attached as **Exhibit F**, binds the Consultant and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### **ARTICLE TWENTY-TWO ENFORCEMENT COSTS**

22.1. If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

**ARTICLE TWENTY-THREE  
NOTICE**

23.1. All notices required in this Contract shall be sent by certified mail, return receipt requested to the Consultant's Representative and the City Representative at the addresses shown in Articles One and Three hereof.

**ARTICLE TWENTY-FOUR  
MODIFICATION OF SCOPE OF WORK**

24.1. It is the intent of this Contract that City shall from time-to-time issue Notice to Proceeds for Consultant to perform work. Notice to Proceeds shall be duly approved by the City prior to issuance. Consultant shall expediently perform such work within the schedule indicated in the work order in accordance with Article Four above. Consultant shall timely cooperate with City Representative in negotiating the cost and schedule of said work orders prior to submission to the City for approval. The City reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the City's notification of a contemplated change, the Consultant shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the City of any estimated change in the completion date, and (3) advise the City if the contemplated change shall effect the Consultant's ability to meet the completion dates or schedules of this Contract.

24.2. If the City so instructs in writing, the Consultant shall suspend work on that portion of the Scope of Work or work order affected by a contemplated change, pending the City's decision to proceed with the change. Consultant shall be entitled to invoice City for that portion of the work completed prior to receipt of the written notice.

24.3. If the City elects to make the change, the City shall initiate a Contract Amendment and the Consultant shall not commence work on any such change until such written amendment is signed by the Consultant and the City.

**ARTICLE TWENTY-FIVE  
MODIFICATION**

25.1. The City and the Consultant agree that this Contract together with the Exhibits hereto, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article Twenty-Three - Modification of Scope of Work. In the event of any conflict or inconsistency between this Contract and the provisions in the incorporated Exhibits, the terms of this Contract shall supersede and prevail over the terms in the Exhibits.

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### ARTICLE TWENTY-SIX MISCELLANEOUS

- 26.1. Consultant, in representing City, shall promote the best interest of City and each party agrees to assume toward the other party a duty of good faith and fair dealing.
- 26.2. No modification, waiver, suspension or termination of the Contract or of any terms thereof shall impair the rights or liabilities of either party.
- 26.3. This Contract is not assignable, in whole or in part, by Consultant without the prior written consent of City.
- 26.4. Waiver by either party of a breach of any provision of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract.
- 26.5. The headings of the Articles, Schedules, Parts and Attachments as contained in this Contract are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Schedules, Parts and Attachments.
- 26.6. This Contract, including the referenced Schedules and Attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Contract.
- 26.7. Consultant acknowledges that it shall comply with all applicable Federal law, regulations, executive orders, State laws and regulations and local laws, ordinances and regulations as it pertains to services being rendered under this contract.
- 26.8. Consultant acknowledges that some federal funds may be utilized in the course of services being performed under this agreement, as such, consultant agrees that it shall adhere to all necessary federal regulations, including those as set forth in Exhibit G\_\_\_\_\_. Further, the Consultant acknowledges that the Federal government is not a party to this agreement and is not subject to any obligations or liabilities to the non-Federal entity, Consultant, or any other party pertaining to any matter resulting from this Contract.

### ARTICLE TWENTY-SEVEN MINORITY/WOMEN'S BUSINESS ENTERPRISES

- 27.1. The Consultant must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, in accordance with 2CFR 200.321. If subcontracts are to be let, prime contractor will require compliance by all sub-contractors. Prior to contract award, the contractor shall document efforts to utilize M/WBE firms including what firms were solicited as suppliers and/or subcontractors as

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applicable and submit this information with their bid submittal. Information regarding certified M/WBE firms can be obtained from:

Florida Department of Management Services (Office of Supplier Diversity)  
Florida Department of Transportation  
Minority Business Development Center in most large cities and  
Local Government M/DBE programs in many large counties and cities

### **ARTICLE TWENTY-EIGHT PROCUREMENT OF RECOVERED MATERIALS**

28.1. Consultant must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **ARTICLE TWENTY-NINE ENVIRONMENTAL AND ENERGY POLICIES**

29.1. The Consultant shall comply with mandatory standards and policies relating to energy efficiency, stating in the state energy conservation plan issued in compliance with the Energy Policy and Conservation act. (Pub. L. 94-163, 89 Stat. 871) [53 FR 8078, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19645, Apr. 19, 1995].

29.2. Clean Air Act.

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

b. The Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

c. The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance under this Contract.

29.3. Federal Water Pollution Control Act.

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- a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance under this Contract.

### **ARTICLE THIRTY FEDERAL SUSPENSION AND DEBARMENT**

30.1. This Agreement may be covered in part as transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- a. The Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- b. This certification is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment.
- c. The Consultant agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **ARTICLE THIRTY-ONE LOBBYING**

31.1. Byrd Anti-Lobbying Amendment. Consultant who applies or bids for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in



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connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

### **ARTICLE THIRTY-TWO THIRD PARTY BENEFICIARIES**

32.1. It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary under this Contract, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract

### **ARTICLE THIRTY-THREE CONTRACTING WITH THE ENEMY**

33.1. In accordance with 2 C.F.R. 200.215, it is acknowledged that no services under this contract are to be performed outside the United states and its territories nor in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

### **ARTICLE THIRTY-FOUR SEVERABILITY**

34.1. If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

### **ARTICLE THIRTY-FIVE REPRESENTATION OF AUTHORITY TO CONTRACT/SIGNATORY**

35.1 The individual signing this Contract on behalf of [REDACTED] represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract. The signatory represents and warrants to the City that the execution and delivery of this Contract and the performance of [REDACTED] obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the Consultant and enforceable in accordance with its terms.

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**IN WITNESS WHEREOF**, the parties hereto have set their hands and official seals the day and year first above written.

**CONSULTANT:**

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
(printed)

**CITY OF MILTON, FLORIDA**

\_\_\_\_\_  
Randy Jorgenson, City Manager

**(ATTEST)**

\_\_\_\_\_  
Purchasing Officer

\_\_\_\_\_  
Print Name

Approved as to form:

\_\_\_\_\_