

# AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between the CITY of Treasure Island, Florida (CITY) and **XXXXXXXX**. (CONSULTANT).

## WITNESSETH:

WHEREAS the CITY desires to engage the CONSULTANT to perform certain professional services pertinent to such work in accordance with this Agreement; and

WHEREAS the CONSULTANT desires to provide such professional services in accordance with this Agreement; and

WHEREAS the CITY selected the CONSULTANT in accordance with the competitive selection process described in Section 287.055 of the Florida Statutes, and based on information and representations given by the CONSULTANT in a proposal dated **XXXXX XX**, 2018:

NOW, THEREFORE, in consideration of the premises and the mutual benefits which will accrue to the parties hereto in carrying out the terms of this Agreement, it is mutually understood and agreed as follows:

### 1.0 AGREEMENT DOCUMENTS

This Agreement consists of this document including attachments, the Request for Qualifications (RFQ), and CONSULTANT'S proposal submitted in response to the RFQ, as if all components were set forth herein verbatim. In the event of a conflict between the terms and conditions provided in this document including the attachments and the RFQ or proposal, the provisions in this document shall prevail. No amendment shall be effective until and unless reduced to writing and executed by the Parties.

### 2.0 GENERAL SCOPE OF THIS AGREEMENT

The relationship of the CONSULTANT to the CITY will be that of a professional consultant, and the CONSULTANT will provide the professional and technical services required under this Agreement in accordance with acceptable engineering practices and ethical standards.

CONSULTANT shall have the discretion, subject to the requirement that it perform the

services required hereunder competently and professionally in accordance with the applicable professional standards and otherwise comply with the terms of this Agreement, to select the means and methods of performing such services. In this regard, CONSULTANT shall be fully responsible for the employment, direction, supervision, compensation and control of any and all persons employed or retained by CONSULTANT. Neither CONSULTANT nor CONSULTANT'S contractors, subcontractors, consultants, suppliers, experts, or other persons or organizations retained or utilized by CONSULTANT for the services required hereunder shall be considered by reason of the provisions of this Agreement or otherwise as being an employee or agent of the CITY. CONSULTANT shall comply with all workers' compensation, employers' liability and other Federal, State, and municipal laws, ordinances, and regulations required of an employer performing services as herein contemplated. Furthermore, CONSULTANT is responsible for paying all income and employment taxes, and the CITY shall not be responsible for collecting and/or paying withholding, FUTA, FICA and any other state or federal taxes.

The services that may be required of the Consultant include, but are not limited to, the following engineering disciplines:

- Site/Civil
- Waterfront Facilities
- Transportation
- Geotechnical
- Environmental
- Land Surveying and Mapping
- Hydrographic Surveying and Mapping

The Consultant shall perform all services in accordance with generally accepted professional standards. The Consultant shall perform all services as expeditiously as is consistent with professional skill and care and the orderly progress of the work. All work of any kind, shall conform to and be in compliance with, and the Consultant shall be familiar with all applicable codes, laws, ordinances, regulations and restrictions, guidelines, standards, procedures and directives.

### **3.1 PROFESSIONAL TECHNICAL SERVICES**

3.1 It shall be the responsibility of the ENGINEER to work with and for the CITY on an as-needed basis, to provide civil engineering review and inspection services, as required by the City for subdivision plats, site plans, site modifications, and permit submissions in conformance with the City of Treasure Island Land Development Regulations. Including but not limited to:

- a. Review subdivision plats, site plans, site modifications, and permit submissions for conformance with the City of Treasure Island Land Development Regulations.
- b. Review all grading, drainage, and storm water management plans relative to proposed

subdivision plats, site plan, site modifications, and/or permit submission for compliance with their Southwest Florida Water Management District permit and the City of Treasure Island Land Development Regulations.

c. Review and inspect the existing storm-water facilities on a case by case basis to ensure existing facilities can accommodate the proposed new development or site alteration. As necessary, outline the improvements required of the private development to ensure adequate storm-water capacity and storm-water quality are maintained. Ensure that drainage does not flow to an adjacent property.

d. Review proposed parking plans, driveway plans, traffic circulation plans and transportation plans for proposed subdivision plats, site plans, site modifications, and permit submissions. Review and inspect existing conditions on a case by case basis to ensure the existing facilities can accommodate the proposed new development or site alteration. Review the impact on pedestrian and bicycle travel. If existing facilities are insufficient to accommodate the site alteration or newly proposed development; outline the improvements required of the private development to ensure adequate traffic circulation, traffic capacity, promotion of pedestrian/bicycle/motorist safety, improved intersection visibility, and access for emergency response vehicles. Ensure sufficient and orderly parking is provided.

e. Review utility plans of proposed subdivision plats, site plans, site modifications, and permit submissions. Review and inspect existing conditions on-site on a case by case basis to ensure the existing facilities can accommodate the proposed new development or site alteration. If existing facilities are insufficient to accommodate the site alteration or newly proposed development; outline the improvements required of the private development.

f. Perform engineering inspections for construction of subdivisions, drainage improvements, site modifications, roadway improvements, driveway connections, utility connections, seawall construction, etc. The inspections shall include, but are not limited to: conformance with approved plans both on private and public property related to the approved submittal. Ensure, grading, drainage, storm water improvements, road improvements, curb, sidewalk, and utility connections are in conformance with the approved plans. During each site visit; ensure that the erosion control measures are installed in accordance with NPDES. Ensure that upon completion of the site work and drainage improvements does storm water is not directed to flow to an adjacent property.

g. Perform seawall permit reviews for any submittal which proposes to bring in additional fill and/or a higher seawall or retaining wall. Review the existing site conditions, paying particular attention to adjacent grades and height of adjacent seawalls of neighboring properties. Note the height of the storm drain in the street to the proposed height of the seawall and grades

Other work assignments that may be reasonably required under the general scope of this professional agreement include:

- Provide licensed survey services, as requested by the City.
- Provide engineers for emergency inspections following a natural disaster.

- Prepare land development regulation amendments.

The CONSULTANT shall perform all services in accordance with generally accepted professional standards. The CONSULTANT shall perform all services as expeditiously as is consistent with professional skill and care and the orderly progress of the work. All work of any kind, shall conform to and be in compliance with, and the CONSULTANT shall be familiar with all applicable codes, laws, ordinances, regulations and restrictions, guidelines, standards, procedures and directives.

3.2 The CONSULTANT'S services under this Agreement will be provided under Work Authorizations. Generally, each Work Authorization will include the services for a single project or assignment, and it will contain a mutually agreed-upon detailed scope of work, fee, and schedule of performance in accordance with applicable fiscal and budgetary constraints.

3.3 The CONSULTANT shall maintain an adequate and competent staff of professionally qualified personnel available to the CITY for the purpose of rendering the required engineering and/or architect services hereunder, and shall diligently execute the work to meet the completion time established in Work Authorization.

3.4 The CITY reserves the right to enter into contracts with other consulting firms for similar services. The CONSULTANT will, when directed to do so by the CITY, coordinate and work with other consulting firms retained by the CITY.

3.5 At all times during the performance of any of the services required hereunder, CONSULTANT shall comply with Title VII of the Civil Rights Act of 1964, as amended (45 C.F.R. Part 1010), and the Florida Civil Rights Act of 1992. CONSULTANT shall not discriminate in any form or manner against its employees or applicants for employment on the basis of race, color, national origin, religion, sex, age, handicap or marital status. Further, CONSULTANT shall comply with all applicable rules, regulations or executive order promulgated to give effect to the Civil Rights Act of 1964, as amended.

#### **4.0 WORK AUTHORIZATIONS**

4.1 There is no guarantee of work under this Contract. The CONSULTANT shall begin work promptly after receipt of a fully executed copy of each Work Authorization, in accordance with Paragraph 3.2, above. Receipt of a fully executed Work Authorization shall constitute written notice to proceed.

4.2 If the CONSULTANT'S services called for under any Work Authorization are delayed for reasons beyond the CONSULTANT'S control, the time of performance shall be adjusted as appropriate.

4.3 It is the intent of the parties hereto that this Agreement continue in force until five years from the date of initiation, \_\_\_\_\_, with the option of the CITY to provide up to three one-year extensions, subject to the provisions for termination contained herein. Assignments that are in progress at the Contract termination date will be

completed by the CONSULTANT unless specifically terminated by the CITY.

4.4 CONSULTANT acknowledges and agrees that time is of the essence with respect to its performance under this Agreement and any Work Authorization.

4.5 Each Work Authorization shall establish the following:

- a) A Work Authorization number;
- b) A title for the project;
- c) A general description of the purpose of the work;
- d) A clear and concise description of each item of the scope of work to be performed in sufficient detail to reasonably assure both Parties as to the extent and cost of each service to be performed;
- e) The scope items to which a lump sum fee applies and the total compensation that will be paid to the CONSULTANT by the CITY for completion of the project services;
- f) The scope items, which time charges apply, the rates at which they will be charged by personnel category, and the maximum total compensation amount to which they are limited for each scope item;
- g) The expenses qualified for reimbursement, and the rates at which they will be charged by expense category, and the maximum total reimbursement amount to which they are limited;
- h) Description of deliverables;
- i) The committed date of completion of the services and deliverables, with intermediate milestone dates where appropriate;
- j) When sub-consultants are to be utilized, the scope items in which they will be involved, the extent to which they will be involved, and the above-referenced fees and expenses attributable to them;
- k) A designated person to act on the CONSULTANT's behalf on all matters concerning the Work Authorization;
- l) The contract manager designated by the CITY; and
- m) Any additional details that may be required to describe the duties and obligations of the Parties with respect to a particular Work Authorization.

## **5.0 INSURANCE REQUIREMENTS**

See Exhibit A attached.

## **6.0 PROFESSIONAL SERVICES/CONSULTANT'S COMPETITIVE NEGOTIATION**

## **ACT (CCNA) - Florida Statute 287.055**

Professional Services provided under this Agreement are within the scope of the practice of architecture, landscape architecture, professional engineering, or registered land surveying, as defined by the laws of the State of Florida. Provisions of F.S. 287.055 apply.

### **7.0 GENERAL CONSIDERATIONS**

7.1 All documents including field books, drawings, specifications, calculations, geotechnical investigation reports, etc., used in the preparation of the work shall be supplied by the CONSULTANT and shall become the property of the CITY and shall be made available to the CITY upon request at any reasonable time, including all finished or unfinished documents and other data prepared or obtained by the CONSULTANT upon the termination of this Agreement in whole or in part. The CITY acknowledges that such documents are not intended or represented to be suitable for use by the CITY or others for purposes other than those for which the documents are prepared. Any reuse of these documents without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the CITY's sole risk without liability or legal exposure to the CONSULTANT.

7.2 The CONSULTANT will provide expert witnesses, if required by the CITY, to testify in connection with any suit at law. A supplemental agreement will be negotiated between the CITY and the CONSULTANT describing the services desired and providing a basis for compensation to the CONSULTANT.

7.3 Upon the CONSULTANT'S written request, the CITY will furnish or cause to be furnished such reports, studies, instruments, documents, and other information as the CONSULTANT and CITY mutually deem necessary. The CITY does not warrant the accuracy or completeness of the information authored by third parties. The CONSULTANT is responsible for independently verifying the information contained in the documents provided.

7.4 The CITY and the CONSULTANT each bind themselves and their successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of each other party, in respect to all covenants of this Agreement. The CONSULTANT shall not assign or transfer its interest in this Agreement without written consent of the CITY.

7.5 To the greatest extent permitted by law, the CONSULTANT shall indemnify and hold harmless the CITY, its officers, employees, and agents from and against claims, causes of action, lawsuits, damages, judgments, losses and expenses, whether direct, indirect or consequential, including but not limited to, bodily injury, sickness, disease or death, personal injury, or injury to or destruction of tangible property, including loss of use, to the extent such claims are caused by the negligent or reckless acts or errors or omissions, or intentional wrongful misconduct by the CONSULTANT, any sub-consultant or any other person or organization employed or utilized by CONSULTANT to perform or furnish any of the services required hereunder, or anyone for whose acts any of them may be liable. This indemnity shall include, but not be limited to, reasonable charges of engineers, attorneys, legal

assistants, and other professionals, and costs of both defense and appeal in a court of law, or arbitration, or other tribunal, for any reason. This indemnification shall also include claims, damages, losses, and expenses, including reasonable attorneys', experts', and legal assistants' fees and costs, to the extent caused by infringement of patents or copyrights, or public record violations incident to providing the services required hereunder. It is specifically understood and agreed that this indemnification agreement does not cover or indemnify the CITY for its own negligence. This Indemnification provision shall survive completion or termination of this Agreement.

7.6 Nothing herein shall be interpreted as a waiver by the CITY of its rights, including the limitations of the waiver of immunity, as set forth in Florida Statutes 768.28, or any other statutes, and the CITY expressly reserves these rights to the full extent allowed by law. This shall survive completion or termination of this Agreement.

7.7 The CONSULTANT recognizes that the registered persons practicing engineering with the CONSULTANT as provided in Chapter 471 of the Florida Statutes are not relieved from personal liability for their professional acts and each registered person practicing engineering with the CONSULTANT who performs consulting engineering services for the CITY pursuant to this Contract or any particular Work Authorization shall be liable in accordance with section 471.023(3) of the Florida Statutes.

7.8 The CONSULTANT agrees not to engage the services of any person or persons in the employ of the CITY to an allied capacity, on either a full or part-time basis, on the date of the signing of this Agreement, or during its term.

7.9 Key personnel assigned to CITY projects by the CONSULTANT shall not be removed from the projects until alternate personnel acceptable to the CITY are approved in writing by the CITY. Key personnel are identified as: Project Manager and technical experts.

7.10 The CONSULTANT shall attach a brief status report on the project(s) with each request for payment.

7.11 The CITY hereby authorizes the City Manager to administer the terms and conditions of this Agreement on behalf of the CITY and to make all managerial decisions on behalf of the CITY as they relate to the provisions of this Agreement. The City Manager shall have the authority to transmit instructions, receive information, interpret and define the policy of the CITY and decisions pertinent to services covered by this Agreement. The City Manager shall have the right from time to time to designate such other employee of the CITY as the City Manager may deem advisable to perform administrative and managerial functions as they relate to provisions of this Agreement.

7.12 The services shall be performed by the CONSULTANT to the reasonable satisfaction of the CITY and all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement, any duly executed Work Authorization, the prosecution fulfillment of the services hereunder and the character, quality, amount and value thereof which cannot be settled by mutual agreement of the Parties shall be settled by recourse to litigation under Florida law in the appropriate court in Pinellas County, Florida.



The Agreement shall be governed by and construed under the laws of the State of Florida. Each Party consents to the jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the aforesaid laying of venue of any such civil action or legal proceeding in such court. This shall survive completion or termination of this Agreement.

7.13 If any subsequent legal action or other proceedings, including but not limited to any trial proceeding or appellate proceeding, are brought for the enforcement of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party shall be entitled to recover all costs incurred, including reasonable attorneys', legal assistants', and experts' fees and costs prior to trial, at trial, and on appeal, in addition to any other relief to which such Party maybe entitled. No entity or person other than the Parties shall have any legally enforceable rights under this Agreement or by reason of its existence, other than as explicitly set forth herein. This shall survive completion or termination of this Agreement.

7.14 The CONSULTANT warrants it is duly permitted by the laws of the State of Florida to render engineering services in the State of Florida and that one or more of its officers and employees are duly registered as professional engineers in the State of Florida. The CONSULTANT recognizes that in rendering or performing professional services pursuant to the provisions of this Agreement, the CONSULTANT is working for the residents of the CITY of Treasure Island, Florida, subject to public observation, scrutiny and inquiry and based upon said recognition, the CONSULTANT shall in all of its relationships with the CITY pursuant to the provisions of this Agreement conduct itself in accordance with all of the recognized applicable ethical standards set by any related national societies, and the reasonable traditions to perform services.

7.15 The CONSULTANT and any sub-consultants understand and will comply with Section 20.055(5), Florida Statutes and thereby agree to cooperate with the inspector general in any investigation, audit, inspection, review or hearing pursuant to said section.

7.16 The CONSULTANT acknowledges that the portion of its books and records related to its contracting activities with the CITY may become subject to inspection and copying under the Florida Public Records Act. The CONSULTANT agrees to comply with the Florida Public Records Act, as applicable, including, but not limited to section 119.0701 of the Florida Statutes. The CONSULTANT agrees, to the extent required by law, to:

1. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in performing the services of the Agreement;
2. Provide the public with access to the public records under the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided for by law;
3. Ensure that the public records that are exempt or confidential, and exempt from public record disclosure requirements, are not disclosed, except as authorized by law; and
4. Meet all requirements where retained public records and transfer, at no cost, to



the CITY, all public records in possession of the CONSULTANT, upon termination or completion of the Agreement and destroy any duplicate public records that are exempt or confidential, or exempt from public record disclosure requirements.

Furthermore, the CONSULTANT agrees that all records stored electronically shall be provided to the CITY in a format that is compatible with the information technology systems of the CITY. The CONSULTANT shall promptly provide the CITY with a copy of any request to inspect or copy public records that CONSULTANT receives and a copy of the CONSULTANT'S response to each request. The CONSULTANT understands and agrees that failure to provide access to the public records shall be a material breach of the Agreement, its amendments, and Work Authorizations.

**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 CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK**

**CITY OF TREASURE ISLAND**

**120 – 108th Avenue**

**Treasure Island, Florida 33706**

**Phone: (727)-547-4575**

**Fax: (727)-547-4582**

**[tmakras@mytreasureisland.org](mailto:tmakras@mytreasureisland.org)**

**THE CONSULTANT acknowledges that the CITY of Treasure Island cannot and will not provide legal or business advice to the CONSULTANT with respect to its obligations pursuant to this section related to public records. The CONSULTANT acknowledges that it will not rely on the CITY of Treasure Island or its CITY Attorney to provide such business or legal advice and**

**that CONSULTANT has been advised to seek professional advice with regard to public records matters addressed by this Agreement.**

7.17 CONSULTANT has been made aware of the Florida Public Entity Crimes Act, § 287.133, Florida Statutes, specifically, and the CITY's requirement that the CONSULTANT has complied with it in all respects prior to and will comply with it in all respects during the term of this Agreement.

7.18 It is understood and agreed by the Parties hereto that if any part, term or provision of this Agreement is held to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

7.19 The Parties represent and warrant that they have entered into this Agreement relying wholly upon their own judgment, belief and knowledge of the nature, extent, effect and duration of any actions, damages and liability therefore. The Parties represent that they enter into this Agreement without relying upon any statement or representation of the adverse parties other than what has been set forth in writing in this Agreement. The Parties represent that they have had the opportunity to discuss this matter with counsel of their choosing and are satisfied with its counsel and the advice received. The Parties understand this Agreement's contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation or drafting. The Parties further declare and represent that no promise, inducement, agreement or understanding not herein expressed has been made to an adverse party and that this Agreement contains the entire agreement between the Parties hereto and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall be deemed and treated as drafted jointly by all the Parties, and no term, condition or provision of this Agreement shall be construed more strictly against any Party.

All words used herein in the singular shall extend to and include the plural, and the use of any gender shall extend to and include all genders. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement unless stated otherwise. The captions and headings herein are for convenience of reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

7.21 Each party acknowledges and agrees that the covenants under this Agreement, together with the consideration exchanged hereunder, constitute full, fair and valuable consideration for the transfers, transactions and releases required of and by the Parties pursuant to the provisions of this Agreement and that, by virtue of the above-referenced consideration, the Parties have received reasonably equivalent value in exchange for their obligations under this Agreement. The Parties acknowledge and agree that each has received and reviewed a copy of this Agreement in the presence of their respective, independent counsel retained by them. Each party understands the purport, tenor, and effect of this Agreement, and has entered into this

Agreement freely and voluntarily.

7.22 Each of the Parties hereto covenants to the other party hereto that it has lawful authority to enter into this Agreement, that the governing or managing body of each of the Parties has approved this Agreement and that the governing or managing body of each of the Parties has authorized the execution of this Agreement in the manner hereinafter set forth.

## 8.0 COMPENSATION

8.1 The CONSULTANT shall be compensated for all services rendered under this Agreement in accordance with the provisions of each Work Authorization, upon presentation of CONSULTANT'S invoice. An hourly rate schedule and typical methods of compensation are attached hereto as Exhibit B. The amount of compensation paid to the CONSULTANT shall in no event exceed the amount set forth in the Work Authorization. The amount of per diem and travel expenses paid by the CITY to the CONSULTANT shall be limited to the extent set forth in Section 112.061 of the Florida Statutes.

8.2 Except as may be addressed in the initiating Work Authorization, the compensation for services shall be invoiced by the CONSULTANT and paid by the CITY once each month. Such invoices shall be due and payable upon receipt.

8.3 The CONSULTANT agrees to allow full and open inspection of payroll records and expenditures in connection with hourly rate and cost plus fixed fee work assignments upon request of the CITY. Recognizing that the CITY is a public entity, the CONSULTANT shall provide all of the necessary documents and records to the CITY, and to any independent auditor of the CITY upon request, as necessary pursuant to acceptable accounting standards applicable to public bodies and to provide the necessary audit trail and justification for the CITY paying said compensation and expenses.

8.4 Services to be performed in accordance with this Agreement are subject to the annual appropriation of funds by the CITY. In its sole discretion, the CITY reserves the right to forgo use of CONSULTANT for any project which may fall within the Scope of Services listed herein.

## 9.0 REPRESENTATIONS

**CITY REPRESENTATIONS:** The CITY conducted public announcement, qualification, competitive selection and competitive negotiation procedures for an Agreement in accordance with Section 287.055 of the Florida Statutes, the Consultants' Competitive Negotiation Act (CCNA). The request for proposals (RFQ 1718-09) (the "RFQ") was publicly advertised on, XXXXX XX, 2018. XXXX Statements of Qualifications (SOQs) were received by the deadline, including the CONSULTANT'S SOQ. The SOQs were publicly opened on XXXXX XX, 2018. An Evaluation Committee met publicly on May 20 and XXXXXX XX, 2018 and reached consensus on the shortlist ranking. The CITY certified the short-listed firms, which included the CONSULTANT, as qualified and

authorized negotiation of the Agreement at its **XXXXXX XX**, 2018 public meeting.

The CITY has determined that it is necessary, expedient, and in its best interest to enter into this Agreement with the CONSULTANT for the performance of professional consulting services.

**CONSULTANT REPRESENTATIONS:** The CONSULTANT submitted and stands behind its proposal in response to the above RFQ as accepted into the record of the CITY on June 29, 2018, with the knowledge that the CITY is relying thereon as an inducement for entering into this Agreement. The CONSULTANT acknowledges that the CITY also relied upon the CONSULTANT'S representations identified herein as an inducement for entering into this Agreement.

The CONSULTANT is legally authorized to and, by capacity and experience, is qualified to perform and render all of the professional consulting engineering services identified in this Agreement and the professional qualifications of the CONSULTANT was material inducement for the CITY to enter into this Agreement with the CONSULTANT.

The CONSULTANT, in representing the CITY, shall promote the best interest of the CITY and assume towards the CITY a responsible professional relationship consistent with mutual confidence and fair dealing between CONSULTANT and the CITY.

The CONSULTANT warrants 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 any persons, company, corporation, individual or firm, other than a bona fide employee working for the CONSULTANT any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. CONSULTANT represents that it has complied with the provision of Section 287.055(6) of the Florida Statutes.

The CONSULTANT currently has no potential or actual conflict of interest with respect to providing professional services to the CITY. The CONSULTANT agrees to notify the CITY in writing of any commitments during the term of this Agreement which may constitute a potential or actual conflict of interest with respect to the professional services to be performed for the CITY. The CONSULTANT agrees that it shall not knowingly engage in any contractual or professional obligations that create an appearance of a conflict of interest with respect to the service provided pursuant to this Agreement.

The CONSULTANT acknowledges that the CITY, as a unit of local government and as a subdivision of the State of Florida, is subject to controls, limitations, regulations and restraints imposed or administered pursuant to numerous applicable laws, ordinances, agreements, rules and regulations of federal, state, regional and certain local jurisdictions, governmental agencies or authorities. Additionally, the CONSULTANT acknowledges that the CITY often receives grants and participates in grant or funding agreements from federal and state agencies. All services rendered or performed by the CONSULTANT pursuant to any duly executed Work Authorization shall be in conformance therewith.

## **10.0 PROHIBITION AGAINST CONTINGENT FEES**

The CONSULTANT warrants 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 any persons, company, corporation, individual or firm, other than a bona fide employee working for the CONSULTANT any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

## **11.0 TERMINATION**

This Agreement may be terminated by either party with seven (7) days prior written notice, in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. A substantial failure to perform in accordance with the terms of this Agreement, includes but is not limited to the following: (a) failure to begin services authorized under any particular Work Authorization within the time specified in that Work Authorization, or (b) failure to properly and timely perform the services required hereunder or as directed by the CITY, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONSULTANT or by any of CONSULTANT'S principals, partners, officers or directors, or (d) failure to obey and comply with any applicable laws, ordinances, regulations, agency agreements or other codes of conduct. In the event of any such termination, the CITY shall not be obligated to make any further payments to CONSULTANT until such time as the CITY has determined all direct costs, expenses, losses and damages which the CITY may have incurred as a result of such default by CONSULTANT, whereupon the CITY shall be entitled to set off all costs, expenses, losses and damages so incurred by the CITY against any amounts due CONSULTANT for services properly performed.

## **12.0 SUSPENSION, CANCELLATION OR ABANDONMENT**

If the project described in any Work Authorization is suspended, canceled, or abandoned by the CITY, without affecting any other Work Authorization or this Agreement, the CONSULTANT shall be given five (5) days prior written notice of such action and shall be compensated for professional services provided up to the date of suspension, cancellation or abandonment.

This Agreement shall be administered and interpreted under the laws of the State of Florida.

## **13.0 TERMINATION OF CONVENIENCE**

Either the CITY or the CONSULTANT may terminate the Agreement at any time by giving written notice to the other of such termination and specifying the effective date of such termination at least thirty (30) days before said termination date. If the Agreement is terminated by the CITY as provided herein, the CONSULTANT will be paid for services rendered through the date of termination.

**14.1 NOTICE**

Any notice or other writings permitted or required to be delivered under the provisions of this Agreement must be in writing and shall be delivered by sending the notice by personal delivery, electronic mail, U.S. regular mail, or U.S. express mail in any event with sufficient postage affixed, and addressed as follows:

If to CITY:

City of Treasure Island

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

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

If to CONSULTANT: \_\_\_\_\_

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

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

Either party may change said address by notice in writing to the other party in the manner herein provided.



**IN WITNESS WHEREOF**, the City and Contractor have signed this Contract

**ATTEST:** **As To**  
**CITY OF TREASURE ISLAND, FLORIDA**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Garry Brumback, City Manager

**Approved as to form and sufficiency:**

\_\_\_\_\_  
Jennifer Cowan, City Attorney

**As To**  
**CONSULTANT**

\_\_\_\_\_  
Witnesses #1 Signature

By: \_\_\_\_\_

\_\_\_\_\_  
Witnesses #1 Printed

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

\_\_\_\_\_  
Witnesses #2 Signature

Title: \_\_\_\_\_

\_\_\_\_\_  
Witnesses #2 Printed

## **EXHIBIT A – RISK MANAGEMENT & INSURANCE REQUIREMENTS**

**STATEMENT OF PURPOSE:** The CITY of Treasure Island enters into agreements and contracts for services and/or products with other parties. Agreements and contracts shall contain Risk Management/Insurance terms to protect the CITY’s interest and to minimize its potential liabilities. Whenever applicable, the following terms shall be included in agreements and contracts.

**CITY DEFINED:** The term “CITY” (whenever it may appear in this Exhibit) is defined to mean the City of Treasure Island itself, its Commission, its duly appointed officers, or other public bodies, officers, employees, volunteers, representatives and agents.

**HOLD HARMLESS DEFINED:** The term “Hold Harmless” (whenever it may appear in this Exhibit) is defined to mean the CITY shall be held harmless against all claims for bodily injury, personal injury, sickness, disease, death or damage to property or loss of use resulting there from, or arising out of, the agreement or contract unless such claims are a result of the CITY’s sole negligence.

**PAYMENT ON BEHALF OF CITY DEFINED:** The term “Payment on Behalf of CITY” (whenever it may appear in this Exhibit) is defined to mean the CONSULTANT agrees to pay on behalf of the CITY, and to pay the cost of the CITY’s legal defense, as may be selected by the CITY, for claims or suits arising from the fault of the CONSULTANT or other persons employed or utilized by the CONSULTANT in performance of the contract. Such payment on behalf of the CITY shall be in addition to any and all other legal remedies available to the CITY and shall not be considered to be the CITY’s exclusive remedy.

**INSURANCE:** The CONSULTANT shall, at its own cost and expense, acquire and maintain (and cause contractors and subcontractors, if utilized, to acquire and maintain) during the term with the CITY, sufficient insurance to adequately protect the respective interest of the parties. Specifically, the CONSULTANT must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three-year period following the termination or expiration of the Agreement. These insurance requirements shall not limit the liability of the CONSULTANT. The contractor must provide a certificate of insurance and endorsement in accordance with the insurance requirements listed herein prior to recommendation for award. The below insurance requirements are for all Phases of the services (Phase I, Phase II, and Phase III) unless otherwise provided. The CITY does not represent that these types or amounts of insurance to be sufficient or adequate to protect the CONSULTANT’s interests or liabilities, but are merely minimums:

**1. COMMERCIAL GENERAL LIABILITY:**

- **Phase IA & B - \$1,000,000** per occurrence, including but not limited to, bodily injury, personal injury, property damage, premises-operations, products/completed operations, contractual liability, independent contractors, and liability assumed under an insured contract. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  - **Phase II and III - \$3,000,000** per occurrence, including but not limited to, bodily injury, personal injury, property damage, premises-operations, products/completed operations, contractual liability, independent contractors, and liability assumed under an insured contract. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2. AUTOMOBILE LIABILITY: \$1,000,000** per accident combined single limit, for bodily injury and property damage for any owned, non-owned, hired, or borrowed automobile.
- 3. WORKERS' COMPENSATION:** CONSULTANT will obtain and maintain during the life of this contract, Workers' Compensation insurance in accordance with the laws of the State of Florida, for all of CONSULTANT's employees employed at the site of the project. Coverage should include Voluntary Compensation and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable.
- 4. EMPLOYER'S LIABILITY: \$100,000** each employee, each accident, and **\$100,000** each employee/**\$500,000** policy limit for disease, and which meets all state and federal laws. Coverage must be applicable to employees, contractors, and subcontractors, if any.
- 5. IF APPLICABLE, WATERCRAFT/AIRCRAFT LIABILITY:** If the CONSULTANT's provision of services involves utilization of watercraft or aircraft, watercraft and/or aircraft liability coverage must be provided to include bodily injury and property damage arising out of ownership, maintenance or use of any watercraft or aircraft, including owned, non-owned and hired.
- 6. PRODUCTS/COMPLETED OPERATIONS COVERAGE:** The CONSULTANT is required to continue to purchase products contract or agreement, for minimum of three years beyond the CITY's acceptance of renovation or construction projects.

**ACCEPTABILITY OF INSURERS:** Insurance must be placed with insurers with a current A.M. Best's rating of no less than A-VII.

**DEDUCTIBLES AND SELF-INSURED RETENTIONS:** Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require the CONSULTANT to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

**ADDITIONAL INSURED:** The CITY is to be specifically included as an additional insured on all liability coverage described above except for the Workers' Compensation and Professional Liability coverages.

**OTHER INSURANCE PROVISIONS:** The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. **PRIMARY INSURANCE COVERAGE:** For any claims related to this Agreement, the CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute to it.
2. **RIGHT OF RECOVERY:** The CONSULTANT waives its right of recovery against the CITY, to the extent permitted by its insurance policies and shall be evidenced by a Waiver of Subrogation endorsement or indication on the Certificate of Insurance.
3. **SEVERABILITY OF INTEREST/CROSS LIABILITY PROVISION:** The CONSULTANT shall request that its insurers' policies include or be endorsed to include a Severability of Interest/Cross Liability provision so the CITY will be treated as if a separate policy were in existence without increasing the policy limits.
4. **HOLD HARMLESS/INDEMNIFICATION:** The CONSULTANT shall indemnify, and hold harmless the CITY and its officers, employees, from liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of this Agreement and any Work Authorizations issued under this Agreement. CONSULTANT acknowledges that it is solely responsible for complying with the terms of the Agreement or a purchase order or contract arising out of the Agreement (**Revised 7/9/12**).
5. **NOTICE OF CANCELLATION OR RESTRICTION:** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice sent via certified mail, return receipt requested, has been given to the CITY. It is the CONSULTANT's responsibility to ensure the notice requirement is met.

**CERTIFICATE OF INSURANCE/CERTIFIED COPIES OF POLICIES:** The CONSULTANT, if selected, will provide the CITY with a Certificate or Certificates of Insurance showing the existence of coverage as required by the Agreement. In addition, the CONSULTANT will provide to the CITY, if asked in writing, certified copies of all policies of insurance. The CONSULTANT will maintain the required coverage with a current Certificate or Certificates of Insurance throughout the term of the Agreement with the CITY. New certificates and new certified copies of policies shall be provided to the CITY whenever any policy is renewed, revised, or obtained from other insurers.

The address where such certificates and certified policies shall be sent or delivered is as follows:

**City of Treasure Island  
Attention: City Clerk  
120 108<sup>th</sup> Avenue  
Treasure Island, FL 33706**

**CONSIDERATION FOR HOLD HARMLESS/PAYMENT ON BEHALF:** The CONSULTANT agrees to accept, and acknowledges as an adequate amount of remuneration, the consideration of \$100.00 for agreeing to the Hold Harmless, Payment on Behalf of the CITY, Insurance and Certificates of Insurance provisions in the Agreement.

**SUBCONTRACTORS:** CONSULTANT shall require and verify all subcontractors, if used, maintain insurance, including Workers' Compensation insurance, subject to all of the requirements stated herein prior to beginning work.

**LOSS CONTROL/SAFETY:** Precaution shall be exercised at all times by the CONSULTANT for the protection of all persons, including employees, and property. The CONSULTANT shall be expected to comply with all applicable laws, regulations, or ordinances related to safety and health, and shall make special efforts where appropriate to detect hazardous conditions, and shall take prompt action where loss control/safety measures should reasonably be expected.

The CITY may order work to be stopped if conditions exist that present immediate danger to persons or property. The CONSULTANT acknowledges that such stoppage will not shift responsibility for any damages from the CONSULTANT to the CITY.

**ADDITIONAL INSURANCE FOR REPAIR OR SERVICE OR OTHER CONTRACTS:**  
If checked below, the CITY requires the following additional provisions or types of insurance for repair or service or other contracts to afford added protection against loss which could affect the work being performed:

**INSTALLATION FLOATER INSURANCE:** Installation Floater insurance is to be provided to cover damage or destruction to equipment being installed or otherwise being handled or stored by the CONSULTANT. The amount of coverage should be adequate to provide full replacement value of the equipment being installed, otherwise being handled or stored on or off premises. All risks coverage is preferred.

**MOTOR TRUCK CARGO INSURANCE:** If the Installation Floater insurance does not provide transportation coverage, separate Motor Truck Cargo or Transportation insurance is to be provided for materials or equipment transported in the CONSULTANT's vehicles from place of receipt to building sites or other storage sites. All risks covered are preferred.

**CONTRACTOR'S EQUIPMENT INSURANCE:** Contractor's Equipment insurance is to be purchased to cover loss of equipment and machinery utilized in the performance of work by the CONSULTANT. All risks coverage is preferred.

**FIDELITY/DISHONESTY INSURANCE-COVERAGE FOR EMPLOYER:** Fidelity/dishonesty insurance is to be purchased to cover dishonest acts of the CONSULTANT's employees, including but not limited to theft of vehicles, materials, supplies, equipment, tools, etc.; especially property necessary to work performed.

**FIDELITY/DISHONESTY INSURANCE-COVERAGE FOR CITY:** Fidelity/Dishonesty/Liability insurance is to be purchased or extended to cover dishonest acts of the CONSULTANT's employees resulting in loss to the CITY.

**X POLLUTION LEGAL / ENVIRONMENTAL LEGAL LIABILITY INSURANCE FOR PHASE II AND, IF APPLICABLE, PHASE III:** For pollution losses arising from all services performed to comply with this contract. Coverage shall apply to sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in Bodily Injury or Property Damage. If policy is written on a Claims Made form, a retroactive date is required, and coverage must be maintained for 3 years after completion of contract or "tail coverage" must be purchased. Coverage should include but is not limited to: 1) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; 2) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for



such compensation damages; 3) Cost of cleanup/remediation. Policy limits for each occurrence and general aggregate shall be no less than \$ 1,000,000.

**ADDITIONAL INSURANCE FOR RENOVATION OR CONSTRUCTION CONTRACTS:** If checked below, the CITY requires the following types of insurance for renovation or construction contracts. This is in addition to the required coverage's previously cited and the Additional Insurance for Repair or Service or Other Contracts.

  X **COMMERCIAL GENERAL LIABILITY PROJECT AGGREGATE:** Because the Commercial General Liability form of coverage includes an annual aggregate limitation on the amount of insurance provided, a separate project aggregate limit is required by the CITY for this contract or agreement.

       **OWNERS PROTECTIVE LIABILITY:** For renovation or construction contracts the CONSULTANT shall provide for the CITY an Owners Protective Liability insurance policy (preferably through the CONSULTANT's insurer) in the name of the CITY.

       **BUILDER'S RISK:** Builder's Risk Insurance is to be purchased to cover all risks of loss in the complete and full value of the project with no coinsurance penalty provisions. This insurance shall insure the interests of the CITY, the CONSULTANT, and all subcontractors in the work and shall insure against special form causes of loss (all risk perils), including collapse during construction, for replacement cost (including fees and charges of engineers, architects, attorneys and other professionals). The CONSULTANT shall obtain and maintain similar property insurance on equipment, materials, supplies and other property and portions of the work stored on or off site or in transit. Builder's Risk Insurance shall be endorsed to permit occupancy until such time as the facilities are completed and accepted by the CITY and written notice of the fact has been issued by the CITY.

**PROFESSIONAL LIABILITY, MALPRACTICE AND/OR ERRORS OR OMISSIONS:** If checked below, the CITY requires the following terms and types of insurance for professional, malpractice, and errors or omissions liability.

  X **HOLD HARMLESS:** The following replaces the previous Hold Harmless wording:

The CONSULTANT shall indemnify and hold harmless the CITY, and it's officers, employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or wrongful

conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of this Agreement and any Work Authorizations issued under this Agreement. The intent of this includes all claims for financial loss with respect to the provision of, or failure to, provide professional or other services resulting in professional malpractice, or errors, or omissions liability arising out of the negligent performance of this agreement or contract, unless such claims are a result of the CITY's own negligence (Revised 7/9/12).

**X PROFESSIONAL LIABILITY/MALPRACTICE/ERRORS OR OMISSIONS**

**INSURANCE:** The CONSULTANT shall purchase and maintain professional liability or malpractice or errors or omissions insurance appropriate for the type of business engaged in by the CONSULTANT with minimum limits of \$1,000,000 per occurrence and in the aggregate amount of \$2,000,000.

If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless prior policy was extended indefinitely to cover prior acts.

Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

**WRITTEN AGREEMENT/CONTRACT:** Any party providing services or products to the CITY will be expected to enter into a written agreement, contract or purchase order with the CITY that incorporates, either in writing or by reference, all of the pertinent provisions relating to insurance and insurance requirements as contained herein. A failure to do so may, at the sole discretion of the CITY, disqualify any Party from performing services or selling products to the CITY provided, however, the CITY reserves the right to waive any such requirements.

## **EXHIBIT B – CONTRACTOR HOURLY RATES & CONDITIONS**

### **CONDITIONS PERTAINING TO CONTRACTOR RATES:**

**ADDITIONAL EMPLOYEE CLASSIFICATIONS:** If the CONSULTANT wishes to add additional employee classifications, the rates will undergo negotiation through the CITY. The CONSULTANT must provide sufficient justification for adding additional employee classifications.

**ACTUAL RATE VARIATIONS:** In the event that an employee's actual employee hourly cost is lower than the employee hourly cost for the employee classification presented herein, the CONSULTANT shall only charge the CITY for the employee's actual hourly cost.

**TRUTH IN NEGOTIATIONS:** All rates for the CONSULTANT under this contract must abide by the statements made in the Truth in Negotiation Certifications attached herein.

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**EXHIBIT C – TRUTH IN NEGOTIATION CERTIFICATES**

**City of Treasure Island, Florida**

**TRUTH IN NEGOTIATION CERTIFICATION**

Pursuant to Section 287.055(5) (a), Florida Statutes, for any lump-sum or cost-plus-a-fixed fee professional services contract over the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY FOUR, the City of Treasure Island (the City) requires the Consultant to execute this certificate and include it with the submittal of the Technical Proposal, or as prescribed in the contract advertisement.

The Consultant hereby certifies, covenants, and warrants that wage rates and other factual unit costs supporting the compensation for this project's agreement are accurate, complete, and current at the time of contracting. The truth of statements made herein may be relied on by the City and the undersigned is fully advised of the legal effect and obligation imposed on him/her by the execution of the instrument under oath.

The Consultant further agrees that the original agreement price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the agreement price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such agreement adjustments shall be made within (1) year following the end of the contract. For purposes of this certificate, the end of the agreement shall be deemed to be the date of final billing or acceptance of the work by the City, whichever is later.

\_\_\_\_\_  
Name of Consultant

Signature: \_\_\_\_\_

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument \_\_\_\_\_ was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2018 \_\_\_\_\_ (name of the person whose name is being notarized) as the \_\_\_\_\_ (title) of \_\_\_\_\_ (name of corporation/entity), personally known to me as described herein or produced a \_\_\_\_\_ (type of identification) as identification, and who (did / did not) take an oath.

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

My Commission Expires: \_\_\_\_\_

NOTARY SEAL ABOVE

