



March 8, 2018

REQUEST FOR QUALIFICATIONS
RFQ-18-01

Sealed responses marked “**A Continuing Contract for Professional Consulting Services for a Water, Sewer, and Stormwater Rate Analysis Study and/or Studies**” will be received by the Town of Dundee until **2:00 P.M., April 6, 2018**, at the office of the Town Clerk, 202 East Main Street, Dundee, FL 33838, for the following:

**A Continuing Contract for Professional Consulting Services for
a Feasibility Study for a Water, Sewer, and Stormwater Rate
Analysis Study and/or Studies**

At that time, responses will then and there be publicly opened and read aloud in the Town Hall Commission Chambers.

The Town is requesting responses from those qualified firms with previous experience in this type of work. Firms submitting responses shall provide evidence of their experience and expertise in similar work performed. Bidders must submit one (1) **unbound original** and four (4) copies of their responses.

Questions concerning this bid must be submitted in writing on or before 2:00 p.m., March 26, 2018, to Deena Ware at dware@townofdundee.com. Questions received after this time may not be answered.

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

The Town of Dundee reserves the right to reject any and all responses, to waive informalities, to re-advertise, and to enter into a contract determined to be in its best interest.

Sincerely,
TOWN OF DUNDEE

Deena Ware

Town Manager

Scope Of Work

The Town of Dundee's Selection Process for consultant services is in accordance with Section 287.055, Florida Statutes, Consultants' Competitive Negotiations Act. The Selection Committee will review the qualifications of all submitting firms. The Town reserves the right to determine, at its sole discretion, whether the statement of qualifications satisfactorily meets the criteria established in this RFQ, and the right to seek clarification from any firm(s) submitting qualifications.

All interested parties must submit the requested information within the time frame provided herein.

It is the intent of the Town to select and negotiate a Continuing Contract for Professional Consulting Services for a Feasibility Study for a Water, Sewer, and Stormwater Rate Analysis Study and/or Studies with one (1) firm. The Consultant will be chosen based upon the expertise and experience listed as it pertains to the work described. Selection of a qualified firm under this RFQ is not a guarantee of work.

After actual performance, the firms will be evaluated annually by the applicable departments.

VARIOUS SERVICES

All work must be performed in accordance with applicable Federal, State and Local regulations. The various services required may include but will not necessarily be limited to the following types of work. For each category, please indicate if the firm is pre-qualified by a particular state or federal agency in a particular area: i.e. FDOT, FAA, DEP, etc.

Services shall cover, but not be limited to, a Water, Sewer, and Stormwater Rate Analysis Study and/or Studies.

The Town shall request the services on an as-needed basis. There is no guarantee that any or all of the services described in this agreement will be assigned during the term of this agreement. Further, the Consultant understands that they are providing these services on a non-exclusive basis. The Town, at its option, may elect to have any of the services set forth herein performed by other consultants or by Town staff. Notice: The above various services are general in nature and intended to provide respondents with a general overview of the tasks envisioned as part of the various types of work involved. The Town reserves the right to expand and/or reduce the various services as may be appropriate based upon changing Town requirements and/or budget considerations.

SUBMITTAL

Submittals should not contain information in excess of that requested, must be concise, and must specifically address the issues of this RFQ. A page can be either single or double sided (single-sided counts as one (1) page, double-sided counts as two (2) pages). It is requested that the responses be in the same order as listed in the tabs below. The submittals should include the following items placed into individual binders behind the tabs as outlined below.

Any qualified firm desiring to provide the required professional services should submit one (1) unbound original and four (4) copies for a total of five (5) sets of the entire proposal including a letter of interest, requested documents and information. The submission package, limited to a maximum of 40 pages single-sided (or 20 pages double-sided), should at a minimum include:

Tab 1. Company Information

- Brief overview of the firm's history and organization that includes the name of the firm's contact person, address, telephone, fax number and email address. **(Limit response to one page)**
- Provide documentation of the firm's headquarters and local office, if applicable, and Intent/Capacity to affect the local economy through the use of local labor, vendors, subcontractors, and resources. **(Limit response to one page)**
- Provide documentation of all sub-consultant locations. **(Limit response to one page** reflecting name of sub-consultant and office location)
- Provide a list of all sub-consultant's expertise and qualifications **(Limit response to one page maximum per sub-consultant)**

Tab 2. Experience and Expertise

- Provide resumes of all personnel that may be assigned to Town under an agreement for services contained herein. **(Limit response to one page per resume)**
- Provide a list of similar projects with agencies for which the firm has provided similar services over at least the last three (3) years, with a brief description of the Scope of Work and the firm's involvement. A client list showing the current contact person, telephone number and email address for each agency must be submitted. **(Limit response to one page per project).**
- Provide a short narrative outlining how the firm has functioned as a consultant with other government agencies. **(Limit response to two pages maximum)**

Tab 3. Project Approach

- Provide a narrative outlining the firm's approach to the specific scope of services requested in the RFQ and how they might benefit the Town of Dundee, including uses of sub-consultants, if applicable. **(Limit response to three pages maximum)**
- Relative to the scope of work; provide any innovative approaches to providing these services which might apply to the Town of Dundee. **(Limit response to one page maximum)**

Tab 4. Interaction with Town and Regulatory Agency Staff

- Provide information that demonstrates the firm's ability to work with the Town as well as other agencies. **(Limit response to two pages maximum)**

Tab 5. Timely Completion of Projects

- Provide a short narrative outlining how you propose to manage projects in order to meet schedule and budget requirements. Describe the firm's current and future projected workload. Describe specifically the firm's daily ability to handle each aspect of the scope of services described herein. **(Limit response to two pages maximum)**

SELECTION AND EVALUATION PROCEDURES

A Selection Committee will review the submittals received. The evaluation criteria listed below will be utilized to rank the firms and to short-list the consultants. Interviews with the firms short-listed may then be scheduled with the Selection Committee for final ranking and selection. The Town shall be the sole judge of its own best interests, the responses, and the resulting negotiated agreement. The Town's decisions will be final.

Consultants will be evaluated using a number of factors including, but not limited to, the following:

1. Intent/Capacity to affect the local economy through the use of local labor, vendors, subcontractors, and resources. Points will be awarded based on the following conditions:
 - i Firms with corporate headquarters in Florida (5 points) **(Corresponds to Tab 1)**
 - ii Firms located in Town Utility Service Area (5 additional points) “
 - iii Firms with corporate headquarters in Town Utility Service Area (5 additional points) “
- 1.a. Sub-consultant Experience and Expertise (5 points) **(Corresponds to Tab 1)**
2. Experience and expertise of the consulting firm and its key personnel with similar services to those in the Request for Submittal (35 points) **(Corresponds to Tab 2)**
- 2a. Client reference list (15 points) **(Corresponds to Tab 2)**
3. Approach to meeting the Town's needs as stated in the Scope of Services (20 points) **(Corresponds to Tab 3)**
4. Ability to work with Town and regulatory agencies. (5 points) **(Corresponds to Tab 4)**
5. Ability to provide services in a timely manner (5 points) **Corresponds to Tab 5)**

(Forms 330 - these will not count as part of the maximum page limits)

Be advised that failure to comply with the following criteria will be grounds for disqualification and will be strictly enforced:

- Deposit of submittal(s) to the correct location by the specified cut-off date and time.
- Compliance with the lobbying prohibitions.

The submittal may be withdrawn by written notice to the Town Clerk at any time prior to the above submittal deadline (all submittals will remain the property of the Town of Dundee).

The Selection Committee(s) will evaluate each submittal according to the criteria listed above. The

Selection Committee(s) will then rank the firms based upon the submittals. If the Selection Committee(s) deems it appropriate, they may choose to short-list a certain number of the firms and conduct interviews with those firms. Recommendations will then be made to the Town Commission for final approval.

Any questions regarding this RFQ should be directed to Deena Ware by email at dware@townofdundee.com.

The Town of Dundee reserves the right to reject any and all submittals, waive minor informalities, or award to and/or negotiate with the firm(s) whose submittal(s) best serve the interests of the Town of Dundee.

PUBLIC RECORDS

In accordance with Chapter 119 of the Florida Statutes (Public Records Law), and except as may be provided by other applicable State and Federal Law, all proposers are hereby made aware that Request for Qualifications and the submittals thereto are in the public domain. **Do not submit information that you do not want to be made public.**

DEVELOPMENT COSTS

Neither the Town nor its representative(s) shall be liable for any expenses incurred in connection with preparation of a response to the RFQ. Proposers should prepare their submittals simply and economically, providing a straightforward and concise description of the proposer's ability to meet the requirements of the RFQ.

CONTRACT PERIOD

Any resulting contract resulting from this request is expected to begin on or about _____, 2018, and remain in effect for a period of three (3) years, unless terminated sooner under the provisions of the Consultant Agreement. Any resulting contract may be extended for an additional three (3) year period. If an awarded firm has lost more than 50% of its key staff (assigned to a particular Town contract), the contract may not be renewed, and the firm in question will be required to resubmit at the next RFQ advertisement if consideration for that firm is so desired. Individual Task Orders will be used for specific projects. Each Task Order will have time specific limitations and monetary values negotiated at the time of issuance.

To the extent permitted by F.S. 287.055 and based upon continued satisfactory performance of the firm(s) selected, the Town of Dundee reserves the right to utilize additional consulting services for substantially similar services. When applicable, this/these resulting contract(s) shall be considered continuing contract(s).

LOBBYING

Lobbying shall be defined as any action taken by an individual, firm, association, joint venture, partnership, syndicate, corporation, and or any other group(s) who seek to influence the governmental decision of a Commission/Board Member, Town Manager, and/or any other Town Personnel during the solicitation process. The lobbying black-out period begins upon issuance of this solicitation and concludes upon Town Commission approval of a contract for that particular endeavor/scope of work. Proposers shall not contact any Town Commission member and/or any requesting or evaluating Department/Office personnel during said black-out period. All questions shall be directed to the Town Clerk. A submittal may be disqualified if that firm has violated the black-out period.

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

THIS MASTER CONTINUING PROFESSIONAL CONSULTING AGREEMENT is made and entered into on this _____ day of _____, 2015, by and between The Town of Dundee, Florida, a Florida municipal corporation, hereinafter referred to as "TOWN," and _____, hereinafter referred to as "CONSULTANT."

RECITALS:

WHEREAS, the TOWN as required by Florida law made a Request for Qualifications RFQ-15-01 for provision of certain consulting services; and

WHEREAS, the TOWN desires to retain the CONSULTANT to furnish a Continuing Contract for Professional Consulting Services for a Feasibility Study for a Water, Sewer, and Stormwater Rate Analysis Study and/or Studies as presented herein in connection with the provision of municipal services by the TOWN to areas within the Corporate TOWN Limits and to unincorporated area(s) in Polk County; and

WHEREAS, the TOWN has recognized a need for a Continuing Contract for Professional Consulting Services for a Water, Sewer, and Stormwater Rate Analysis Study and/or Studies with regard to:

- A. xxxxxxxxxxxxxxxxx; and
- B. xxxxxxxxxxxxxxxxx; and
- C. xxxxxxxxxxxxxxxxx; and
- D. xxxxxxxxxxxxxxxxx; and
- E. Any other associated municipal functions within the TOWN's service area(s) as further described in the TOWN's Request for Qualifications attached hereto as Exhibit "A", and as may be specified in subsequent TASK ORDER Authorizations, hereinafter called the "TASK ORDER(s)"; and

WHEREAS, the TOWN selected the CONSULTANT in strict accordance with Chapter 287.055 Fla. Stat., also known as the "CONSULTANT's Competitive Negotiations Act" and found the CONSULTANT to possess the qualifications necessary to satisfactorily perform the work herein contemplated; and

WHEREAS, the CONSULTANT, having examined the scope of the services required for the proposed TASK ORDER(s), and having expressed its desire and willingness to provide such services, and having presented its qualifications to the TOWN in support of its expressed desires; and

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

WHEREAS, the CONSULTANT has agreed to provide professional services to the TOWN upon the terms and conditions hereinafter set forth; and

WHEREAS, it is intended that funds if available will be provided in the TOWN's budgets as needed to pay the costs of the services involved:

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and subject to availability of funding the TOWN agrees to retain the CONSULTANT and the CONSULTANT agrees to perform all work, both for a continuing nature and special project basis, as described herein, and upon the following terms and conditions:

ARTICLE I. The above recitals are hereby incorporated into this Agreement.

ARTICLE II. DESCRIPTION OF PROJECT AND TERM OF AGREEMENT:

It being the intent of this Agreement to provide a general basis for performing services, as yet not fully defined, the starting date and time for completion of each TASK ORDER shall be mutually agreed to and set forth in the Authorization to Proceed from the TOWN. This Agreement shall continue in full force for a period of three (3) years from the date first written above or until terminated in accordance with Article XIX. At the discretion of the TOWN Manager this Agreement may be extended for an additional three (3) years without readvertising under the CONSULTANT's Competitive Negotiations Act. The above time periods may also be extended at the discretion of the TOWN Manager to complete a Project already in progress at the end of the term.

ARTICLE III. BASIC SERVICES OF THE CONSULTANT:

This Agreement provides the general terms, obligations and conditions which shall control all work. The CONSULTANT when so authorized by the TOWN agrees to provide and to perform such professional services as the TOWN may, from time to time, require, including but not limited to, serving as the TOWN's professional services representative for Projects identified by the TOWN, providing professional consultation and advice, and by itself or with Subconsultants furnishing customary civil, architectural, structural, mechanical, environmental, transportation, stormwater, irrigation, landscaping, electrical engineering, and management consulting services as may be appropriate. The CONSULTANT shall perform any and all Project Services in a timely, efficient, and cost-effective manner and in accordance with the generally accepted standards of the profession. Unless modified in writing by both parties, duties of CONSULTANT shall not be construed to exceed those services specifically described in each TASK ORDER.

Item 1. General Consulting Services

- 1.1** The TOWN shall, from time to time at its sole discretion, authorize the CONSULTANT in writing to provide Services by means of a TASK ORDER under the terms of this Agreement. A TASK ORDER shall, by mutual agreement of the parties, set forth (1) the Scope of Services, (2) the time for performance, (3) method and amount of compensation, (4) the provisions of Items 1 and 2 of this Agreement which are applicable, (5) the Deliverables, if any (which are the items to be provided to the TOW as a result of the Services), and (6) the services, information, and data that can be provided by the TOWN to the CONSULTANT.
- 1.2** The TOWN does not guarantee, warrant, or represent that any number or any particular type of Project will be assigned to the CONSULTANT under the terms of this Agreement. Furthermore, the purpose of this Agreement is not to authorize a specific Project, but to set forth certain duties, obligations, rights, and responsibilities that may be incorporated by reference into any TASK ORDER that may be mutually agreed

to by the parties. The TOWN shall have the sole discretion to select the Project(s), if any, which may be given to the CONSULTANT.

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

Item 2. Studies and Reports

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

- 2.1 Consult with the TOWN to clarify and define the TOWN's requirements under the TASK ORDER.
- 2.2 Obtain from the TOWN, or its designated representative, available reports, records, property maps, drawings, opinions of probable cost, financial data, field survey notes, and other data that may be reasonably available at the time of authorization to proceed.
- 2.3 Advise the TOWN as to the necessity of the TOWN's providing or its need for obtaining services from others of the types as set forth in ARTICLE III, paragraph 1.3 or any other services reasonably required in the CONSULTANT's judgment from others.
- 2.4 Provide special analysis of the TOWN's needs, preliminary studies, regional planning reports, feasibility investigations, evaluations, comparative studies, appraisals, rate studies, operational-management services, or any other program as authorized by the TOWN.
- 2.5 Provide a general economic analysis of the TOWN's requirements applicable to various alternatives, which includes a broad estimate of construction cost and method of financing.
- 2.6 Prepare a Preliminary Report with findings and recommendations.
- 2.7 Furnish three (3) printed copies and one (1) electronic, if requested, of the Preliminary Report to the TOWN.

Item 3. Preliminary Design Plans

After written authorization to proceed with the Preliminary Design Phase, the CONSULTANT shall (if needed):

- 3.1 On the basis of the data and information obtained under Item 2, or for any defined TASK ORDER, prepare preliminary data including basis of design, sketches, drawings, maps, opinions of probable cost, time of completion and outline specifications to develop and establish the scope of the proposed construction.
- 3.2 Make a personal examination of the proposed Project site, and as may reasonably be discoverable, note site conditions and impediments that pertain to or might adversely affect the timely, efficient, and economical completion of any phase of the Project or the Project as a whole. The CONSULTANT shall promptly report any adverse site conditions to the TOWN.

- 33 Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
- 34 At a minimum, provide the TOWN with a 50% and 90% complete document(s) for preliminary review during the development and submission of the Preliminary Design Phase report. In addition, CONSULTANT will meet with the TOWN to discuss preliminary submittal reviews by the TOWN.
- 35 Provide services to investigate existing conditions of facilities or to verify the accuracy of drawings or other information furnished by the TOWN or others to the CONSULTANT. Such verification services shall be set forth in the applicable TASK ORDER.
- 36 Advise the TOWN if additional data or services are necessary for preliminary design and assist the TOWN in obtaining such data and services.
- 37 Based on the information contained in the preliminary design documents, submit a revised Total Project Cost estimate to the TOWN.
- 38 Make on-site field investigations as necessary to become familiar with the conditions affecting the TASK ORDER.
- 39 Furnish five (5) printed copies and one (1) electronic copy, if requested, of the Preliminary Design Documents.
- 310 Assist the TOWN in obtaining preliminary approval of the proposed work from any Local, State or Federal Agency having jurisdiction over the TASK ORDER.

Item 4. Final Design Phase

After written authorization to proceed with the Final Design Phase, the CONSULTANT shall (if needed):

- 4.1 On the basis of the preliminary design documents for a defined TASK ORDER, prepare and furnish the "Contract Documents", which include the Agreement, the Contractor's Bid, Invitations to Bid, Bid Forms where appropriate, the Bonds, the Notice of Award, Specifications, Drawings and Addenda.
- 4.2 Advise the TOWN of additional services of others, if required, and arrange for, and furnish if authorized, all necessary additional tests, borings, soils investigations for the TASK ORDER. (The actual cost of said tests, borings, etc. shall be paid for by the TOWN).
- 4.3 Complete work on the TASK ORDERS within the time allowed by maintaining an adequate staff of engineers, draftsmen, and other employees on the work. The CONSULTANT is not responsible for delays caused by factors beyond the CONSULTANT's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the TOWN to furnish timely information or approve or disapprove of the CONSULTANT's services of work product promptly, or delays caused by faulty performance by the TOWN or by contractors of any level. When such delays beyond the CONSULTANT's reasonable control occur, the TOWN agrees the CONSULTANT is not responsible for damages, nor shall the CONSULTANT be deemed to be in default of this Agreement.
- 4.4 Comply with all Federal, State and Local laws or ordinances applicable to this work.
- 4.5 Prepare the necessary application forms and supporting documents for the approval of the TASK ORDER and assist the TOWN in acquiring the approval from Local, State and Federal Regulatory Agencies. The CONSULTANT shall also assist the TOWN in obtaining such approvals by submitting, participating, and/or leading in negotiations with appropriate authorities, and the TASK ORDER shall define the CONSULTANT's role in this regard.
- 4.6 Cooperate fully with the TOWN in order that all phases of the work may be properly scheduled and coordinated. At this Final Design Phase, the CONSULTANT will furnish the TOWN a construction time schedule for the completion of the TASK ORDER.

- 4.7 Request information and verification of location of utility facilities in the vicinity of the proposed work. Upon approval of the final plans, send letter with applicable sheets of the plans to each utility company having installations in the area of the work, notifying them of any relocations required. Send copies of all such letters to utilities to the TOWN for reference and file.
- 4.8 Report the status of TASK ORDERS to the TOWN Manager or his designee upon request, and hold the drawings, calculations, and related work open to the inspection of the TOWN Manager or his authorized agent or designee at any time.
- 4.9 Submit to the TOWN five (5) sets of check prints and the Contract Documents at 30%, 60%, and 90% completion for each TASK ORDER for review and approval and advise the TOWN in writing with each submittal of the estimated project construction cost.
- 4.10 Submit to the TOWN a final draft of the Contract Documents, including all revisions and/or modifications. Upon approval, assemble and bind the Contract Documents and deliver five (5) sets to the TOWN. Additional copies required shall be furnished at actual cost of reproduction if requested by the TOWN. It is understood and agreed that the CONSULTANT assumes no responsibility for the legal review of such documents. **Consultant shall provide an electronic copy of all contract documents.**
- 4.11 Advise the TOWN of any adjustments in the cost of the PROJECT caused by changes in scope, design requirements or construction costs; and furnish final cost estimate for the PROJECT, based on the approved drawings and specifications.

Item 5. Bidding or Negotiating Phase

After written authorization to proceed with the Bidding or Negotiating Phase, the CONSULTANT shall (if needed):

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

Item 6. Construction Phase

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

- 6.1 General. Consult with and advise the TOWN and act as its representative as provided in the TOWN's Standard Construction Contract Documents (Construction Contract Documents). The TOWN shall have sole

discretion as to the form of these contract documents, or as to how they are to be amended pursuant to any Project, or as to how they may otherwise be amended from time to time.

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

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

- 65** Advise and consult with the TOWN and act as the CONSULTANT as provided in the Contract Documents covering the construction of the Project and work described in the TASK ORDER.
- 66** Make weekly visits and as needed to the site by a qualified representative of the CONSULTANT to observe the work. The CONSULTANT shall have authority, as the TOWN's representative, to require special inspection or testing of the work and shall receive and review all certificates of inspections, testings, and approvals required by laws, rules, regulations, ordinances, codes, orders and terms of the Drawings and Specifications (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Drawings and Specifications) and, in addition, the CONSULTANT shall have authority, as the TOWN's representative, to act as initial interpreter of the requirements of the Drawings and Specifications.
- 67** Review and approve shop and equipment drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, results of tests and inspections, and other data which any Contractor is required to submit, and receive and review maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the Contract Documents. The CONSULTANT may be allowed to use its shop drawing stamp during review provided the format and language of the shop drawing stamp is approved by the TOWN prior to use. Furthermore, the CONSULTANT agrees that it shall devise a separate tracking system for Shop Drawings previously disapproved or for which corrections, modifications, or changes are necessary. The tracking system shall be both timely and efficient, and shall account for the status and party responsible to correct all previously submitted Shop Drawings until their complete approval and acceptance. The tracking system shall include, but not be limited to, the following CONSULTANT activities: subsequent to any Contractors being ordered to start construction work, the CONSULTANT shall transmit to the TOWN, if required by TASK ORDER at such frequency as defined therein, a list of Shop Drawings anticipated for such construction contract, the names of the Shop Drawings, their due dates (in accordance with Shop Drawing schedules submitted by the Contractor(s)) required from the Contractor(s); their dates of issue, receipt, checking, return for correction, resubmission, and approval; and any information that will clearly provide the TOWN with the progress of Project Shop Drawings; provided, however, that in any event all Shop Drawings that have been submitted to the CONSULTANT (whether for approval or re-approval) shall be reviewed and returned by the CONSULTANT within twenty-eight (28) days of submission.
- 68** Prepare routine change orders as required. The CONSULTANT shall evaluate and determine the acceptability of substitute materials and equipment proposed by the Contractor(s).
- 69** Review, verify, approve, and certify Contractor's monthly estimates and final estimates and payments. The CONSULTANT shall also periodically review the Record Drawings as prepared by the Contractor(s) and verify the accuracy and completeness thereof, prior to recommendation to the TOWN of the release of progress payments for the work in question.
- 610** Conduct a site visit, in company with the TOWN to determine if a TASK ORDER is substantially complete and a final site visit to determine if a TASK ORDER has been completed in accordance with the Contract Documents and the Contractor(s) has fulfilled all of his obligations there-under so that the CONSULTANT may approve, in writing, final payment to the Contractor(s). The CONSULTANT shall certify a completed TASK ORDER to all regulatory agencies upon completion. Advise and consult with the TOWN as to interpretations of the Contract Documents in any disputes between the TOWN and the prime Contractor and any other entity involved on working on the project at the direction of the prime Contractor.
- 611** Furnish the TOWN five (5) sets of reproducible revised Contract Drawings showing the work as constructed. Record Drawings shall be based on the marked-up prints, drawings, and other data furnished by the Contractor(s)' field engineering and inspection personnel and which the CONSULTANT considers significant.

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

ARTICLE IV. RESPONSIBILITIES OF TOWN:

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

Item 1. Assist and cooperate with CONSULTANT in any manner necessary and within its ability to facilitate CONSULTANT's performance under this Agreement.

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

Item 3. Furnish CONSULTANT with all technical and other data in TOWN's possession including, but not limited to, maps, surveys, drawings, soils or geotechnical and other types of reports, financial statements, and any other information required by, or useful to, CONSULTANT in performance of its Services under this Agreement. CONSULTANT shall be entitled to rely upon the information supplied by TOWN.

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

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

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

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

TOWN will furnish contractor's certificates of insurance evidencing that CONSULTANT, its officers, employees, agents, and CONSULTANTs are named as additional insureds on contractor's general liability and property insurance applicable to the Project. Contractor's policies shall be primary and any such insurance carried by the CONSULTANT shall be excess and noncontributory. The certificates shall provide that CONSULTANT be given 30 days' written notice prior to any cancellation thereof.

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

ARTICLE V. AMERICANS WITH DISABILITIES ACT:

Any other provision of this Agreement to the contrary notwithstanding, unless otherwise specified in the Scope of Services, TOWN shall have sole responsibility as between TOWN and CONSULTANT for compliance with the Americans With Disabilities Act ("ADA") 42 U.S.C. 12101 et. Seq. and the related regulations.

ARTICLE VI. COMPENSATION:

For the Services described in each TASK ORDER, TOWN agrees to pay, and CONSULTANT agrees to accept the total compensation in accordance with compensation terms included in the TASK ORDER. CONSULTANT may re-allocate compensation between tasks, provided total compensation is not exceeded without the written approval of TOWN. For each defined service, or separately authorized PROJECT, a mutually acceptable fee shall be negotiated when the scope of such proposed authorization has been defined. In the event that a specific fee is not established the Hourly Rate Schedule contained in Exhibit A attached hereto. The rate schedule shall be revised annually and furnished to the TOWN prior to its effective date. Annual revisions to the Hourly Rate Schedule shall be submitted prior to the date that they take effect. The revised Hourly Rate Schedule shall take effect unless written notice is received from the TOWN that the revised rates are not accepted. Provided further that CONSULTANT agrees that the rates on its Hourly Rate

Schedule shall not be increased above three percent (3%) of existing accepted rates per year during the term of this Agreement. Compensation shall be billed monthly in summary form. For other than lump-sum contracts, the TOWN shall only be obligated to pay for those Services that the CONSULTANT can demonstrate are reasonable, provable, and within the Scope of Services of any TASK ORDER.

ARTICLE VII. DIRECT AND REIMBURSABLE EXPENSES:

The TOWN shall reimburse the CONSULTANT for certain direct out-of-pocket expenses as listed below; these direct charges shall be submitted to the TOWN on a timely basis at actual cost, verified by appropriate bills, invoices, etc. Reimbursable expenses shall not exceed \$3,000.00 except when authorized in advance in writing by TOWN.

Item 1. Travel and Subsistence

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

Item 2. Printing and Reproduction

The costs of reproduction of reports, plans, and specifications except as otherwise provided in this Agreement, plus the hourly cost of the CONSULTANT's staff incurred for administration.

Item 3. Services of Others

For services of others when authorized by the TOWN Manager, the actual cost of such services plus the hourly cost of the CONSULTANT's staff incurred for administration.

Item 4. Miscellaneous

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

ARTICLE VIII. PAYMENTS:

Item 1.

Payment for authorized services rendered, including direct and reimbursable costs, shall be payable in approximate proportion to the degree of completion of the work as estimated by the CONSULTANT subject to approval of the TOWN Manager or his designated representative. Payment shall be made within forty-five (45) calendar days of receipt of invoice as provided by Section 218.74, Florida Statutes.

Item 2. Payment Withheld

When the TOWN has reasonable ground for belief, or information to believe that: (1) the CONSULTANT will be unable to perform the Services under any TASK ORDER within the related Project Term; or (2) a meritorious claim exists against the CONSULTANT or the TOWN arising out of the CONSULTANT's negligence or the CONSULTANT's **breach** of any provision of this Agreement or any TASK ORDER; then the TOWN may withhold a Payment otherwise due and payable to the CONSULTANT; provided, however, that the TOWN shall not unreasonably withhold other TASK ORDER payments that may not otherwise be in dispute. Any Payment so withheld may be retained by the TOWN for such period as it deems advisable to protect the TOWN against any loss or deprivation that the TOWN may incur pursuant to this Subsection or as may be determined by a court of competent jurisdiction. This provision is intended solely for the benefit of the TOWN and no person shall have any right against the TOWN and/or its employees and officials by reason of the TOWN's withholding of Payments. Interest [one percent (1%) simple interest, per month] shall only be payable by the TOWN on any amounts withheld under this provision if the TOWN has acted without justification. This provision is not intended to limit or in any way prejudice any other right the TOWN may have in this regard or any right or defense that the CONSULTANT might choose to exercise against the CITY.

Item 3. Termination

Upon the termination of this Agreement, the CONSULTANT shall prepare a final and complete Payment Statement for all services and reimbursable expenses incurred since the positing of the last Payment Statement and through the date of termination. The Final Payment Statement shall be subject to all of the provisions described in Article XXVII.

Item 4. Final Payment

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

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

ARTICLE IX SCHEDULE OF WORK:

The TOWN shall have the sole rights to determine on which unit(s) or sections of the work the CONSULTANT shall proceed and in what order. Authorization by the TOWN, through the TOWN Manager or his designee, in writing, shall cover in detail the scope and intent of the proposed engineering services.

ARTICLE X. RESPONSIBILITY OF CONSULTANT:

Item 1. Standard of Care—Professional Services

Subject to the limitations inherent in the agreed scope of work as to the degree of care, amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, CONSULTANT shall perform its Services in accordance with generally accepted standards and practices customarily utilized

by competent engineering firms in effect at the time CONSULTANT's Services are rendered.

Item 2. Reliance upon Information Provided by Others

If CONSULTANT's performance of services hereunder requires CONSULTANT to rely on information provided by other parties (excepting CONSULTANT's subcontractors), CONSULTANT shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so in writing by TOWN.

Item 3. CONSULTANT's Opinion of Costs

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

Item 4. Construction Phase Services

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

ARTICLE XI. AUDIT RIGHTS:

The TOWN reserves the right to audit the records of the CONSULTANT related to compensation issues associated with an authorized TASK ORDER at any time during the execution of the TASK ORDER and for a period of one year after final payment is made to the CONSULTANT. Failure of the CONSULTANT to maintain sufficient auditable records will authorize the TOWN to determine, at its sole and conclusive discretion, the time and cost

expended from information maintained by the CONSULTANT relevant to the PROJECT(S). The CONSULTANT's staff will be compensated on an hourly rate basis for assisting the TOWN in its audit process.

ARTICLE XII. ASSIGNMENT:

The CONSULTANT shall not sublet, assign, or transfer any work under this Agreement without the written consent of the TOWN.

ARTICLE XIII. SPECIAL PROJECTS:

Periodically, the TOWN will require professional services on special projects which are funded, in whole or in part, by various State or Federal agencies as well as TOWN bond issues. The TOWN, by virtue of its strict compliance with the CONSULTANT's Competitive Negotiations Act, reserves the right to either authorize the CONSULTANT to proceed with such a special project without further competitive negotiations, or the TOWN may, at its discretion, reinstate competitive negotiations under the CONSULTANT's Competitive Negotiations Act to select an engineer for that individual special project.

ARTICLE XIV. ASBESTOS/HAZARDOUS MATERIALS:

CONSULTANT and CONSULTANT's subcontractors shall have no responsibility for the discovery, handling, removal, or disposal of or exposure of persons to asbestos or hazardous or toxic materials that are present in any form at the Project site. Professional services related to or in any way connected with the investigation, detection, abatement, replacement, use, specification, or removal of products, materials, or processes containing asbestos or hazardous or toxic materials are beyond the scope of this Agreement. TOWN shall be solely responsible for notifying all appropriate governmental agencies, including the potentially effected public, of the existence of any hazardous or toxic materials located on or at the project site at anytime.

In the event CONSULTANT encounters asbestos or hazardous materials at the jobsite, CONSULTANT may, at its option and without liability for damages, suspend the performance of services on the Project until such time as TOWN and CONSULTANT mutually agree on an amendment to this Agreement to address the issue, or TOWN retains another specialist CONSULTANT or contractor to identify, classify, abate and/or remove the asbestos and/or hazardous materials.

ARTICLE XV. CONSULTANT'S WORK PRODUCT:

Item 1. Scope

CONSULTANT's work product, which is prepared solely for the purposes of this Agreement, including, but not limited to, drawings, test results, recommendations and technical specifications, whether in hard copy or electronic form, shall become the property of TOWN when CONSULTANT has been fully compensated as set forth herein. CONSULTANT may keep copies of all work products for its records.

CONSULTANT and TOWN recognize that CONSULTANT's work product submitted in performance of this Agreement is intended only for the project described in this Agreement. TOWN's alteration of CONSULTANT's work product or its use by TOWN for any other purpose shall be at TOWN's sole risk, and TOWN shall hold harmless and indemnify CONSULTANT against all losses, damages, costs and expense, including attorneys' fees, arising out of or related to any such alteration or unauthorized use.

Item 2. Electronic Copies

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

ARTICLE XVI. INDEMNIFICATION AND INSURANCE

Item 1. Indemnification and Repair of Damage

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

- (a) any act, omission or default of the CONSULTANT or its employees or agents, (including negligent, reckless, willful or intentional acts or omissions);
- (b) any and all bodily injuries, sickness, disease or death;
- (c) injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (d) other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with this Agreement or any Project performed thereunder; and/or
- (e) the violation of any federal, state, county or city laws, by-laws, ordinances or regulations by the CONSULTANT or employees.

CONSULTANT deems and acknowledges that \$500.00 of the amount paid to CONSULTANT under this Agreement is in consideration, for this and all other indemnifications given by CONSULTANT. For purposes of compliance with Florida law, CONSULTANT acknowledges that this provision shall be deemed a part of the project specifications or the bid documents and is given subject to the provisions of Section 725.08 of the Florida Statutes.

1.1.1.1 CONSULTANT shall indemnify, defend, and hold harmless the TOWN, its elected officials, officers, and employees (hereinafter collectively referred to as "TOWN") from liability for damages to persons or property caused in whole or in part by any act, omission, or default of CONSULTANT (specifically including CONSULTANT's negligent or grossly negligent acts and/or TASK ORDERS issued hereunder, omissions,

or defaults) which relates to, pertains to, or arises from the Agreement or CONSULTANT's performance thereof. This contractual indemnity is authorized by Sections 725.06 and 725.08 of the Florida Statutes. CONSULTANT also agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against the TOWN, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

- 1.1.1.2 In the event of any claims or suits which fall within either of the foregoing indemnities, payment of any amount due pursuant thereto shall, after receipt of written notice by CONSULTANT from the TOWN that such amount is due, be made by CONSULTANT prior to the TOWN being required to pay same, or in the alternative, the TOWN, at TOWN's option, may make payment of an amount so due and the CONSULTANT shall promptly reimburse the TOWN for same, together with interest thereon at the rate of 12% per annum simple interest from the day of TOWN's payment.
- 1.1.1.3 CONSULTANT agrees, at the CONSULTANT's expense, after receipt of written notice from the TOWN, to defend any action against the TOWN that falls within the scope of the foregoing indemnities, or the TOWN, at the TOWN's option, may elect not to tender such defense and may instead elect to secure its own attorney to defend any such action and the reasonable costs and expenses of such attorney incurred in defending such action shall be payable by the CONSULTANT. Additionally, if CONSULTANT, after receipt of written notice from the TOWN fails to make any payment due hereunder to the TOWN, CONSULTANT shall pay any reasonable attorney's fees or costs incurred by the TOWN in securing any such payment from CONSULTANT. Nothing contained herein is intended nor shall it be construed to waive the TOWN's right and immunities under the common law or Florida Statute, Section 768.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist in the TOWN's favor.
- 1.1.2** No Damages For Delay By TOWN. CONSULTANT shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from TOWN for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency or extended overhead, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CONSULTANT for hindrances or delays due solely to fraud, bad faith or active malicious interference on the part of TOWN. Otherwise, CONSULTANT shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for excusable events of delay.
- 1.1.2.1** If the CONSULTANT submits a schedule or expresses an intention to complete the Work required by any required milestone or completion date, the TOWN shall not be liable to the CONSULTANT for any costs incurred, lost profits, extended overhead, expenses, or other damages of any kind because of delay or hindrance, regardless of whether such delay or hindrance was caused by the TOWN or its agents, should CONSULTANT be unable to complete the Work before such milestone or completion date as is described within the schedule.

1.122 On any particular TASK ORDER the TOWN reserves the right to include a provision for liquidated damages as a result of any project or work delay.

Item 2. INSURANCE

21 The CONSULTANT shall purchase, maintain, and keep in full force, effect, and good standing, such insurance that is described below, and any other insurance necessary to fully protect it from claims of the nature that are detailed below, that may arise out of, or result from, the CONSULTANT's operations, performance, or services, or all of these things, or any of these things in combination (CONSULTANT's Operations), whether the CONSULTANT's Operations are by the CONSULTANT, any of its agents or Subconsultants, or anyone for whose act or acts it may be liable. The CONSULTANTS insurance carrier shall be licensed to do business in the State of Florida and shall have an A.M. Best Rating of B+ or better.

1. Claims under Workers Compensation, disability benefit, or other (similar) employee benefit acts; and
2. Claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees; and
3. Claims for damages for personal injury; and
4. Claims for damages because of injury to or destruction of tangible property, including the loss of property use resulting therefrom.

22 Limits of Liability. The insurance required by this Subsection shall be written for not less than the limits of liability specified below, or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the CONSULTANT's obligation under Subsection 1.2, above:

- | | |
|---|-----------------------------------|
| 1. Workers Compensation and Employers Liability | (present Florida statutory limit) |
| 2. Commercial General Liability Bodily Injury | \$1,000,000 per occurrence |
| Property Damage | \$1,000,000 per occurrence |
| 3. Business Automobile Liability | \$1,000,000 per occurrence |

23 CONSULTANTs Errors and Omissions Policy. The CONSULTANT shall also purchase, maintain, and keep in full force, effect, and good standing, a professional liability/errors and omissions insurance policy having minimum limits of \$1,000,000.00, with a \$500,000.00 self-insured retention or, the CONSULTANT shall provide the TOWN with policy coverage wherein the insurer agrees to pay claims (up to the limits of coverage) and will thereafter recover the self-insured retention from the insured-CONSULTANT. The errors and omissions policy shall be in effect and shall insure the CONSULTANT's performance on TOWN projects in accordance with the terms thereof. The coverage must respond to all claims reported within four (4) years following the period in which coverage is required.

24 Insurance Administration. Insurance Certificates, evidencing all insurance coverages referred to in this Subsection, shall be filed (or be on file) with the TOWN at least ten (10) calendar days after the final execution of this Agreement. The Insurance Certificates shall be fully acceptable to the TOWN in both form and content, and shall provide and specify that the related insurance coverage shall not be canceled (Coverage

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

- 25** TOWN As Additional Insured. The TOWN shall be listed as an additional insured on all insurance coverage required by this Agreement, except Workers Compensation and Professional Liability errors and omissions insurance. Furthermore, all other insurance policies pertaining to the services to be performed under this Agreement and any TASK ORDERS issued hereunder shall memorialize that the CONSULTANT's, or the CONSULTANT's Subconsultants, or all of these entities (Primary Insureds) insurance, shall apply on a primary basis, and that any other insurance maintained by the TOWN shall be in excess of and shall not contribute to or be commingled with the Primary Insured's insurance.
- 26** TOWN's Right to Inspect Policies. The CONSULTANT shall, upon thirty (30) days written request from the TOWN, deliver copies to the TOWN of any or all insurance policies that are required in this Agreement. Provided that CONSULTANT shall be entitled to redact all confidential information on copies of all such policies of insurance that are delivered to the TOWN. It being the intent of the parties that the TOWN shall have copies of all policies in order to determine appropriate and relevant coverage, limits, deductibles, insurance exclusions and other information related thereto.
- 27** CONSULTANT shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance. All required insurance policies shall preclude any insurer's rights of recovery or subrogation against the TOWN with the express intention of the parties being that the required insurance coverages protect both parties as the primary coverages for any and all losses covered by the above-described insurance. Violation of the terms of this paragraph and its subparts shall constitute a breach of the Agreement, and the TOWN, at its sole discretion, may cancel the Agreement and all rights, title and interest of the CONSULTANT shall thereupon cease and terminate. The TOWN reserves the right to require or adjust any of the insurance coverages it deems necessary depending upon the company, the project, or the potential exposures. The CONSULTANT shall not commence performance of duties under this Agreement and/or any TASK ORDERS issued hereunder until the CONSULTANT has obtained all insurance coverages required under this paragraph and all certificates of insurance have been approved by the TOWN, nor shall the CONSULTANT allow any Subconsultant to commence performance of duties under any contract with the

TOWN until all similar such insurance coverages and certificates of insurance required of the Subconsultant have been obtained and approved.

Item 3. Nothing herein is intended to act as a waiver of the TOWN's sovereign immunity and/or limits of liability as set forth in section 768.28, Florida Statutes.

ARTICLE XVII. CONFIDENTIALITY:

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

- 1) becomes generally available to the public other than as a result of disclosure by CONSULTANT or its agents or employees;
- 2) was available to CONSULTANT on a non-confidential basis prior to its disclosure by TOWN;
- 3) becomes available to CONSULTANT from a third party who is not, to the knowledge of CONSULTANT, bound to retain such information in confidence.

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

ARTICLE XVIII. SUSPENSION AND/OR TERMINATION OF WORK:

Any work being performed under this Agreement may be suspended as follows:

Item 1. By TOWN. By written notice to CONSULTANT, TOWN may suspend all or a portion of the Work under this Agreement if unforeseen circumstances beyond TOWN's control make normal progress of the Work impracticable. If suspension is greater than 60 days, then CONSULTANT shall have the right to terminate this Agreement in accordance with Article XIX, Termination of Agreement. TOWN's suspension of Work hereunder shall be without prejudice to any other remedy of TOWN at law or equity.

Item 2. By CONSULTANT. By written notice to TOWN, CONSULTANT may suspend the Work if CONSULTANT reasonably determines that working conditions at the Site (outside CONSULTANT's control) are unsafe, or in violation of applicable laws. CONSULTANT's suspension of Work hereunder shall be without prejudice to any other remedy of CONSULTANT at law or equity.

ARTICLE XIX. TERMINATION OF AGREEMENT:

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

Item 2. This Agreement may be terminated by CONSULTANT as follows: (1) for cause, if TOWN materially breaches this Agreement through no fault of CONSULTANT and TOWN neither cures such material breach nor makes reasonable progress toward cure within 15 days after CONSULTANT has given written notice

of the alleged breach to TOWN, or (2) (upon five days' notice if work under this Agreement has been suspended by either TOWN or CONSULTANT for more than 60 days in the aggregate.)

Item 3. Payment upon Termination

In the event of termination, CONSULTANT shall perform such additional work as is reasonably necessary for the orderly closing of the Work. CONSULTANT shall be compensated for all work performed prior to the effective date of termination, plus work required for the orderly closing of the Work, including: (1) authorized work performed up to the termination date; (2) all efforts necessary to document the work completed or in progress; and (3) any termination reports requested by TOWN.

ARTICLE XX. ASSIGNMENT:

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

ARTICLE XXI. NO BENEFIT FOR THIRD PARTIES:

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

ARTICLE XXII. COMPLIANCE WITH APPLICABLE LAW:

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

ARTICLE XXIII. FORCE MAJEURE:

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

ARTICLE XXIV. SEVERABILITY:

If any part of this Agreement is found unenforceable under applicable laws, such part shall be inoperative, null, and void insofar as it conflicts with said laws, but the remainder of this Agreement shall be in full force and effect.

ARTICLE XXV. CHOICE OF LAW/JURISDICTION:

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

ARTICLE XXVI. ATTORNEYS' FEES:

In the event either party commences legal proceedings against the other, then the prevailing party shall, in addition to any other recovery, be entitled to recover its reasonable attorneys' fees and all other costs of such proceeding.

ARTICLE XXVII. NOTICES:

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

CONSULTANT:

TOWN:

Town Manager
Town of Dundee
P.O Box 1000
Dundee, Florida 33838-1000
Fax: (863) 438-8338

With a copy to:
Frederick J. Murphy, Jr., Esquire
Town Attorney
Boswell & Dunlap LLP
Post Office Drawer 30
Bartow, Florida 33831-0030
Fax: (863) 533-7412

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

ARTICLE XXVIII. MISCELLANEOUS PROVISIONS:

Item 1.

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

Item 2.

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

Item 3.

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

Item 4. Waiver of Claim

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

Item 5. TOWN's Agent

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

Item 6. CONSULTANT's Project Team

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

Item 7. Non-Exclusive Agreement

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

Item 8. Licenses

The CONSULTANT shall, during the life of this Agreement, procure and keep in full force, effect, and good standing all necessary licenses, registrations, certificates, permits, and other authorizations as are required by local, state, or federal law, in order for the CONSULTANT to render its Services or Work as described herein. The CONSULTANT shall also require all Subconsultants to comply by contract with the provisions of this Subsection.

Item 9. Compliance With New Regulations

The CONSULTANT agrees that at such time as the local, state, or federal agencies modify their grant procedures in order for the TOWN or the CONSULTANT to qualify for local, state or federal funding for the Services to be rendered by the CONSULTANT, then the CONSULTANT shall consent to and make such modifications or amendments in a timely manner. If the CONSULTANT is unable to comply with applicable local, state, or federal laws and regulations governing the grant of such funds for Services to be rendered herein, then the TOWN shall have the right, by written notice to the CONSULTANT, to terminate

this Agreement for convenience. Furthermore, if the CONSULTANT's compliance with such laws, regulations, rules, or procedures causes a material change to a term or condition of this Agreement, or to any TASK ORDER, then the TOWN agrees, upon sufficient proof of material changes as may be presented to it by the CONSULTANT, to amend all related TOWN /CONSULTANT contractual obligations, and to revise such Project budgets accordingly.

Item 10. License Fee and Royalties

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

ARTICLE XXIX. SUBORDINATION OF TASK ORDERS:

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

ARTICLE XXX. HEADINGS:

The headings or titles of the paragraphs of this Agreement are for purposes of convenience only and shall not be utilized for purposes of interpretation of any of the provisions of this Agreement.

ARTICLE XXXI. VALIDITY:

The validity, interpretation, construction, and effect of this agreement shall be in accordance with and governed by the laws of the State of Florida, only. In the event any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. To that extent, this Agreement is deemed severable.

ARTICLE XXXII. REMEDIES AND COSTS:

Subject to the provisions in Article XV of this Agreement, all remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of exclusive of each other or of any other remedy available to either party, at law or in equity. No delay or omission to exercise any TOWN right or TOWN power accruing upon any event of default shall impair any TOWN right or TOWN power nor shall it be construed to be a waiver of any event of default or acquiescence in it, and every TOWN right and TOWN power may be exercised from time to time as often as may be deemed expedient. In the event that TOWN or CONSULTANT seeks to enforce this contract by way of legal action, and the matter is placed in the hands of an attorney, then the prevailing party shall recover its attorneys fees, including all appellate attorneys fees.

ARTICLE XXXIII. TIMELINESS:

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

ARTICLE XXXIV. PUBLIC ENTITY CRIME:

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

ARTICLE XXXV. PUBLIC RECORDS:

Subject to the terms of this Agreement, if it is determined that the CONSULTANT is providing any services on behalf of the TOWN as contemplated in Section 119.0701 of the Florida Statutes then the CONSULTANT agrees to:

1. Keep and maintain public records required by the TOWN to perform the service.
2. Upon request from the TOWN's custodian of public records, provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of this Agreement if the Company does not transfer the records to the TOWN.
4. Upon completion of this Agreement, transfer, at no cost, to the TOWN all public records in possession of the Company or keep and maintain public records required by the TOWN to perform the service. If the CONSULTANT transfers all public records to the TOWN upon completion of this Franchise Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of this Franchise Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records, in a format that is compatible with the information technology systems of the TOWN.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT

**THE CUSTODIAN OF PUBLIC RECORDS, DEENA WARE, TOWN CLERK,
dware@townofdundee.com, (863) 438-8330, EXT 222, 202 EAST MAIN STREET,
DUNDEE, FL 33838.**

If the CONSULTANT does not comply with a public records request, TOWN shall enforce this Agreement which may include immediate termination of this Agreement.

ARTICLE XXXVI. ENTIRETY OF AGREEMENT:

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

ARTICLE XXXVII. AUTHORIZATION:

The persons executing this Agreement on behalf of the parties hereto represent and warrant that the parties have all legal authority and authorization necessary to enter into this Agreement, and that such persons have been duly authorized to execute this Agreement on their behalf.

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

TOWN OF DUNDEE, FLORIDA

Signature _____

Signature _____

Printed Name _____

Printed Name _____

Title _____

Title _____

Federal Tax ID number: _____

ATTEST:

BY: _____
Town Clerk

APPROVED AS TO FORM AND
CORRECTNESS:

BY: _____
Frederick J. Murphy, Jr., Town Attorney
Town of Dundee

Exhibit 1
Town of Dundee
Task Assignment Notification Form

Task Assignment Number:

Date:

Contractor Name:

Contractor Representative:

Town of Dundee Contract Manager:

Task Description (use additional sheets if necessary)

Deliverables:

Due Date:

Task Assignment Type:

Amount Not to Exceed:

Cost Reimbursement plus Fixed Fee \$

Fixed Price \$

Total Task Assignment Value \$

CONTRACTOR
Contract Manager and Date

TOWN OF DUNDEE
Contract Manager Signature and Date

APPROVED:

Cost Center Administrator and Date

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

Date

Name of Company

Authorized Signature

Printed Name

Type of Company (Corporation, LLC, Partnership, etc.)

Title/Position

Physical Address

City

State

Zip

Email address

Telephone Number

Federal Employer I.D. # (FEID)

Fax Number

Received Addenda #'s

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