

**UTILITIES COMMISSION**  
**City of New Smyrna Beach, Florida**  
**INVITATION TO NEGOTIATE**  
**FOR**  
**UTILITIES COMMISSION REBRANDING/STRATEGIC INITIATIVES**  
**ITN 13-17**

The Utilities Commission, City of New Smyrna Beach, FL (“Utilities Commission”) requests Invitations to Negotiate (“ITN”) from qualified vendors to provide rebranding and strategic initiative development services to the Human Resources Department of the Utilities Commission per the “project description”

The ITN is the most practical means of shaping the subjective determinations of the branding and strategic initiatives analysis and formulation. Though it is the opinion of the Utilities Commission that this ITN seeks “Artistic Services” as defined within the F.S. 287.057 “Procurement of Commodities or Contractual Services” and that no competitive bid process is mandated, it chooses to proceed in this manner to allow for a competitive process and determination of best fit for the proposer and the Utilities Commission.

**SUBMIT ONE (1) ORIGINAL AND THREE (3) COPIES AND A DIGITAL COPY ON A FLASH DRIVE TO:**

Maureen Crossman, CPPB  
Materials Manager  
Utilities Commission, City of New Smyrna Beach, FL  
(386) 424-3046 Telephone  
(386) 424-2748 Fax

**MAILING ADDRESS:**

Post Office Box 100  
New Smyrna Beach, Florida 32170-0100

**WALK-IN DELIVERY ADDRESS:**

200 Canal Street  
New Smyrna Beach, Florida 32168

Submittals received after the SUBMITTAL DUE BY DATE and TIME will not be considered for award.

SUBMITTALS DUE BY: 2:30 PM; May 23, 2017 at which time only the names of the firms submitting replies will be read aloud and recorded.

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The purpose for the ITN is to obtain and select the most highly qualified firm to provide professional expertise in a timely manner on an as needed basis.

Conditions and Provisions

Each proposal must be signed by a duly authorized official of the proposing company. The completed and signed proposal (together with all required attachments) must be submitted in accordance with the provisions herein. All participating proposers, by their signature, shall agree to comply with all of the conditions, requirements and instructions of this ITN as stated or implied herein.

Any alteration, erasure or interlineations by a proposer in this proposal shall constitute cause for rejection. Proposers may not include exceptions or deviations to the requirements set forth in this ITN in its proposal pages; rather, any proposed exceptions or deviations must be made separately on proposer's letterhead and accompany its proposal. Any exceptions or deviations to the requirements of this ITN proposed by a proposer will be taken into consideration when evaluating proposals submitted; however, any such exceptions or deviations are offered for discussion purposes only and the Utilities Commission reserves the right to accept, reject, or further negotiate any or all proposed modifications.

All proposers are required to complete all information requested in this ITN. Failure to do so may result in the disqualification of a proposal.

The Utilities Commission reserves the right to postpone or cancel this ITN, or reject all proposals, if in its judgment; it deems it to be in the interest of the Utilities Commission to do so.

The Utilities Commission reserves the right to waive any technical or formal errors or omissions and to reject any and all proposal(s), or to award a contract for the items herein, either in part or whole, if it deems it to be in the interest of the Utilities Commission to do so.

Background of Utilities Commission, City of New Smyrna Beach

The Utilities Commission was chartered through the voters' passage of Chapter 67-1754, Laws of Florida, and Special Acts of 1967, as subsequently amended in 1984, as a separately governed entity. The City of New Smyrna Beach exercises charter oversight of the Utilities Commission with regard to budgeting and selective contractual obligations, and revenue certificates with regard to specified utility obligations.

The Utilities Commission governing body consists of five members who are appointed by the City Commission. Each commissioner is a qualified elector in New Smyrna Beach. The Utilities Commission is funded solely through utility revenues and is not a taxing authority.

The Utilities Commission is a mission-driven organization dedicated to providing quality vital municipal retail electric, water, wastewater, reclaimed water services for over 40 years to the customers within the City of New Smyrna Beach and the surrounding areas located in the unincorporated area of

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Volusia County. The Utilities Commission is a not for profit entity owned by the ratepayers and is a valuable community asset. Pursuant to its Charter, it pays to the general fund of the City of New Smyrna Beach (“City”) a sum equal to six (6) percent of its gross revenues. This amount totaled approximately Three Million Seven Hundred Twenty-One Thousand Eight Hundred Eighty-Three Dollars (\$3,721,883.00) in 2016. The Utilities Commission also contributes additional monies to the City, approximately One Million Nine Hundred Forty-Eight Thousand Five Hundred Eighteen Dollars (\$1,948,518.00) indirectly through the 9% utilities services Utilities Commission tax. Also, in 2015, the Utilities Commission was the sixth (6th) Largest Employer in the City of New Smyrna Beach.

The Utilities Commission is a local business with local concern and is driven with local incentive by local people. Its strategy is to develop and maintain effective and efficient services fairly apportioned and partial to none. It has a fiduciary duty to its ratepayers and, in addition to its bond requirements, will not offer service or incentive to anyone at the cost of another. The Utilities Commission enables this community to retain local control of essential life infrastructure services - water resources and electricity, for approximately 25,000 customers (includes approx. 30% County of Volusia ratepayers).

The Utilities Commission employs approximately 160 people in all services industries listed above dedicated as public servants with the leadership/management style based on the “servant-leadership” model. Our current vision is “to improve the quality of life for our customer by being the best utility service provider” and our stated mission is “to benefit our community by providing timely, cost-effective and high quality products and services to our customers with sound economy and good management.” For additional Information, please visit the website at: [www.ucnsb.org](http://www.ucnsb.org)

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**ITN SCHEDULE**

DISTRIBUTION OF ITN 13-17:	April 24, 2017
DEADLINE FOR FINAL QUESTIONS BY 2:30PM: E-MAIL <a href="mailto:mcrossman@ucnsb.org">mcrossman@ucnsb.org</a>	May 8, 2017
ADDENDUM PUBLISHED BY 5:00PM:	May 16, 2017
ITN RETURN DEADLINE BY 2:30 pm: LOCATION: THE UTILITIES COMMISSION – RECEPTION 200 CANAL STREET, NEW SMYRNA BEACH, FL	May 23, 2017

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Scope of Work

The Utilities Commission seeks professional expertise in a timely manner to help it in its rebranding initiatives and modification of the company's strategic initiatives.

- Create an updated brand identity, including logo redesign, and brand identity guidelines and systems.
- Develop and help implement a strategy to gain organizational consensus for the new brand.
- Develop a strategy, for implementation by the Utilities Commission, to market the refined brand.
- Conduct a SWOT analysis.
- Help determine the current perspective of internal/external customers and affected peoples and entities.
- Company name and tagline. Evaluate whether our name is appropriately identifying for our culture, foundation and services and/or is broad enough for the organization's growing opportunities of diverse services, multiple business divisions and partnerships.
- Modify current strategic initiatives to align with new brand identity.
- Develop a brand platform, including positioning, personality, promise, differentiation, and value.

Proposal Requirements

The UCNSB will select one (1) firm from the selected list of qualified, experienced companies.

Submittals shall be clear, concise, indexed by subject, typed on letter size paper and individually bound.

Submittals shall be mailed or delivered in a sealed package clearly marked on the outside with REBRANDING / STRATEGIC INITIATIVES, ITN Number 13-17, and due date (May 23, 2017, 2:30 P.M.). Packages shall be received by the advertised deadline. Each respondent should ensure that they have received any/all addenda and amendments to this ITN before submitting their proposal.

Please have the length of the submittals contain no more than thirty (30) double-sided pages. Longer ones may not be considered.

- Provide a brief description of your firm's structure and capabilities, including basic information and history.
- List all services provided in-house and services provided by any outside consultants. If any services are to be provided by outside consultants, please provide a brief description of the firm, its role, and capabilities.
- Describe in detail your approach and process for brand development.

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- Introduce your proposed project team, including consultants. Provide background information for all personnel assigned to the project including specific experience that each team member would contribute to the project. Identify and define their individual roles.
- Provide three (3) case studies of your firm providing similar services to organizations our size within the past 5 years. These case studies must include a brief description of the brand identity services provided and a discussion of the outcome.
- Please answer: "Why are you a good fit for this project?" and "What do you see as your core values?"
- Submit a detailed schedule with your proposal for the project, which includes critical milestones.
- Provide a detailed fee proposal, which outlines the specific activities that will be performed during the brand process, and is in alignment with the project schedule.
- What services does your bid cover? What services and materials aren't included which may be necessary to fulfill the project needs?
- Provide a certificate of insurance to satisfy insurance requirements.
- References: Supply at least three (3) references that have used your professional services for a similar project. Include a contact name, address, and a contact phone number, as well as a project summary.
- You shall certify and provide a statement that you are financially stable and have the necessary resources, human and financial, to provide the services at the level required. The statement can be labeled Confidential.
- Any information you believe will help illustrate your qualifications and experiences in said projects, and that will differentiate you from other firms. Do you have experience working with companies in our industry? If so, what percentages of your clients are in our industry? Do you understand the unique challenges our industry faces, and do you have the expertise to address them? Do you understand who our customers are and what they want?

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Proposal Evaluation

Submittals will be reviewed and evaluated as to qualifications to perform the services required by a Selection Committee consisting of qualified Utilities Commission staff based upon the information submitted and the requirements requested.

Selection criteria are outlined below and will be used to evaluate proposals. The Utilities Commission intends to negotiate contract terms with the most qualified proposer. If unsuccessful, the Utilities Commission would intend to then negotiate with the next most qualified proposer, until reaching satisfactory contractual arrangements. This ITN does not commit the Utilities Commission to award a contract or to pay any costs incurred in the preparations or submission of proposals.

Selection of the successful proposal will be made by the Utilities Commission based upon the proposer's:

- Responsiveness to work scope and program needs
- Approach and process
- Demonstrated experience and expertise in similar projects (evaluation of case studies)
- References
- Comprehensiveness
- Qualifications of personnel assigned

Interviews or presentations may be requested for selection purposes. Submittals will be selected and ranked for negotiation in accordance with the CONSULTANTS' COMPETITIVE NEGOTIATIONS ACT (CCNA) Chapter 287.055, of the Florida Statutes.

Disclosure of Contents of Proposals

All proposals become a matter of public record and shall be regarded as Public Records, with the exception of those specific elements in each proposal which are designated by the proposer as Business or Trade Secrets and plainly marked "Trade Secrets", "Confidential", "Proprietary", or "Trade Secret". Items so marked shall not be disclosed unless disclosure is otherwise required under the Public Records Law. If such items are requested under the Public Records Law, the Utilities Commission will use reasonable efforts to notify the proposer, and it will be the responsibility of the proposer to seek a court order protecting the records, and to defend, indemnify, and hold harmless the Utilities Commission from any claim or action related to the Utilities Commission's non-disclosure of such information.

Proof of Registration with The Florida Secretary of State

If the successful proposer is a corporation or limited liability company, it will be required to furnish a Certificate of Good Standing from the Florida Secretary of State's Office, as proof that it is properly registered to do business in the State of Florida, prior to finalization of award and contracting.

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Applicant Ranking Sheet

DESCRIPTION	RATING (1-5)	RATING WEIGHT	Total Score
1. Approach and Process	_____	4	_____
2. Demonstrated Experience and Expertise In Similar Projects	_____	4	_____
3. Qualifications of Personnel Assigned	_____	4	_____
4. Responsiveness to Work Scope and Project Needs	_____	3	_____
5. References	_____	3	_____
6. Comprehensiveness	_____	3	_____
<b>TOTAL</b>			_____

Waiver:

The Utilities Commission, City of New Smyrna Beach, reserves the right to reject any or all proposals, to waive informalities and to accept all or any part of any proposal as may be deemed to be in the best interest of the Utilities Commission, City of New Smyrna Beach, FL.

Contract Terms

The proposed contract period for services will be negotiated based on your scope of work projections.

The Utilities Commission shall award the contract to the responsible and responsive vendor that it determines will provide the best value for its needs based on the selection criteria.

All material produced, data collected, and reports generated by this transaction on behalf of the Utilities Commission are confidential and become the exclusive property of the Utilities Commission. The contractor may not share program materials, customer data, industry or program participant contact information, etc. unless explicitly authorized by The Utilities Commission to do so except as permitted by Public Records Law.

This ITN does not commit the Utilities Commission to pay any costs incurred in the preparation of a proposal or to procure or contract for services.



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Any award as a result of this proposal shall be contingent upon the execution of an appropriate contract. The sample contract attached hereto contains the proposed terms and conditions. These terms and conditions shall form the basis of a contract covering the subject matter of this proposal. Each proposer is required to complete the Contract Certification Form provided below, by which proposer certifies that it is the proposer's intent to comply with each and every term and provision contained in the sample contract and proposes no exceptions, deviations, or modifications to the sample contract except for those separately identified on the proposer's letterhead and accompanying the proposal. On such separate sheet, proposer shall, in typewritten form, reference the article or section number, reproduce the subject language, and underline or highlight those words, phrases, sentences, paragraphs, etc. for which proposer proposes an exception, deviation, or modification. Proposer shall include a brief explanation and alternative language, if any. Any such changes to the terms and conditions of the sample contract proposed by the proposer, if any, are offered for discussion purposes only and the Utilities Commission reserves the right to accept, reject, or further negotiate any or all proposed exceptions, deviations, or modifications to the sample contract.

*I, on behalf of the proposer identified below, hereby certify that I have read a copy of the sample contract attached to this ITN and understand the terms, conditions, and provisions contained in that contract. I further certify that it is the proposer's intent to comply with each and every term and provision contained in the sample contract and propose no exceptions, deviations, or modifications to the sample contract except for those separately identified on the proposer's letterhead and accompanying the proposal. I understand that any exceptions, deviations, or modifications to the sample contract proposed by the proposer, if any, are offered for discussion purposes only and the Utilities Commission reserves the right to accept, reject, or further negotiate any or all proposed exceptions, deviations, or modifications to the sample contract.*

Proposer Name:

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Authorized Signatory:

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Name (please print):

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**AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("AGREEMENT") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the Utilities Commission, City of New Smyrna Beach, Florida, hereinafter referred to as ("Commission"), located at 200 Canal Street, New Smyrna Beach, Florida 32168, and \_\_\_\_\_, hereinafter referred to as ("Contractor"), located at \_\_\_\_\_

**WITNESSETH:**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

**ARTICLE 1. TERM**

This Agreement is to become effective upon execution by both parties. The initial term shall be one (1) year which may be renewed beyond the initial term, up to three (3) times, until either party elects to terminate the Agreement by giving written notice prior to the anniversary of the effective date.

**ARTICLE 2. DESCRIPTION OF SERVICES**

2.1 The Commission shall make request of Contractor who shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth in Exhibit A, the Scope of Work, to the Commission's satisfaction. Contractor shall generate a detailed scope document including cost and schedule to accomplish the services. The Commission will review the scope document and if approved, notify the Contractor in writing. If a site visit by Contractor is needed to generate the scope document, Contractor shall request approval prior to visiting the site.

2.2 Upon authorization by the Commission, Contractor shall perform the services which may be set forth in the Scope of Services. Contractor shall proceed only on receipt of a written Notice to Proceed defining the Scope of Work, Schedule, Not-to-Exceed Cost, and other applicable terms. The Contractor is ready, willing, and able to provide the services required by this Agreement.

2.3 Contractor shall provide Commission's designated Project Manager with monthly time sheets or labor-cost statements for services rendered during the preceding month. Each time sheet shall state the names and direct salaries of all personnel who performed services during said month under this Agreement and the number of hours each worked.

**ARTICLE 3. CHANGES IN THE SCOPE OF WORK**

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3.1 Commission may make changes in the services at any time by giving written notice to Contractor. If such changes increase, decrease or eliminate any amount of work, Commission and Contractor will negotiate any change in total cost or schedule modifications. If Commission approves, Commission shall amend the Scope of Services to reflect the modifications; and Contractor shall be compensated for said services in accordance with the terms of Article 5 herein. All change orders shall be in writing and executed by both Commission's designated representative and the Contractor.

3.2 All of Commission's said Scope of Services and amendments thereto shall be performed in strict accordance with the terms of this Agreement insofar as they are applicable.

**ARTICLE 4. SCHEDULE**

Contractor shall perform its services in conformance with the agreed upon schedule. Contractor shall complete all of said services in a timely manner and will keep Commission apprised of the status of work on a monthly basis.

**ARTICLE 5. COMPENSATION FOR SERVICES**

Commission agrees to compensate Contractor for services properly performed as negotiated and established in accordance with Article 2.0 and 3.0.

**ARTICLE 6. PAYMENT**

6.1 Invoices for Contractor's services shall be submitted to the Commission at monthly intervals for services rendered during the previous period. Each invoice shall delineate the period in which the services were rendered; shall include a summary of the progress to date as a percentage of the major phases of the work. Each invoice shall be certified as correct by a duly authorized representative of Contractor.

6.2 Commission or its authorized representative shall have the right, at all reasonable times, at its own expense, to inspect and audit the books and records of Contractor insofar as they pertain to the direct charges payable by Commission under this Agreement and such audit is performed within three (3) years after the expiration of this Agreement. The composition of fixed rates will not be subject to audit.

6.3 All invoices shall be due and payable thirty (30) days from receipt thereof by Commission, subject to Commission's right to contest, in good faith, all or any part of the charges set forth therein. Payment of invoices shall not be unreasonably withheld by Commission.

In the event Commission questions some element of an invoice, that fact shall be made known to the Contractor immediately. Contractor will help effect resolution and transmit a revised invoice as necessary. Amounts not questioned by Commission shall be promptly paid to Contractor in accordance with the above payment procedures.

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**ARTICLE 7. STATUS OF CONSULTANT:**

The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the Utilities Commission for any purpose whatsoever.

**ARTICLE 8. PROGRESS MEETING**

Commission's designated Project Manager may hold periodic progress meetings during the term of this Agreement.

**ARTICLE 9. SAFETY**

9.1 To the extent the Commission's safety standards do not violate other County, State or Federal standards; Contractor agrees to comply with Commission's safety standards while on the property of the Commission.

9.2 Contractor shall have full responsibility and assume all liability for the safety and supervision of its employees while performing services provided hereunder.

**ARTICLE 10. REASONABLE ACCESS**

During the term of this Agreement, Commission shall grant Consultant reasonable access to Commission's premises for purposes of fulfilling its obligations under this Agreement.

**ARTICLE 11. INSURANCE**

11.1 Workers' Compensation/Employer's Liability Insurance: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the Utilities Commission, as a material representation upon which the Utilities Commission is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

11.2 Commercial General Liability: Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

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**ARTICLE 12. COMPLIANCE WITH LAWS AND REGULATIONS**

12.1 Contractor shall comply with all requirements of federal, state, and local laws, rules, regulations, standards, and/or ordinances applicable to the performance of this Agreement.

12.2 Contractor is subject to the provisions of Section 287.133(2)(a), Florida Statutes, on Public Entity Crimes.

12.3 Contractor shall certify Truth in Negotiation document (Exhibit "C") if required.

**ARTICLE 13. REPRESENTATIONS**

13.1 Contractor represents that the services provided hereunder shall conform to all requirements of this Agreement; shall be consistent with recognized and sound consulting practices and procedures; and shall conform to the professional standards of care, skill, and diligence appropriate to the nature of the services rendered.

13.2 Contractor represents that the personnel furnishing such services shall be qualified and competent to perform the services assigned to them and that such guidance given by and the recommendations and performance of such personnel shall reflect their best personal knowledge and judgment.

13.3 Contractor represents that if Contractor, through its negligent acts, errors, or omissions, causes any injury to Commission or causes any physical damage to, or destruction of, any of Commission's property during the term of this Agreement, it shall be liable for said injuries and/or damages, including reasonable attorney fees and costs incurred as a result therefrom.

13.4 Should Contractor breach the representations set forth above, Commission shall have such remedies as are set forth in this Agreement. To the extent an applicable remedy is not provided herein, both Parties shall have all such remedies as allowed under the laws of the State of Florida.

13.5 Additionally, without limiting the generality of the foregoing, if prior to the expiration of two (2) years from the date Contractor completes its services hereunder, Contractor's services are negligent or erroneous and Commission notifies Contractor in writing that a negligent error or omission has been discovered in Contractor's services, Contractor shall correctly re-perform such negligent services at no additional cost to Commission and within a reasonable time period.

**ARTICLE 14. GUARANTEE AGAINST INFRINGEMENT**

Contractor guarantees that all services provided under this Agreement shall be free from claims of patent, copyright, and trademark infringement. Contractor shall indemnify, hold harmless, and defend Commission, its officers, directors, employees, agents, assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent,

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copyright, or trademark resulting from the use of any goods, services, or other item delivered under this Agreement.

**ARTICLE 15. INDEMNIFICATION**

Contractor shall, to the extent of its negligent performance, nonperformance, error or omission of its duties, pay, indemnify, and save harmless the Commission, its agents, guests, invitees, and employees from all suits, actions, claims, demands, damages, losses, expenses, including reasonable attorney's fees, costs, and judgments of every kind and description to which the Owner, its agents, guests, invitees, or employees may be subjected to by reason of injury to persons or death or third-party property damage, caused by any negligent act or omission of the Contractor or caused by the violation of any federal, state, county, or city law, by-law, ordinance, or regulation by the Contractor, its agents, trainees, invitees, servants, or employees.

**ARTICLE 16. DOCUMENTS**

16.1 Upon Commission's or its designated Project Leader's request, at any time during the term of this Agreement or upon completion or termination of this Agreement, Contractor shall provide Commission or its designated Project Leader with a copy of all documents prepared by Contractor under this Agreement. Documents shall be original and PDF versions.

16.2 The parties acknowledge that the Commission is a part of the government of the Utilities Commission of New Smyrna Beach, Florida, and subject to the Florida Public Records Law.

16.3 Contractor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the Contractor in conjunction with this Agreement. Specifically, the Contractor must:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the Commission in order to perform the services being performed by the Contractor.
- (2) Provide the public with access to public records on the same terms and conditions that the Commission would provide the records and at a cost that does not exceed the cost provided in Chapter 119, 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.
- (4) Meet all requirements for retaining public records and transfer, at no cost, to the Commission all public records in possession of the Contractor upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Commission in a format that is compatible with the information technology systems of the Commission.

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The Contractor shall promptly provide the Commission with a copy of any request to inspect or copy public records in possession of the Contractor and shall promptly provide the Commission a copy of the CONSULTANT's response to each such request. Failure to grant such public access will be grounds for immediate termination of this Agreement by the Commission.

**ARTICLE 17. ASSIGNMENT**

17.1 Contractor shall not assign or subcontract this Agreement or any rights or any monies due or to become due hereunder without the prior, written consent of Commission. All requirements to be observed by the Contractor shall be observed by all subcontractors.

17.2 If upon receiving written approval from Commission, any part of this Agreement is subcontracted by Contractor, Contractor shall be fully responsible to Commission for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.

17.3 If Commission determines that any subcontractor is not performing in accordance with this Agreement, Commission shall so notify Contractor who shall take immediate steps to cancel the subcontract, or correct the deficiency. Commission shall also be given permission to communicate directly to the subcontractor, which communication shall not constitute interference with contractor/subcontractor relationship, provided that Commission notifies Contractor in writing of said communication.

17.4 If any part of this Agreement is subcontracted by Contractor prior to commencement of any work by the subcontractor, Contractor shall require the subcontractor to provide Commission with insurance coverage as set forth by Article 11 and Exhibit "B".

**ARTICLE 18. DEFAULT**

If, during the term of this Agreement, Contractor shall be in default of any provision of this Agreement, Commission may suspend its payment or performance hereunder until such delinquency or default has been corrected; provided, however, that no suspension shall be effective unless and until Commission gives notice of the default to Contractor with at least ten (10) days to cure such default.

**ARTICLE 19. TERMINATION**

Notwithstanding any other provision of this Agreement, Commission may, upon fifteen (15) days written notice to Contractor, terminate this Agreement if: (a) Contractor is adjudged to be bankrupt; (b) Contractor makes a general assignment for the benefit of its creditors; (c) Contractor fails to comply with any of the conditions or provisions of this Agreement; or (d) Contractor is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement, without prejudice to any other right or remedy Commission may have under this Agreement; or (e) when deemed by the Commission (in its sole discretion) is in the best interest of the Commission. In the

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event of such termination, Commission shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for work properly performed prior to the effective date of termination.

**ARTICLE 20. FORCE MAJEURE**

Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strikes; extraordinary breakdown or damage to Commission's generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes.

**ARTICLE 21. NOTICE**

Any notices required to be given by the terms of this Agreement shall be delivered by hand or mailed, postage prepaid, to:

For Contractor:

For Commission:

Utilities Commission, Utilities Commission of New Smyrna Beach, Florida  
Attention: Human Resources  
P.O. Box 689  
New Smyrna Beach, FL 32170-0100  
(386) 427-1361

**ARTICLE 22. GOVERNING LAW**

This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida.

**ARTICLE 23. HEADINGS**

Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

**ARTICLE 24. SEVERABILITY**



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In the event any portion or part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of competent jurisdiction, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.

**ARTICLE 25. WAIVER AND ELECTION OF REMEDIES**

25.1 Waiver by Commission of any term, condition, or provision of this Agreement shall not be considered a waiver of any term, condition, or provision in the future.

25.2 No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

25.3 Notwithstanding any other provision of this Agreement, the provisions of Articles 13, 14 and 15 shall survive the termination or expiration of this Agreement.

**ARTICLE 26. THIRD PARTY RIGHTS**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Commission and Contractor.

**ARTICLE 27. ENTIRE AGREEMENT**

This Agreement, including the Appendix A and Exhibits "A", "B" and "C", constitutes the entire agreement between Commission and Contractor with respect to the services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

**ARTICLE 28. LIMITATION OF LIABILITY**

To the fullest extent permitted by law, Contractor's total liability for any and all claims, losses, damages and expenses resulting in any way from this Agreement shall not exceed the total compensation received by Contractor under the applicable Scope of Services notwithstanding the fault, tort (including negligence), strict liability or other basis of legal liability of the Contractor and shall extend to its officers, directors, employees, licensors, agents, subcontractors, vendors and related entities.

**ARTICLE 29. CONSEQUENTIAL DAMAGES**

Notwithstanding any provision in this Agreement to the contrary, and to the fullest extent permitted by law, Contractor shall not be liable to Commission for loss of profits, revenue, use, opportunity, and goodwill; cost of substitute facilities, goods, and services; cost of capital; and increased operating costs.

**ARTICLE 30. INTELLECTUAL PROPERTY RIGHTS**

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The Commission and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the Commission pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the Commission. The Contractor shall disclose all such items to the Commission and shall assign such rights over to the Commission upon completion of the Project. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, et seq., the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the Commission at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the Commission, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

**ARTICLE 31. CONFIDENTIAL INFORMATION**

Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the Commission, and that the disclosure of such Proprietary Data or information may be damaging to the Commission or third parties. Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the Commission to Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent contractor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be documents subject to disclosure pursuant to the Florida Public Records Law, and provided or made available to Contractor by the Commission. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

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IN WITNESS, WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

COMMISSION:

CONTRACTOR:

UTILITIES COMMISSION, CITY OF  
NEW SMYRNA BEACH, FLORIDA

By: \_\_\_\_\_  
WILLIAM R. MITCHUM  
General Manager/CEO

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

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

APPROVED AS TO FORM AND CORRECTNESS:

Its: \_\_\_\_\_

(CORPORATE SEAL)

\_\_\_\_\_  
Utilities Commission Attorney

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**EXHIBIT "A": TASK AUTHORIZATION FORM**

In accordance with the Agreement for Engineering Services, between the **UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA**, hereinafter referred to as "**COMMISSION**", located at 200 Canal Street, New Smyrna Beach, Florida 32168, and \_\_\_\_\_, hereinafter referred to as "**CONSULTANT**", located at \_\_\_\_\_, dated \_\_\_\_\_, 2017, **COMMISSION** hereby authorizes **CONSULTANT** to proceed with the services as set forth in the attached proposal and the following:

Task No.: \_\_\_\_\_

Project No.: \_\_\_\_\_

Consulting Firm: \_\_\_\_\_

Scope of Work: \_\_\_\_\_  
(reference separate document if necessary) \_\_\_\_\_

Estimated Man-Hours: \_\_\_\_\_

Estimated Cost: \_\_\_\_\_

Not-to-Exceed Cost: \_\_\_\_\_

Consultant's Project Mgr.: \_\_\_\_\_

Commission's Designated  
Project Leader: \_\_\_\_\_

CONSULTANT

Accepted By: \_\_\_\_\_ Date: \_\_\_\_\_

(Type)Name & Title: \_\_\_\_\_

UTILITIES COMMISSION

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

Director of Engineering  
Derek M. Wainscott, P.E.

Accepted By: \_\_\_\_\_ Date: \_\_\_\_\_

William Ray Mitchum  
General Manager/CEO

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**EXHIBIT "B": INSURANCE REQUIREMENTS**

**I. INSURANCE:** Except as otherwise specified in this contract, the **CONSULTANT** and its subcontractors of any tier will be required at their own expense to maintain in effect at all times during the performance of the work insurance coverage with limits set forth below with insurers and under forms of policies satisfactory to the **COMMISSION**. It shall be the responsibility of the **CONSULTANT** and its subcontractors to maintain adequate insurance coverage and to assure that subcontractors are adequately insured at all times. Failure of the **CONSULTANT** and its subcontractors to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation.

The **CONSULTANT** and its subcontractors shall furnish to the **COMMISSION** such Certificates of Insurance or endorsements required by the provisions set forth herein, which Certificates of Insurance shall name the **COMMISSION** as Additional Insured. All Certificates of Insurance must be provided by an acceptable insurance carrier to the **COMMISSION** and that the carrier should have no less rating than A - X by A.M. Best and Company. **COMMISSION** reserves the right to accept or decline carrier providing coverage.

**II. CERTIFICATES OF INSURANCE:** At the time of the execution of this contract and each subcontract, but in any event, prior to commencing work, the **CONSULTANT** and its subcontractors shall furnish the **COMMISSION** with Certificates of Insurance as evidence that the policies providing the required coverages and limits of insurance are in full force and effect. The Certificates shall provide that any company issuing an insurance policy for the work under this contract shall provide not less than thirty (30) days' advance notice to the **COMMISSION** in writing of cancellation, non-renewal, or material change in the policy of insurance. In addition, the **CONSULTANT** shall immediately provide written notice to the **COMMISSION** upon receipt of notice of cancellation of an insurance policy or a decision to terminate or alter any insurance policy. All Certificates of Insurance shall clearly state that all applicable requirements have been satisfied including certification that the Comprehensive General Liability policies are of the "occurrence form". Certificates of Insurance for **CONSULTANT** and subcontractor-furnished insurance and notices of any cancellations, terminations, or alterations of such policies shall be mailed to the **COMMISSION**'s office, ATTN: Engineering Manager, at P.O. Box 100, New Smyrna Beach, Florida 32170-0100.

**III. ADDITIONAL INSURED:** All insurance coverages (except Workers' Compensation and Professional Liability) furnished under this contract shall include the **CONSULTANT**, the **COMMISSION** and its commissioners, officials, directors, officers, agents, and employees as Additional Insured's with respect to the activities of the **CONSULTANT** and its subcontractors.

These policies shall contain a "cross-liability" or "severability of interest" clause or endorsement. Notwithstanding any other provisions of these policies, the insurance afforded shall apply separately to each insured, named insured, or Additional Insured with respect to any claim, suit, or judgment made or brought by or for any other insured, named insured, or Additional Insured as though a separate policy

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had been issued to each, except the insurer's liability shall not be increased beyond the amount or amounts for which the insurer would have been liable had only one insured been named.

**IV. WAIVER OF SUBROGATION:** The **CONSULTANT** and its subcontractors shall require their insurance carrier, with respect to all insurance policies, to waive all rights of subrogation against the **COMMISSION**, its commissioners, officials, directors, officers, agents, and employees.

**V. COMPREHENSIVE GENERAL LIABILITY:** This insurance shall be an occurrence-type policy written in comprehensive form and shall protect the **CONSULTANT** and its subcontractors and the Additional Insured's against all claims arising from bodily injury, sickness, disease, or death of any person other than the **CONSULTANT's** employees or damage to property of the **COMMISSION** or others arising out of the act or omission of the **CONSULTANT** or its subcontractors or their agents, employees, or subcontractors. This policy shall include protection against claims insured by usual Personal Injury Liability coverage and an endorsement (Protective Liability) to insure the contractual liability assumed by the **CONSULTANT** and its subcontractors under the Section entitled "Indemnification," as well as Completed Operations, Products Liability, Contractual Liability, Broad Form Property Coverage, Premises/Operations, and Independent Contractors.

Combined Single Limit: \$1,000,000 per claim and annual aggregate of \$2,000,000.

**VI. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY:** The insurance shall protect the **CONSULTANT** and its subcontractors against all claims under applicable state workers' compensation laws. The insured shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of workers' compensation laws. This policy shall include an all-states endorsement. The liability limits shall not be less than:

Workers' Compensation: Statutory

Employers' Liability: \$100,000 each accident;  
\$500,000 disease policy limit;  
and  
\$100,000 disease, each employee.

**VII. PROFESSIONAL LIABILITY:** Professional Liability insurance shall be provided in an amount of \$100,000.

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**EXHIBIT "C": TRUTH IN NEGOTIATION CERTIFICATE  
and  
STATEMENT CONCERNING COMPETITIVE ACT**

Truth in Negotiation Certificate:

For all lump-sums or cost-plus-fixed-fee professional service contracts over \$50,000 the Utilities Commission shall require the A/E firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contract negotiations.

Contracts for professional services for all lump sum or cost-plus-a-fixed-fee type of compensation shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums where the agency determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Such adjustments must be made within one year following the end of the contract.

All records of cost and expenses are available to the Utilities Commission, City of New Smyrna Beach, Florida and shall be maintained throughout this contract upon which the Lump Sum Amount was estimated and finally accepted.

Competitive Negotiations Act:

The architect, registered land surveyor or professional consultant (as applicable), warrants that he has not employed or retained any company or person, other than a bon-a-fide employee working solely for the architect, registered land surveyor or professional consultant to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for an architect, registered land surveyor, or professional consultant any fee, commission, percentage, gift, or other consideration, contingent upon or resulting from the award or making of this Agreement.

Firm Name: \_\_\_\_\_  
Authorized Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF FLORIDA, COUNTY OF \_\_\_\_\_

Before me personally appeared \_\_\_\_\_, to me well known and known to me to be the person described in and who executed the foregoing instrument.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public, State of Florida

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Witness