

**UTILITIES COMMISSION
City of New Smyrna Beach, Florida**

**REQUEST FOR STATEMENT OF QUALIFICATIONS
PROFESSIONAL SERVICES – 2019 RATE STUDY
RSQ NO. 01-19**

THE UTILITIES COMMISSION IS SEEKING STATEMENTS OF QUALIFICATIONS FROM QUALIFIED CONSULTANTS TO PROVIDE PROFESSIONAL SERVICES IN FIELD OF EXPERTISE FOR THE ENGINEERING DEPARTMENT OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA PER THE “PROJECT DESCRIPTION” AND ATTACHED EXHIBITS.

SUBMIT TWO ORIGINALS, FIVE (5) COPIES AND ONE FLASH DRIVE IN PDF FORMAT TO:

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

MAILING ADDRESS:

200 Canal Street
New Smyrna Beach, Florida 32168

WALK-IN DELIVERY ADDRESS:

200 Canal Street
New Smyrna Beach, Florida 32168

PURPOSE FOR RSQ 01-19 is to obtain and select the most highly qualified firm to provide professional expertise in a timely manner for the FY 2019 Rate Study

SUBMITTALS DUE BY: **2:30 PM; December 6, 2018** at which time only the names of the firms submitting statements of qualifications will be read aloud and recorded.

Submittals received after this deadline **will not** be considered for award.

Exhibits:

Draft Scope of Service for Rate Study

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RSQ 01-19 SCHEDULE

DISTRIBUTION OF RSQ NO.01-19:	November 5, 2018
DEADLINE FOR QUESTIONS BY 2:30 PM: E-MAIL TO mcrossman@ucnsb.org	November 13, 2018
ADDENDUM PUBLISHED BY 5:00 PM:	November 26, 2018
RSQ RETURN DEADLINE BY 2:30 PM: LOCATION: UCNSB – RECEPTION 200 CANAL STREET, NEW SMYRNA BEACH, FL 32168	December 6, 2018

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Professional Services Description

The Description below and the following Professional Services Agreement are proposed to provide the Utilities Commission, City of New Smyrna Beach (COMMISSION) ready access to a consultant whom specializes in enterprise utility rate studies for utility organizations. Submitters should be able to show their proficiency in each of the following:

GENERAL DESCRIPTION OF SERVICES NEEDED:

- Electric Usage Rate Study
- Potable Water Usage Rate Study
- Reclaimed Water Usage Rate Study
- Waste Water Usage Rate Study
- Allocation of Overhead Costs
- Data Collection and Analysis
- Assessment to Institute Development Review Fees for Plan and Policy Review (currently none) and Rates to cover costs.

SUBMITTAL REQUIREMENTS: Interested CONSULTANTS shall submit:

- Two (2) original Statement of Qualifications marked “ORIGINAL”.
- Five (5) copies of the Statement of Qualifications marked “COPY”.
- One (1) flash drive with the Statement of Qualifications in PDF format.

Failure to provide the required copies and information may result in the qualification not being considered by the UCNSB. 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 *Professional Services – FY2019 Rate Study, RSQ Number 01-19*, and due date (**December 6, 2018, 2:30 P.M.**).

Packages shall be received by the advertised deadline. Packages received after the deadline will remain unopened.

Each respondent should ensure that they have received any/all addenda and amendments to this RSQ before submitting their proposal.

Submittals should contain no more than thirty (30) double sided sheets; longer submittals **WILL** be discarded.

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RANKING SUBJECTS

CONSULTANT INFORMATION:

1. One CONSULTANT will be selected and will enter into an agreement with the COMMISSION. Provide information on the CONSULTING firm. Sub-Consultants will be considered as part of the evaluation and the submitter should include relevant information about the sub-consultant and the roles of each CONSULTANT. The COMMISSION will enter into an agreement with one CONSULTANT whom will be responsible for the sub-consultants performance, schedule, efforts, etc.

CONSULTANT EXPERIENCE:

2. The CONSULTANT should provide a list of studies within the past five (5) years showcasing the firm’s expertise for Rate Studies for Enterprise Utilities (or similar e.g. City, State, County, schools projects). Provide current names and telephone numbers to contact for project reference.

CONSULTANT’S UNDERSTANDING:

3. Description of the consultant’s understanding of, and approach to, utility specific Rate Studies

STAFFING REQUIREMENTS:

4. Staffing and organization. Listing of key personnel key to manage study. This should include key management, project leader, electrical, civil, and financial talent who will actually complete work if selected. This should include brief resumes of key persons.

LOCATION:

5. Location of the local office where staff completing study for COMMISSION work on a daily basis.
 - a. 0-75 miles 5 points
 - b. 76-120 miles 3 points
 - c. > 121 miles 1 points

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FINANCIAL STABILITY:

6. All respondents shall certify and provide a statement that they are financially stable and have the necessary resources, human and financial, to provide the services at the level required. All respondents shall be **prepared** to supply a financial statement upon request, preferable a certified audit, but a third party prepared financial statement and the latest Dun & Bradstreet report will be accepted. **The statement can be labeled Confidential.**

INSURANCE:

7. Evidence of required insurance coverages to be supplied prior to entering into a agreement for professional services and contract to perform Rate Study.

OCCUPATIONAL LICENSE:

8. Attach a copy of Occupational License for firm.

OTHER INFORMATION:

9. Information the consultant believes will help illustrate his firm's qualifications and experience in utility projects, and that will differentiate his from other firms.

Submittals will be reviewed and evaluated as to qualifications to perform the services required by a Selection Committee consisting of qualified COMMISSION staff based upon the information submitted and the requirements requested. In person interviews may be required for the committee will winnow the submittals to a short list of three (3) firms.

The top ranked firm will be selected for project contract negotiation in accordance with the CONSULTANTS' COMPETITIVE NEGOTIATIONS ACT (CCNA) Chapter 287.055, of the Florida Statutes.

WAIVER: The COMMISSION 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.

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CONSULTANT RANKING SHEET

<u>DESCRIPTION</u>	<u>AVAILABLE POINTS</u>	<u>TOTAL</u>
1. Consultant Information	<u>Maximum of 25</u>	_____
2. Consultant Experience	<u>Maximum of 25</u>	_____
3. Consultant’s Understanding	<u>Maximum of 15</u>	_____
4. Staffing Requirements	<u>Maximum of 15</u>	_____
5. Location	<u>Maximum of 5</u>	_____
6. Financial Stability	<u>Maximum of 10</u>	_____
7. Insurance	<u>Maximum of 5</u>	_____
8. Occupational License	<u>Maximum of 5</u>	_____
9. Other Information	<u>Maximum of 5</u>	_____
	MAX 110	TOTAL

Negotiation and Professional Service Contracts

- After the Selection Committee has made their selection, the director of engineering will agenda with the Commission a recommendation for approval of the agreement (sample below).
 - The director of engineering is not permitted to be on or discuss submittals with the submitters, nor the Selection Committee.
- After Commission approval of the service agreement, the director of engineering will conduct fee and contract negotiations with the selected CONSULTANT. The parties will:
 - Agree upon the full scope of services to be supplied; and,
 - Agree upon compensation
- After a contract is negotiated, the director of engineering will submit the contract with fee to the COMMISSION for approval.

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AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES

SAMPLE

THIS AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES (“AGREEMENT”) is made and entered into this _____ day of _____, 20____, by and between the **UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA**, (hereafter "**COMMISSION**"), located at 200 Canal Street, New Smyrna Beach, Florida 32168, and _____, (hereafter "**CONSULTANT**"), located at _____.

RECITALS

1. The **COMMISSION** was created by special act of the Florida Legislature as a political subdivision of the State of Florida with certain powers, authorities, and duties related to the provision of water, wastewater, reclaimed water, and electric utility services, including the authority to enter into contracts.
2. The **COMMISSION** wishes to obtain consulting services on a continuing basis.
3. The **CONSULTANT** is willing to provide such consulting services.

ACCORDINGLY, for and in consideration of the Recitals hereof, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the Parties, the Parties hereby covenant and agree as follows:

SECTION 1. RECITALS.

The above Recitals are true and correct and form a material part of this Agreement.

SECTION 2. TERM.

This Agreement is to become effective upon execution by both parties. The initial term shall be one (1) year.

Additionally, the parties agree that this Agreement may be automatically renewed beyond the initial term, up to three (3) times, unless either party elects to terminate the Agreement by giving written notice prior to the anniversary of the effective date.

SECTION 3. DESCRIPTION OF SERVICES.

3.1 The **COMMISSION** shall make request of **CONSULTANT** to perform engineering services on a Task Authorization (“Exhibit A”) basis. The **COMMISSION** will communicate with **CONSULTANT** orally or in writing providing a description of the task to be performed. **CONSULTANT** shall generate a detailed scope document including cost and schedule to accomplish the task. The **COMMISSION** will review the scope document and if approved, notify the **CONSULTANT** in writing. If a site visit by

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CONSULTANT is needed to generate the scope document, **CONSULTANT** shall request approval prior to visiting the site.

3.2 Upon authorization by the **COMMISSION**, **CONSULTANT** shall perform the services of design, specification preparation, bid evaluation, construction management services, and all other services which may be set forth in the Scope of Services and authorized by Task Authorization. **CONSULTANT** 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.

3.3 **CONSULTANT** 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 “*billing rates of all personnel*” who performed services during said month under this Agreement and the number of hours each worked.

SECTION 4. CHANGES IN THE SCOPE OF WORK.

4.1 **COMMISSION** may make changes in the services at any time by giving written notice to **CONSULTANT**. If such changes increase, decrease or eliminate any amount of work, **COMMISSION** and **CONSULTANT** 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 **CONSULTANT** shall be compensated for said services in accordance with the terms of Section 5 herein. All change orders shall be in writing and executed by both **COMMISSION'S** designated representative and the **CONSULTANT**.

4.2 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.

SECTION 5. SCHEDULE.

5.1 **CONSULTANT** shall perform its services in conformance with the agreed upon schedule. **CONSULTANT** shall complete all of said services in a timely manner and will keep **COMMISSION** apprised of the status of work on a monthly basis. Should **CONSULTANT** fall behind the agreed-upon schedule, it shall employ such resources so as to comply with the agreed-upon schedule.

5.2 No extension for completion of services shall be granted to **CONSULTANT** without **COMMISSION's** prior written consent, except as provided in Sections 4.1 and 22.1 herein.

SECTION 6. COMPENSATION FOR SERVICES

COMMISSION agrees to compensate **CONSULTANT** for services properly performed as negotiated and established in accordance with Sections 3.0 and 4.0 hereof.

SECTION 7. PAYMENT; INVOICES.

7.1 Invoices for **CONSULTANT'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

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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 **CONSULTANT**.

7.2 **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 **CONSULTANT** 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.

7.3 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**, but the **COMMISSION** reserves the right to reject any statement which fails to adequately describe the services rendered by **CONSULTANT**. Upon written notice to **CONSULTANT**, payment may be withheld, in whole or in part, for **CONSULTANT'S** failure to comply with a term, condition or requirement of this Agreement. **CONSULTANT** will help effect resolution and transmit a revised invoice as necessary. Thereafter, the withheld amount(s) shall be paid upon **CONSULTANT'S** satisfactory demonstration of compliance to the **COMMISSION**. Amounts not questioned by **COMMISSION** shall be promptly paid to **CONSULTANT** in accordance with the above payment procedures.

SECTION 8. RIGHT TO INSPECTION.

COMMISSION or its affiliates shall at all times have the right to review or observe the services performed by **CONSULTANT**.

No inspection, review, or observation shall relieve **CONSULTANT** of its responsibility under this Agreement.

SECTION 9. PROGRESS MEETING.

COMMISSION'S designated Project Manager may hold periodic progress meetings on a monthly basis, or more frequently if required, during the term of this Agreement. **CONSULTANT'S** Services Project Manager and only appropriate consultants shall attend all scheduled meetings as designated by **COMMISSION'S** Project Manager, and **CONSULTANT** shall be compensated at the billing rates set forth in Section 6.

SECTION 10. SAFETY.

To the extent the **COMMISSION'S** safety standards do not violate other County, State or Federal standards, **CONSULTANT** agrees to comply with **COMMISSION'S** safety standards while on the property of the **COMMISSION**.

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

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SECTION 11. 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.

SECTION 12. INSURANCE.

12.1 **CONSULTANT** shall maintain in force during the term of this Agreement, at its own expense, public liability insurance and other insurance coverage as set forth in Exhibit "B" which is hereby made a part of this Agreement.

12.2 **CONSULTANT** and **COMMISSION** waive all rights against each other and their respective directors, officers, partners, commissioners, officials, agents, subcontractors, consultants, and employees for damages covered by any type of property insurance during and after the completion of the services. A similar provision shall be incorporated into all construction contractual arrangements entered into by **COMMISSION** and shall protect **COMMISSION** and **CONSULTANT** to the same extent. All project contractors shall be required to include **COMMISSION** and **CONSULTANT** as additional insureds on their general liability insurance policies.

PURSUANT TO §558.0035, FLORIDA STATUTES, A DESIGN PROFESSIONAL EMPLOYED BY A BUSINESS ENTITY IS NOT INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF A PROFESSIONAL SERVICES CONTRACT IF ALL PROVISIONS IN SAID STATUTE ARE IN COMPLIANCE.

SECTION 13. STANDARDS OF CONDUCT; COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS.

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

13.2 The **CONSULTANT** covenants that it or any of its employees presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of services hereunder.

13.3 The **CONSULTANT** agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313, Florida Statutes, as it relates to services performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. The **CONSULTANT** agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the services performed.

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13.4 The **CONSULTANT** shall comply with all federal, state, and local laws, and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

13.5 The **CONSULTANT** warrants that he 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 he has not paid or agreed to pay any person, company, corporations, individual, or firm, other than a bona fide employee working solely for the **CONSULTANT** any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement.

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

13.7 **CONSULTANT** shall certify Truth in Negotiation document (Exhibit "C") if required.

SECTION 14. CONSULTANT'S REPRESENTATIONS.

On behalf of its employees, agents, servants and contractors, Consultant represents and warrants to the **COMMISSION** each of the following:

14.1 **CONSULTANT** 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.

14.2 **CONSULTANT** 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.

14.3 **CONSULTANT** represents that if **CONSULTANT**, 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.

14.4 **CONSULTANT** represents that none of **CONSULTANT'S** principals or the immediate family of **CONSULTANT'S** principals has a compensation arrangement of any kind with **COMMISSION**. For purposes of this subsection, the term "immediate family" shall include a spouse, natural or adoptive parent, child or sibling, stepparent, stepchild, stepbrother or stepsister, father-in-law, mother-in-law, grandparent, grandchild or spouse of a grandparent or grandchild. For purposes of this subsection, compensation shall be defined as any type of remuneration directly or indirectly, overtly or covertly, paid in cash or in kind.

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14.5 **CONSULTANT** represents that it is not undergoing any type of audit by a public or private, state or regulatory body or auditing entity.

14.6 **CONSULTANT** represents that it and its principals have not engaged in, and during the term of this Agreement agree not to engage in, any activities prohibited under the federal anti-kickback laws (42 U.S.C. 1320a-7, 1320a-7a, 1320a-7b), the regulations promulgated pursuant to such federal statutes, related state or local statutes or regulations, or rules of professional conduct.

14.7 Should **CONSULTANT** 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.

SECTION 15. GUARANTEE AGAINST INFRINGEMENT.

CONSULTANT guarantees that all services provided under this Agreement shall be free from claims of patent, copyright, and trademark infringement. **CONSULTANT** 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, copyright, or trademark resulting from the use of any goods, services, or other item delivered under this Agreement.

SECTION 16. INDEMNIFICATION.

CONSULTANT shall, to the extent of its negligent performance, nonperformance, error or omission of its duties, pay, indemnify, and save harmless the **COMMISSION**, its agents, and employees from all suits, actions, claims, demands, damages, losses, expenses, including reasonable attorney's fees, costs, of every kind and description to which the Owner, its agents, 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 **CONSULTANT** or caused by the violation of applicable federal, state, county, or city law, by-law, ordinance, or regulation by the **CONSULTANT**, its agents, trainees, invitees, servants, or employees.

SECTION 17. AUDIT; PUBLIC RECORDS RETENTION; DOCUMENTS; OWNERSHIP.

17.1 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, **CONSULTANT** shall provide **COMMISSION** or its designated Project Leader with a copy of all documents prepared by **CONSULTANT** under this Agreement. Documents shall be original and PDF versions.

17.2 The parties acknowledge that the **COMMISSION** is a part of the government of the City of New Smyrna Beach, Florida, and subject to the Florida Public Records Law.

CONSULTANT has been advised the **COMMISSION** that all its activities are subject to the Public Records Law (Chapter 119, Florida Statutes) and the Sunshine Law (Section 286.011, Florida Statutes), and agrees to maintain all records necessary to comply with the requirement of such laws, and for the

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proper supervision of the services performed pursuant to this Agreement. **CONSULTANT** agrees to comply with all **COMMISSION** policies and procedures in observing the requirement of said laws.

17.3 **CONSULTANT** 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 **CONSULTANT** in conjunction with this **AGREEMENT**. Specifically, the **CONSULTANT** 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 **CONSULTANT**.
- (2) Upon request from the **COMMISSION** custodian of public records, **CONSULTANT** shall provide the **COMMISSION** with a copy of the requested records within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (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 **CONSULTANT** 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**.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-424-3001, 200 CANAL ST, NEW SMYRNA BEACH, FL 32168, DSIMMONS@UCNSB.ORG.

The **CONSULTANT** shall promptly provide the **COMMISSION** with a copy of any request to inspect or copy public records in possession of the **CONSULTANT** 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**.

17.4 **COMMISSION** shall have the right to audit the books, records and accounts of **CONSULTANT** that are related to the performance of Services pursuant to this Agreement. **CONSULTANT** shall keep such books, records and accounts as may be necessary in order to record complete and correct entries related to this Agreement. **CONSULTANT** shall preserve and make available, at reasonable times for examination and audit by **COMMISSION**, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or if the Florida Public Records Act is not applicable for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit

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findings If the Florida Public Records Act is determined by **COMMISSION** to be applicable to **CONSULTANT'S** records, **CONSULTANT** shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by **CONSULTANT**. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for **COMMISSION** disallowance and/or recovery of any payment upon such entry. The **CONSULTANT** shall retain all records relating to this Agreement for five years after the **COMMISSION** makes final payment and all other pending matters are closed.

17.5 Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of **COMMISSION**. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by **CONSULTANT**, whether finished or unfinished, shall become the property of **COMMISSION** and shall be delivered by **CONSULTANT** to the **COMMISSION** within seven (7) days of termination of this Agreement by either party. Any compensation due to **CONSULTANT** may be withheld until all documents are received as provided herein.

SECTION 18. ASSIGNMENT

18.1 **CONSULTANT** 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 **CONSULTANT** shall be observed by all subcontractors.

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

18.3 If **COMMISSION** determines that any subcontractor is not performing in accordance with this Agreement, **COMMISSION** shall so notify **CONSULTANT** 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 **CONSULTANT** in writing of said communication.

18.4 If any part of this Agreement is subcontracted by **CONSULTANT** prior to commencement of any work by the subcontractor, **CONSULTANT** shall require the subcontractor to provide **COMMISSION** with insurance coverage as set forth by Section 11 and Exhibit "B".

SECTION 19. INDEPENDENT CONTRACTOR.

The parties intend that an independent contractor relationship will be created by this Agreement. It is understood that **COMMISSION** does not agree to use **CONSULTANT** exclusively. It is further understood that **CONSULTANT** is free to contract for similar services to be performed for others while under contract with **COMMISSION**. The parties expressly acknowledge that **CONSULTANT** is an independent consultant, and nothing contained in this Agreement will be deemed or construed to create a

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partnership or joint venture between **COMMISSION** and **CONSULTANT** or any other relationship between the parties. Additionally, nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, or to allow **COMMISSION**, or its agents, representative, or employees, to exercise control or direction over the manner or method by which Consultant performs any services which are the subject of this Agreement.

SECTION 20. AUTHORIZATION.

CONSULTANT shall not, without authorization first being given by **COMMISSION**: a) Use or pledge money or credit of the **COMMISSION**, except in the usual and regular course of business and on account of or for the benefit of the **COMMISSION**; b) Release or discharge any debt due to **COMMISSION** without receiving the full amount thereof; c) Commit any act causing seizure or attachment of the **COMMISSION'S** property; or d) Cause **COMMISSION** to become a guarantor, surety, or endorser, or give any note which obligates the **COMMISSION**.

SECTION 21. TAXES.

CONSULTANT shall assume full responsibility for payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, Social Security, and income tax laws, with respect to **CONSULTANT'S** performance of this Agreement.

SECTION 22. DEFAULT.

If, during the term of this Agreement, **CONSULTANT** 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 **CONSULTANT** with at least ten (10) days to cure such default.

SECTION 23. TERMINATION.

Notwithstanding any other provision of this Agreement, **COMMISSION** may, upon fifteen (15) days written notice to **CONSULTANT**, terminate this Agreement if: (a) **CONSULTANT** is adjudged to be bankrupt; (b) **CONSULTANT** makes a general assignment for the benefit of its creditors; (c) **CONSULTANT** fails to comply with any of the conditions or provisions of this Agreement; or (d) **CONSULTANT** 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 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.

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SECTION 24. 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.

SECTION 25. NOTICE.

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

For CONSULTANT:

For COMMISSION:

Utilities Commission, City of New Smyrna Beach, Florida
Attention: Director of Engineering
P.O. Box 100
New Smyrna Beach, FL 32170-0100
(386) 427-1361

SECTION 26. GOVERNING LAW.

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

SECTION 27. SEVERABILITY.

In the event any portion of 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.

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SECTION 28. WAIVER AND ELECTION OF REMEDIES.

28.1 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.

28.2 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.

28.3 Notwithstanding any other provision of this Agreement, the provisions of Sections 14, 15 and 16 shall survive the termination or expiration of this Agreement.

SECTION 29. THIRD PARTY RIGHTS.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than **COMMISSION** and **CONSULTANT**.

SECTION 30. LIMITATION OF LIABILITY.

To the fullest extent permitted by law, **CONSULTANT'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 **CONSULTANT** under the applicable Scope of Services notwithstanding the fault, tort (including negligence), strict liability or other basis of legal liability of the **CONSULTANT** and shall extend to its officers, directors, employees, licensors, agents, subcontractors, vendors and related entities.

SECTION 31. CONSEQUENTIAL DAMAGES.

Notwithstanding any provision in this Agreement to the contrary, and to the fullest extent permitted by law, **CONSULTANT** 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.

SECTION 32. ENTIRE AGREEMENT.

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

SECTION 33. JOINT PREPARATION.

Preparation of this Agreement has been a joint effort of **COMMISSION** and **CONSULTANT** and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

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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:

UTILITIES COMMISSION, CITY OF
NEW SMYRNA BEACH, FLORIDA

By: _____

Its: General Manager/CEO _____

ATTEST: _____

APPROVED AS TO FORM AND CORRECTNESS:

Utilities Commission Attorney

CONSULTANT:

By: _____

Its: _____

ATTEST: _____

Its: _____

(CORPORATE SEAL)

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EXHIBIT "A": TASK AUTHORIZATION FORM

In accordance with the Agreement for Continuing Professional 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 _____, **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) _____

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: _____

Derek Wainscott, P.E.
Director of Engineering

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 had

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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. COMPREHENSIVE AUTOMOBILE LIABILITY: This insurance shall be written in the comprehensive form and shall protect the **CONSULTANT** and its subcontractors and the Additional Insured's against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. The liability shall not be less than:

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

VII. 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.

VIII. 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 bonafide 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 _____, 20__.

Notary Public, State of Florida

My commission expires _____

Witness

Date

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FREQUENTLY ASKED QUESTIONS

1. What firms currently hold the contract to provide services?
 - a. This is a specific RSQ for one specific study. Currently, no firm is retained for these services.

2. Who will be on the selection committee?
 - a. A five (5) member selection committee is comprised of the Commission's:
 1. Legal Counsel
 2. Controller
 3. Director of System Operations
 4. Director of Water Resources
 5. Customer Service Manager

3. Can you tell me if there are any specific projects that have been identified at present for this contract?
 - a. This RSQ is for a single project as defined in the RSQ for a single Rate Study

4. Does it have to be double-sided?
 - a. The Commission wants to limit the number of sheets in each submittal to 30. Double-sided responses are permitted. As mentioned on Page 4, submittals longer than thirty (30) sheets will be discarded. (Yes, firms ask this question)

5. Are the three (3) references for the three (3) current similar contracts or should the three (3) references be separate? What would be preferred?
 - a. Three (3) references for current similar contracts is preferred, but we will review separate references.