

UTILITIES COMMISSION
City of New Smyrna Beach, Florida

REQUEST FOR STATEMENT OF QUALIFICATIONS
CONTINUING PROFESSIONAL HYDROGEOLOGICAL SERVICES
RSQ NO. 20-20

THE UTILITIES COMMISSION IS SEEKING STATEMENTS OF QUALIFICATIONS FROM QUALIFIED CONSULTANTS TO PROVIDE CONTINUING PROFESSIONAL HYDROGEOLOGICAL SERVICES FOR THE ENGINEERING DEPARTMENT OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA PER THE ATTACHED SPECIFICATIONS.

SUBMIT ONE ORIGINAL, THREE COPIES AND ONE FLASH DRIVE IN PDF FORMAT TO:

Maureen Lynch, CPPB
Materials Manager
Utilities Commission,
City of New Smyrna Beach, FL
(386) 424 3046 Telephone
(386) 424 2732 Fax
mlynch@ucnsb.org

MAILING ADDRESS:

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

WALK-IN DELIVERY ADDRESS:

200 Canal Street
New Smyrna Beach, Florida 32168

PURPOSE FOR RSQ is to obtain and select the most highly qualified firms to provide professionals expertise in a timely manner on an as needed basis. Submittals received after this deadline **will not** be considered for award.

SUBMITTALS DUE BY: **2:30 PM; June 4, 2020** at which time only the names of the firms submitting statements of qualifications will be read aloud and recorded. Vendors are encouraged not to attend bid openings in person but to attend by phone. A Teleconference phone number and PIN will be released prior to the bid opening. UCNSB takes this step in an abundance of caution for the safety and wellbeing of our staff and community.

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RSQ SCHEDULE

DISTRIBUTION OF RSQ NO. 20-20:	May 4, 2020
DEADLINE FOR QUESTIONS BY 2:30 PM: E-MAIL TO mlynch@ucnsb.org	May 18, 2020
ADDENDUM PUBLISHED BY 5:00 PM:	May 26, 2020
RSQ RETURN DEADLINE BY 2:30 PM: LOCATION: UCNSB – RECEPTION 200 CANAL STREET, NEW SMYRNA BEACH, FL	June 4, 2020

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Continuing Professional Hydrogeological Services Agreements

BACKGROUND:

The COMMISSION's Water Resource Division currently has twenty-three (23) production wells located in 4 wellfields. Due to the age of some of these wells, redevelopment, routine maintenance/evaluations may be necessary to ensure reliability.

GENERAL SCOPE OF SERVICE:

The COMMISSION is seeking the services of a consultant to provide Professional Hydrogeological and Well Services for the repair testing of existing wells and associated well head appurtenances and pumps. The scope of services shall consist of, but not limited to:

- A. Professional Hydrogeological Services
 - a. Development of a Data Collection and Evaluation Program for each well.
 - b. Onsite observation and direction during field work.
 - c. Evaluation of geophysical and TV survey data.
 - d. Remedial Well Development Program to restore wells through acidization, wire brush the casing, air lift, and/or Airburst technique, if needed.
 - e. Provide written reports on findings, CD/DVD copies of the geophysical logs and TV survey and make recommendations to the COMMISSION on a course of future action to improve water quality.
 - f. Assist during the drilling of new production wells to ensure that chloride quality and yield tests are performed as the wells are constructed in an effort to "dial in" and find a beneficial zone for source water.
 - g. Assist with the development of the Alternative Water Supply Plan – brackish water production and monitoring wells.

- B. Well Field Services
 - a. Mobilize personnel and equipment to each well site.
 - b. Remove and inspect the well pump(s) and related equipment, provide the COMMISSION with recommendations for pump repairs or pump replacement.
 - c. Install and operate a test pump as required to complete well work.

- d. Conduct static and pumped geophysical logs.
- e. Conduct static and pumped TV survey.
- f. Deliver pump to shop for evaluation, make any needed repairs to the pumps with COMMISSION approval.
- g. Re-install the repaired or new pump; and
- h. Flow test and adjust the pump.

The consultant shall be specialized in well field development, well evaluations and emergency response. Furthermore, they should have extensive knowledge of the Floridan Aquifer and be familiar with wells located in Volusia County. The consultant shall have a professional geologist within their team to evaluate the needs of each of the wells. Each individual well shall be treated on a case-by-case basis. The consultant shall determine what developmental method is needed to restore a well to proper operation.

QUALIFICATIONS/CERTIFICATIONS:

The preferred firm will have a current professional registration certificate from the appropriate governing board. A firm must be properly registered at the time of its submittal to practice their profession in the State of Florida.

EVALUATION METHOD:

The COMMISSION will appoint a committee consisting of Commission staff to evaluate the proposals and to make recommendations. The COMMISSION will be the sole judge of its own best interests, the proposals, and the resulting contract. The COMMISSION's decisions will be final. Award will be made to the proposal, which presents the best value to the COMMISSION based on the entire evaluation process and all the information gathered including price/cost. The COMMISSION may require the short-listed firm (s) to do an oral presentation or have discussions by proposed team relative to their specific experience on similar projects. Note: Respondents are prohibited from contacting any of the committee members, other than the Procurement Manager prior to the recommendation of award from the committee.

EVALUATION CRITERIA:

The following criteria will be used in the evaluation of the proposals:

- A. Qualifications, experience and project approach:
 - Professional license, certifications, titles, and accomplishments of staff;
 - Credentials, qualifications and years' experience of the staff for both the prime and sub consultants and key personnel as presented by resumes, education, and training;
 - Affiliations, memberships, and officers of staff in professional organization;
 - Number of years prime and sub consultants worked together;
 - Experience in providing similar projects;
 - Overall project approach to support the needs and objectives of the project;
 - Quality of performance or previous contracts or services;

- Whether the firm can perform the contract or provide the service within budget requirements, promptly or within the time specified, without delay or interference;
- Quality, availability and adaptability of the contractual services to the particular use required;
- Sufficiency of the financial resources and ability of the firm to perform the contract or provide the services;
- Character, integrity, reputation, judgment, and efficiency of the firm;
- Previous and existing compliance by the firm with laws and ordinance relating to the contract or services;
- Location of office facilities and staff within a local area (Volusia County preferred, Central Florida in general);

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SUBJECTS:

QUALIFICATIONS DATA:

1. Listing of projects within firm's expertise for other utility corporations, with project data, done within the last ten years, with names and telephone numbers to contact for project reference.

CONSULTANT'S UNDERSTANDING:

2. Description of the consultant's understanding of and approach to utility specific projects.

STAFFING REQUIREMENTS:

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

LOCATION:

4. Locations of the local office where bulk of UCNSB project work will be completed.

FINANCIAL STABILITY:

5. 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:

6. Evidence of required insurance coverages to be supplied prior to entering into a contract.

OCCUPATIONAL LICENSE:

7. Attach a copy of Occupational License for firm. Subcontractors, if used, will also be required to provide Occupational License.

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REFERENCES:

8. Three (3) references and three (3) current similar contracts.

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 UCNSB staff based upon the information submitted and the requirements requested. The committee will winnow the submittals to a short list of three (3) firms per task. In person interviews may be required for selecting the shortlist of three (3) firms. If interviews are required no more than five (5) firms will be interviewed from which the three (3) firms will be selected and ranked for negotiation in accordance with the CONSULTANTS' COMPETITIVE NEGOTIATIONS ACT (CCNA) Chapter 287.055, of the Florida Statutes.

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.

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SUBMITTAL REQUIREMENTS: Interested firms shall submit:

- One (1) original Statement of Qualifications marked “ORIGINAL”.
- Three (3) 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. 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 Continuing Professional Services, RSQ Number 20-20, and due date (June 4, 2020 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 RSQ before submitting their proposal.** Submittals should contain no more than thirty (30) double sided pages; longer submittals **WILL** be discarded.

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CONSULTANT RANKING SHEET

DESCRIPTION	RATING (1-5)	RATING WEIGHT	TOTAL
1. Qualifications Data	_____	_____ 5 _____	_____
2. Consultants Understanding	_____	_____ 2 _____	_____
3. Staffing Requirements	_____	_____ 4 _____	_____
4. Location	_____	_____ 3 _____	_____
5. Financial Stability	_____	_____ 3 _____	_____
6. Insurance	_____	_____ 2 _____	_____
7. Occupational License	_____	_____ 2 _____	_____
8. References	_____	_____ 3 _____	_____
9. Other Information	_____	_____ 4 _____	_____
MAX 140		TOTAL	_____

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SAMPLE

AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES

THIS AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES (“AGREEMENT”) is made and entered into this _____ day of _____, 2020, 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 (“**CONSULTANT**”), located at _____

WITNESSETH:

WHEREAS, the **COMMISSION** wishes to obtain consulting services on a continuing basis; and

WHEREAS, the **CONSULTANT** is willing to provide such consulting services;

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

ARTICLE 1. TERM

1.1 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.

ARTICLE 2. DESCRIPTION OF SERVICES

2.1 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

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

2.2 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.

2.3 **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 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

3.1 **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 Article 5 herein. All change orders shall be in writing and executed by both **COMMISSION's** designated representative and the **CONSULTANT**.

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

4.1 **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.

4.2 No extension for completion of services shall be granted to **CONSULTANT** without **COMMISSION's** prior written consent, except as provided in Sections 3.1 and 21.1 herein.

ARTICLE 5. COMPENSATION FOR SERVICES

5.1 **COMMISSION** agrees to compensate **CONSULTANT** for services properly performed as negotiated and established in accordance with Article 2.0 and 3.0.

ARTICLE 6. PAYMENT

6.1 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 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**.

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 **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.

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 **CONSULTANT** immediately. **CONSULTANT** will help effect resolution and transmit a revised invoice as necessary. Amounts not questioned by **COMMISSION** shall be promptly paid to **CONSULTANT** in accordance with the above payment procedures.

ARTICLE 7. RIGHT TO INSPECTION

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

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

ARTICLE 8. PROGRESS MEETING

8.1 **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 Article 5.

ARTICLE 9. SAFETY

9.1 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**.

9.2 **CONSULTANT** 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

10.1 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 **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.

11.2 **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.

ARTICLE 12. COMPLIANCE WITH LAWS AND REGULATIONS

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

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

ARTICLE 13. REPRESENTATIONS

13.1 **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.

13.2 **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.

13.3 **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.

13.4 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.

Additionally, without limiting the generality of the foregoing, if prior to the expiration of two (2) years from the date **CONSULTANT** completes its services hereunder, **CONSULTANT**'s services are

negligent or erroneous and **COMMISSION** notifies **CONSULTANT** in writing that a negligent error or omission has been discovered in **CONSULTANT's** services, **CONSULTANT** shall correctly reperform such negligent services at no additional cost to **COMMISSION** and within a reasonable time period.

ARTICLE 14. GUARANTEE AGAINST INFRINGEMENT

14.1 **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.

ARTICLE 15. INDEMNIFICATION

15.1 **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, 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 **CONSULTANT** or caused by the violation of any federal, state, county, or city law, by-law, ordinance, or regulation by the **CONSULTANT**, 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, **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.

16.2 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.

16.3 **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) 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 **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**.

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**.

ARTICLE 17. ASSIGNMENT

17.1 **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.

17.2 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.

17.3 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.

17.4 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 Article 11 and Exhibit "B".

ARTICLE 18. INDEPENDENT CONTRACTOR

18.1 At all times during the term of this Agreement, **CONSULTANT** shall be considered an independent contractor.

ARTICLE 19. DEFAULT

19.1 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.

ARTICLE 20. TERMINATION

20.1 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.

ARTICLE 21. FORCE MAJEURE

21.1 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 22. NOTICE

22.1 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

ARTICLE 23. GOVERNING LAW

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

ARTICLE 24. HEADINGS

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

ARTICLE 25. SEVERABILITY

25.1 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.

ARTICLE 26. WAIVER AND ELECTION OF REMEDIES

26.1 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.

26.2 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.

26.3 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 27. THIRD PARTY RIGHTS

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

ARTICLE 28. ENTIRE AGREEMENT

28.1 This Agreement, including the Appendix A and 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.

ARTICLE 29. LIMITATION OF LIABILITY

29.1 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.

ARTICLE 30. CONSEQUENTIAL DAMAGES

30.1 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.

ARTICLE 31. TERMS

31.1 Terms used in this **AGREEMENT** will have the meanings indicated in the General Terms and Conditions.

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.

OWNER:

CONSULTANT:

UTILITIES COMMISSION, CITY OF
NEW SMYRNA BEACH, FLORIDA

By: _____
Joseph G. Bunch
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 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 _____, 2020, **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: _____

Julie A. Couillard, P.E.
Director of Engineering

Accepted By: _____ Date: _____

Joseph G. Bunch
General Manager/CEO

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 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.

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 _____, 2020.

Notary Public, State of Florida

My commission expires _____

Witness

Date