

## Addendum #1: Answers to Questions

**NOTE:** To give firms more time to develop their responses, the submittal deadline for this RFQ will be extended to October 7, 2020 at 4:00pm.

**Question 1:** I am emailing to inquire about how many firms the City plans to award contracts to for the Mexico Beach Pier project once proposals are submitted?

**Answer 1:** The City reserves the right to award contracts to multiple firms if it is determined that this is in the City's best interest. However, it is likely that only one firm will be awarded and the City reserves the right to reject any or all response, to waive informalities, or to re-advertise for Statements of Qualifications as outlined in the Request for Qualifications.

**Question 2:** I wanted to know how you would like us to name each section that would go in the proposal?

Should it be separated by the tabs under "Selection Criteria"

- A. Vision/Approach
- B. Experience on Similar Projects
- C. Qualifications of Person Proposed to Do the Work
- D. Local Knowledge and In-House Services

Or should it be separated as in "Submission Format"

- A. Letter of Transmittal
- B. Organization Profile and Qualification
- C. References
- D. Other Information

**Answer 2:** It is preferred that the tabs be separated as outlined under "Submission Format." The "Selection Criteria" may be addressed throughout any/all sections of the submittal, but can be addressed directly correlated to the above outline (A. Vision/Approach, B. Experience on Similar Projects...) within the "Other Information" section.

**Question 3:** For Section III. Submission Format (RFQ page 7) - C is missing. Please confirm whether or not there is a section missing.

**Answer 3:** This was a formatting error in the document. There is not a sub-section missing. There are 4 sub-sections under the Submission Format heading: Letter of Transmittal, Organization Profile and Qualifications, References, Other Information.

**Question 4:** Per requirements in section II. Selection Criteria A (RFQ page 5) – In which section in our response would you like us to detail our approach?

**Answer 4:** See Answer #2 above.

**Question 5:** Per requirements in section II. Selection Criteria A (RFQ page 5) – In which section in our response would you like us to include information on our experience with similar projects?

**Answer 5:** See Answer #2 above.

**Question 6:** Due to the circumstances surrounding COVID-19, would you consider permitting the submission of electronic copies instead of hard copies?

**Answer 6:** All submissions must be made as outlined in the Request for Qualifications (Special Instructions and Conditions, Part I). As described in this Addendum #1, the deadline for submission has been extended to allow sufficient time for delivery of submittals.

**Question 7:** Are we permitted to hand deliver our proposal? If so, please confirm we are to hand deliver at the following address provided in the RFQ: 201 Paradise Path, Mexico Beach, FL 32410

**Answer 7:** Yes, hand delivery of proposals is permitted, but must be received by the deadline identified above in this addendum. The submitting firm will be solely responsible for ensuring that submittal package arrives prior to the deadline. No exceptions will be made.

**Question 8:** Will the City consider the following changes to the proposed contract language?:

## ARTICLE 9 – INSURANCE & BONDS

### **A. Indemnification**

The parties recognize that the ENGINEER is an independent contractor. The ENGINEER agrees to ~~assume liability for and indemnify, hold harmless, and defend~~ the City, its ~~commissioners, mayor, officers, employees, agents, and attorneys of,~~ from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the ENGINEER, its agents, officers, contractors, subcontractors, employees, or anyone else employed or utilized by the ENGINEER in the performance of this Agreement. The ENGINEER's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the ENGINEER against the City ~~and~~ ENGINEER hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes.

The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement. ~~Subject to the limitations set forth in this Section, the ENGINEER shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the ENGINEER's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving ENGINEER of any of its obligations hereunder. If the ENGINEER assumes control of the defense of any third party claim in accordance with~~

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~~this paragraph, the ENGINEER shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the ENGINEER shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the ENGINEER has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.~~

~~It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.08, Florida Statutes, as amended. ENGINEER expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.08, Florida Statutes, as amended. Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.~~

1. Purports to waive protection expressly granted by statute.
2. Expressly prohibited by Fla. Stat. Sec. 725.08(2).

#### **ARTICLE 10 - EXCUSABLE DELAYS**

The ENGINEER shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the ENGINEER'S control and without its fault or negligence. Such causes may

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include but are not limited to: acts of God; the City's omissive and commissive failures; natural or public health emergencies; labor disputes; freight embargoes; and severe weather conditions. If failure to perform is caused by the failure of the ENGINEER'S ENGINEER(s) and is without the fault or negligence of them, the ENGINEER shall not be deemed to be in default.

Upon the ENGINEER'S request, the CITY shall consider the facts and extent of any failure to perform the work and, if the ENGINEER'S failure to perform was without its fault or negligence ~~as determined by the CITY~~, any affected provision of this Agreement shall be revised accordingly; subject to the CITY's rights to change, terminate, or stop any or all of the work at anytime.

#### **ARTICLE 11 - LIQUIDATED DAMAGES**

~~Liquidated damages shall be paid to the CITY at the rate of \$200 per day for all work awarded under the contract until the work has been satisfactorily completed as provided by the Contract Documents. Sundays and Legal Holidays shall be excluded in determining days in default.~~

~~It is agreed that the amount is the per diem rate for damage incurred by reason of failure to complete the work. The said amount is hereby agreed upon as the reasonable costs which may be accrued by the CITY after the expiration of the time of completion. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages which have accrued against the ENGINEER.~~

~~The CITY shall have the right to deduct such damages from any amount due, or that may become due the ENGINEER, or the amount of such damages shall be due and collectable from the ENGINEER or Surety.~~

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Article 11 is not insurable.

**Answer 8:** The city has made changes to the contract language as reflected in Attachment A of this document. Attachment A is a direct replacement for the corresponding sections of the original RFQ (Agreement For Professional Services, Exhibit A: Scope of Services and Rates, Exhibit B: Additional Federal and State Mandated Contractual Terms) and any updated language should be considered to supersede those sections of the original RFQ. Please note changes do not match exactly to those proposed in the Question 8, so it is important to review the entirety of Attachment A, not solely the sections where changes were requested through Question 8.

**Question 9:** Regarding the subject RFQ, would the City consider extending the due date please?

**Answer 9:** As stated above, the submittal deadline for this RFQ will be extended to October 7, 2020 at 4:00pm.

## Attachment A

**AGREEMENT FOR PROFESSIONAL SERVICES  
FOR ENGINEERING, ARCHITECTURAL, AND RELATED SERVICES  
TO THE CITY OF MEXICO BEACH**

This Agreement made as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **City of Mexico Beach**, Florida (the “CITY”), and \_\_\_\_\_, authorized to do business in the State of Florida (the “ENGINEER”), and whose address is \_\_\_\_\_.

In consideration of the mutual promises contained herein, the CITY and the ENGINEER agree as follows:

**ARTICLE 1 - SERVICES**

The ENGINEER’s responsibility under this Agreement will be to provide professional services of a specified nature and rates, as described in Exhibit “A” – Scope of Services and Rates, attached hereto and incorporated as if fully set forth herein, when and if the City of Mexico Beach requests the ENGINEER to provide such services through an approved task order.

Services of the ENGINEER shall be under the general direction of the CITY ADMINISTRATOR, who may designate a person to act as the CITY’S representative (hereinafter “REPRESENTATIVE”) during the performance of this Agreement.

**ARTICLE 2 – TERM OF AGREEMENT**

This agreement shall commence on the date noted above and continue to project completion for a maximum period of two years.

**ARTICLE 3 - PAYMENTS TO ENGINEER**

**A. Fees**

As consideration for providing the services enumerated in Article I, the City of Mexico Beach shall pay the ENGINEER fees as defined in the task order. The ENGINEER's fees shall be based on one of the following as requested by the City of Mexico Beach and as determined in each purchase or task order:

1. Lump Sum Method - wherein the City of Mexico Beach shall pay the ENGINEER an agreed upon lump sum amount, which includes all of the ENGINEER's Direct Salary, Overhead Costs, Direct Expenses, Subconsultants, and Profit.
2. Standard Hourly Rate Method - Wherein the City of Mexico Beach shall pay the ENGINEER the agreed upon hourly rates for time actually engaged on the work covered by this Agreement.
3. Other methods of payment as agreed to by both parties and as described in the purchase or task order.

**B. Reimbursable Expenses**

If provided for in a task order, the City will pay for ENGINEER's travel expenses including the travel expenses of ENGINEER's employees when they are away from their home or office overnight in accordance with the standard list of allowable expenses for an "authorized person" under Florida Statute 112.061 at no greater than the standard rates provided Florida Statute 112.061. Long-distance telephone and postage charges will be included in the Lump Sum Price or charged at actual cost to the ENGINEER as determined in each purchase or task order. A task order cannot provide for travel expenses in excess of what is allowed by this paragraph. Payment shall meet criteria established in Article 3-B, as determined reasonable in accordance with the scope of the project by the City Administrator, or his designee.

**C. Direct Project Expenses**

Charges for printing, reproduction, use of computer-aided design equipment, field equipment, and any laboratory analysis performed by the ENGINEER, and the use of the ENGINEER's and employee's automobiles will be included in the Lump Sum Price or charged as determined and set forth in each task order.

**D. Additional Costs**

The parties agree that any additional costs for work or services to be provided under a task order issued pursuant to this Agreement, or pursuant to any other method or manner utilized by the parties for determining the cost of services or work to be provided by the ENGINEER, must be approved in writing by the City of Mexico Beach. If such additional costs are not authorized by the City of Mexico Beach in writing, no payment for such additional costs shall be made. Sub engineers charges for the services of outside ENGINEERS and specialists (hereinafter called SUBCONSULTANTS) are as follows:

1. Labor Services - The labor services of approved SUBCONSULTANTS, whose expertise is required within the scope of the ENGINEER's work, will be invoiced in accordance with the executed task order.
2. Out of Scope Expertise - The services of approved SUBCONSULTANTS, whose expertise is outside the scope of the ENGINEER's work and/or who are retained by the ENGINEER as a convenience to the City of Mexico Beach, will be charged at the cost of such services to the ENGINEER plus an administrative handling fee, as negotiated with, and agreed to, by the City of Mexico Beach.
3. Approval - The use of any SUBCONSULTANTS or specialist referenced in Paragraphs 1 and 2 above must be listed/identified in Part B: Organization Profile and Qualifications in the Response to Qualifications.

**E. Status Report**

The ENGINEER shall complete and submit a technical summary and budgetary status report with each invoice (format to be provided by City). In no case shall the ENGINEER bill the City of Mexico Beach for more than one hundred (100) percent of the previously agreed upon purchase order or task order fee, unless authorized by the City of Mexico Beach in writing.

**F. Standard Hourly-Rate—Definition**

The ENGINEER's standard hourly and overtime rates shall be as provided by Exhibit A and shall be used for task orders unless a task order is for a fixed lump sum.

**G. Monthly Invoices**

The ENGINEER shall submit invoices once each month to the City of Mexico Beach for the services performed and the expenses and other charges accounted for under this Agreement during the preceding month. Separate invoices shall be submitted for each task order. Payment as prescribed in Article 2 for services rendered by the ENGINEER during the previous billing period shall be processed in accordance with the Florida Prompt Payment Act, Section 218.70, Florida Statutes.

**H. Payment of Expenses**

Payments on account of expenses shall be made monthly upon presentation of the statement of expenses incurred. Documentation supporting the reimbursable expenses must be attached to the statement. The documentation may include, but is not limited to, copies of invoices and log sheets. The City Administrator or his designee shall make a final determination as to whether expenses are allowed under this Agreement and the applicable task order and whether documentation is sufficient to process invoices for payment.

**ARTICLE 4 - CITY OF MEXICO BEACH'S RESPONSIBILITIES**

**A. Criteria**

Provide all criteria and full information concerning the City of Mexico Beach's requirements of the task order, including objectives and constraints, performance requirements, and any budgetary limitations; and furnish copies of all design and construction standards which the City of Mexico Beach will require to be included in the drawings and specifications.

**B. Available Information**

Assist the ENGINEER by placing at their disposal all pertinent available information including previous reports and data relevant to the ENGINEER's services.

**C. Service of Others**

Furnish to the ENGINEER, as required for performance of the ENGINEER's services, those services identified as City responsibilities in the Scope of Services. The ENGINEER

shall be responsible for performing all other services, either in-house or through SUBCONSULTANTS/contractors, including but not limited to borings, probing, and subsurface explorations, hydrographic surveys, laboratory tests, and inspections of samples, materials, and equipment; appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, topographic, and utility surveys; property descriptions; zoning, deed, and other land use restrictions.

**D. Examine Work of the ENGINEER**

Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the ENGINEER, obtain advice of an attorney, insurance counselor, and other ENGINEERS as City of Mexico Beach deems appropriate for such examination, and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.

**E. Approvals and Permits**

Unless otherwise provided in a purchase or task order, furnish approvals and permits from all governmental authorities having jurisdiction over the project(s) and such approvals and consents from others as may be necessary for completion of the project(s).

**F. Costs**

Bear all costs incidental to compliance with the requirements of this Article.

**ARTICLE 5 - TERMINATION**

The City of Mexico Beach or the ENGINEER may terminate, suspend, or delay this Agreement for any reason or no reason at all by giving at least thirty (30) days written notice to the other party of their intent to terminate, suspend, or delay. In the event the Agreement is terminated, suspended or delayed by the City of Mexico Beach for reasons unrelated to the quality of work provided by the ENGINEER, the City of Mexico Beach shall forthwith pay the ENGINEER in full for all work previously authorized and actually performed prior to the Notice of Termination, Suspension or Delay. This payment shall be the sole financial obligation or responsibility of the City of Mexico Beach for compensation hereunder in the event of termination, suspension or delay in accordance with the provisions of this paragraph.

This Agreement shall continue in effect until a Notice of Termination, Suspension or Delay is given by either party as set forth above. Upon termination, suspension or delay, at the City of Mexico Beach's request, the ENGINEER shall turn over to the City of Mexico Beach all work products and deliverables completed or partially completed up to the date of termination, suspension or delay, including but not limited to, subcontractor work products, surveys, drawings, model results, and specifications. The City of Mexico Beach shall have full rights to use all such work products and deliverables for any project, and in any manner, in the sole discretion of the City. The City of Mexico Beach accepts sole responsibility for the use of the above-referenced work products and deliverables unless prior written approval is obtained from the ENGINEER.

## **ARTICLE 6 - PERSONNEL**

The ENGINEER represents that it has or will secure at its own expense all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required herein under shall be performed by the ENGINEER or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under State and local law to perform such services.

The ENGINEER warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

## **ARTICLE 7 – TERMS OF PERFORMANCE**

### **A. Cost Estimating**

The estimates of project or construction cost for any task(s) provided for herein are to be prepared by the ENGINEER through exercise of their experience and judgment in applying presently available cost data, but it is recognized that the ENGINEER has no control over the cost of labor and materials or over competitive bidding procedures and market conditions, so that the ENGINEER cannot warrant that the project or construction costs will not vary from the ENGINEER's cost estimates.

### **B. Suspension of Work**

If any services covered by this Agreement to be carried out by the ENGINEER shall be suspended, abated, or abandoned at the direction of the City of Mexico Beach for reasons unrelated to the quality of work provided by the ENGINEER, the City of Mexico Beach shall pay the ENGINEER for services actually rendered for such suspended, abated, or abandoned work, and any reasonable additional documented costs incurred in an orderly closing of its activities, with the payment to be based on the fees as established in this Agreement.

### **C. Adjustment for Extended Services**

Unless otherwise provided in a task order issued under this Agreement, if the services covered under this Agreement have not been completed upon the expiration of a twenty-four (24) month period from the date of execution of any purchase order or task order, the ENGINEER may, upon, written notice, request a renegotiation for the fee compensation for services rendered to allow for changes in the cost of service.

### **D. Services in Connection with Claims, Arbitration, and Litigation**

The scope and extent of services to be provided under a task order does not include personnel time of the ENGINEER or time of personnel working under sub agreements and

related expenses required or requested to support, document, bring, defend, or assist in litigation, claims, and/or arbitration undertaken by or defended by the City of Mexico Beach. All such services required or requested of the ENGINEER shall be considered additional services entitling the ENGINEER to additional compensation under this Agreement. The amount of such additional compensation shall be set forth in a separate task order as reviewed and approved by the City. The ENGINEER shall be entitled to such additional compensation until and unless there is a finding by a court of competent jurisdiction that the ENGINEER is liable for damages to the City of Mexico Beach for the acts giving rise to and requiring the requested services and expenses.

**E. Approval of Changes**

The City of Mexico Beach must approve any changes in the scope, specifications, or other conditions under which the services specified or referred to herein are to be performed which result in additional costs or expenses to the City of Mexico Beach or which would change the underlying purpose of the purchase or task order. Changes include, but are not limited to, issuing additional instructions requesting additional work, direct omission of work previously ordered, or changes in time of performance. The ENGINEER shall be required to submit a written change order, which shall include a detailed description of the additional and/or change in the scope of work and the proposed additional fees.

**F. Construction Phase Services**

Visits to construction sites and observations made by the ENGINEER as part of construction phase services authorized by purchase order or task order, if any, shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precaution incidental thereto. Safety precautions administered by the ENGINEER shall meet or exceed those policies enacted by the City.

If on-site Resident Project Representative (RPR) services are provided by the ENGINEER pursuant to a purchase order or task order issued hereunder, such RPR shall endeavor to make reasonable efforts to guard the City of Mexico Beach against defects and deficiencies in the work of the contractor(s) and to help determine if the provisions of the contract documents prepared by the ENGINEER are being fulfilled. The obligations of the RPR shall be set forth in the purchase order or task order which authorizes RPR services. Construction phase services by the ENGINEER will not, however, cause the ENGINEER to be responsible for those duties and responsibilities which belong to the construction contractor(s) and which include, but are not limited to, the obligations set forth above. This paragraph does not, however, release the ENGINEER from any liability which might be attributable to negligent acts, errors, or omissions, including but not limited to design, construction phase services, or other work efforts as defined in the Scope of Services. The City of Mexico Beach reserves the right to request replacement of any RPR personnel

furnished by the ENGINEER.

## **ARTICLE 8 - FEDERAL AND STATE TAX**

The ENGINEER shall be responsible for payment of its own FICA and Social Security benefits with respect to this Agreement and the personnel it employs.

## **ARTICLE 9 – INSURANCE & BONDS**

### **A. Indemnification**

The parties recognize that the ENGINEER is an independent contractor. The ENGINEER agrees to indemnify, hold harmless, and defend the City, its elected officials, officers, employees from and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the ENGINEER, its agents, officers, contractors, subcontractors, employees, or anyone else employed or utilized by the ENGINEER in the performance of this Agreement. The ENGINEER's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the ENGINEER against the City and the ENGINEER hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes with regard to such claims by employees of the Engineer against the City..

The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third-party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.08, Florida Statutes, as amended. Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

### **B. ENGINEER's Status as an Independent Contractor**

That status of the ENGINEER under this Agreement is that of an independent contractor. Nothing in this Agreement shall create or be construed as creating a partnership between the City of Mexico Beach and the ENGINEER, nor shall the ENGINEER be an agent of the City of Mexico Beach.

### **C. Waiver of Subrogation**

The City of Mexico Beach and the ENGINEER waive all rights against each other for damages caused by perils covered by insurance provided under this Agreement to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance held by the City of Mexico Beach and the ENGINEER as trustees. The ENGINEER shall require similar waivers from all SUB ENGINEERSs and their subcontractors and suppliers. The City of Mexico Beach and the ENGINEER waive all rights against each other for loss or damage to any equipment used in connection with performance under this Agreement and covered by any property insurance. The ENGINEER shall require similar waivers from all SUB ENGINEERSs and their subcontractors and suppliers. If the insurance policies referred to in this article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed; failure to obtain endorsement nullifies the waiver of subrogation.

**D. ENGINEER's Insurance**

The ENGINEER shall not commence any work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the City of Mexico Beach, and has named the City of Mexico Beach as an additional insured, except for Worker's Compensation Coverage, nor shall the ENGINEER allow any SUB ENGINEERS to commence work under this Agreement until all similar insurance required of the SUB ENGINEERS has been so obtained. Such insurer shall have a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance authorizing it to write insurance policies in the State of Florida and be doing business in the State of Florida. Insurers shall have at least a Policy Holders Rating of A-, and Financial Rating of Class IV as identified in the latest issue of "Bests Key Rating Guide" unless otherwise accepted by the City of Mexico Beach in writing. The ENGINEER's insurance, and the insurance of any other party bound to the ENGINEER shall be considered primary. The City of Mexico Beach's insurance, if any, shall be considered excess, as may be applicable to claims which arise out of indemnifications, insurance, certificates of insurance and any additional insurance provisions of this Agreement.

**E. Loss Deductible**

The City of Mexico Beach shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of the ENGINEER.

**F. SUB ENGINEERS's Insurance**

The ENGINEER shall require each of his sub-engineers to procure and maintain, during the life of the subcontract, insurance of the types specified in this Article or insure the activities of his sub-engineers in his policy as required in this Article.

**G. Certificate of Insurance**

The City of Mexico Beach shall be furnished proof of insurance coverage as follows:

- The name of the insured, the name of the insurer, the number of the policy, its effective date, and its termination date;
- Statement that the insurer will mail notice to the City of Mexico Beach and a copy to the ENGINEER at least thirty (30) days prior to any material changes in provisions, cancellation, renewal, or non-renewal of the policy;
- Certificate of Insurance shall be in the form as approved by the City of Mexico Beach and such Certificate shall clearly state all the coverage required in this Article;
- If requested by the City of Mexico Beach, the ENGINEER and all subcontractors/SUB ENGINEERSs shall furnish complete copies of all insurance policies, forms and endorsements; and
- Receipt of certificates or other documentation of insurance or policies or copies of policies by the City of Mexico Beach or by any of its representatives which indicate less coverage than required by this Agreement does not constitute a waiver of the ENGINEER's obligations to fulfill the requirements of this Article.

#### **H. Workers' Compensation Insurance**

The ENGINEER shall have in full force, during the life of this Agreement, Workers' Compensation and Employer's Liability Insurance for all his employees connected with work under this Agreement, and in the event any work is subcontracted, the ENGINEER shall require the SUB ENGINEERS similarly to provide Workers' Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by the ENGINEER. The ENGINEER may provide a workers' compensation waiver in lieu of workers' compensation insurance where such waiver is properly approved by the Florida Department of Labor and Employment Security and accepted by the City of Mexico Beach in writing. Such insurance or waiver shall comply with the Florida Workers' Compensation Law. In case any class of work conducted under this Agreement is not protected under the Workers' Compensation statute, the ENGINEER shall provide adequate insurance, satisfactory to the City of Mexico Beach, for the protection of employees not otherwise protected.

#### **I. Liability Insurance**

The ENGINEER shall have in full force, during the life of this Agreement, Commercial General Liability and Commercial Automobile Liability Insurance that shall protect the City of Mexico Beach from claims for damage for bodily injury and personal injury, including accidental death, as well as claims for property damages which may arise from tasks associated with or carried out under this Agreement, whether such operations are by itself or by anyone directly or indirectly employed by them, and the amount of such insurance shall be minimum limits as follows:

- Commercial General Liability:
  - Minimum Coverage is \$1,000,000 per occurrence
  - Coverage shall include premises, operations, products, completed operations, independent contractors, contractual liability covering this Agreement, contracts and leases, broad form property damage coverage, personal injury and bodily injury.
  - If Umbrella or Excess liability coverage is used to satisfy the requirements of this Article, it shall not be more restrictive than the underlying insurance policy coverage.
- Commercial Automobile Liability:
  - Minimum Coverage is \$1,000,000 per occurrence
  - Coverage shall include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

#### **J. Professional Liability Insurance**

During the term of this Agreement, the ENGINEER will carry Errors and Omission insurance which will cover liability for any damage or non-performance on account of any error, omission, or other provable negligence caused by the ENGINEER. The amount of insurance shall not be less than \$1,000,000 per occurrence and aggregate. The City of Mexico Beach may require higher limits mutually agreed with the ENGINEER for specific task orders.

#### **K. Bonds**

In the event that a performance or payment bond is required due to use of grant funds for the project, by City Council or as otherwise required, the ENGINEER shall not commence work under this Agreement until it has obtained the required bonds and provided such bonds to the CITY.

#### **ARTICLE 10 - EXCUSABLE DELAYS**

The ENGINEER shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the ENGINEER'S control and without its fault or negligence. Such causes may include but are not limited to: acts of God; the City's omissive and commissive failures; natural or public health emergencies; labor disputes; freight embargoes; and severe weather conditions. If failure to perform is caused by the failure of the ENGINEER'S ENGINEER(s) and is without the fault or negligence of them, the ENGINEER shall not be deemed to be in default.

Upon the ENGINEER'S request, the CITY shall consider the facts and extent of any failure to perform the work and, if the ENGINEER'S failure to perform was without its fault or negligence as determined by the CITY, any affected provision of this Agreement shall be revised accordingly; subject to the CITY's rights to change, terminate, or stop any or all of the work at anytime.

## **ARTICLE 11 - LIQUIDATED DAMAGES**

Liquidated damages shall be paid to the CITY at the rate of \$200 per day for all work awarded under the contract until the work has been satisfactorily completed as provided by the Contract Documents. Sundays and Legal Holidays shall be excluded in determining days in default.

It is agreed that the amount is the per-diem rate for damage incurred by reason of failure to complete the work. The said amount is hereby agreed upon as the reasonable costs which may be accrued by the CITY after the expiration of the time of completion. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages which have accrued against the ENGINEER.

The CITY shall have the right to deduct such damages from any amount due, or that may become due the ENGINEER, or the amount of such damages shall be due and collectable from the ENGINEER or Surety.

## **ARTICLE 12 – REMEDIES**

### **A. Claims, Counter-Claims, Disputes, Etc.**

All claims, counter-claims, disputes, and other matters in questions between the ENGINEER and the City of Mexico Beach will be first reviewed by authorized representatives of both parties for a recommended solution. If no solution or resolution is forthcoming, such disputes will be decided by a court of competent jurisdiction convened in the State of Florida.

### **B. Governing Laws**

This Agreement shall be governed by the laws of the State of Florida.

### **C. Venue**

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submits itself to the exclusive jurisdiction of the Fourteenth Judicial Circuit Court, in and for Bay, Calhoun, Gulf, Holmes, Jackson and Washington Counties, Florida, and the jurisdiction of the United States District Court for the Northern District of Florida, Panama City Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Agreement; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense or otherwise in any suit, action or other proceeding, (i) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever, and (ii) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any party hereto is brought in an inconvenient forum, or that the venue of such suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such courts.

#### **D. Attorney's Fees and Costs**

In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs, and expenses, including attorney's fees, as may be set by the Court.

#### **ARTICLE 13 - NONEXCLUSIVE AGREEMENT**

This Agreement is not intended to be and shall not be construed as an exclusive contract, and the City of Mexico Beach may employ additional or other professional consulting firms to perform work contemplated by this Agreement without liability to the City of Mexico Beach.

#### **ARTICLE 14 - ARREARS**

The ENGINEER shall not pledge the CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

#### **ARTICLE 15 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The ENGINEER shall deliver to the CITY for approval and acceptance, and before being eligible for final payment of any amount due, all documents and materials prepared by and for the CITY under this Agreement.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CITY or at its expense will be kept confidential by the ENGINEER and will not be disclosed to any other party, directly or indirectly, without the CITY'S prior written consent.

Such information and data shall be and will remain the CITY'S property and may be reproduced and reused at the discretion of the CITY.

All products generated by the ENGINEER for the CITY become the property of the CITY. The CITY may require submission of any electronic file version of reports, data, maps, or other submission of documentation produced for or as a result of this project in addition to paper documents.

The CITY and the ENGINEER shall comply with the provisions of the Florida Public Records Law.

**If the ENGINEER has questions regarding the application of Chapter 119, Florida Statutes, to the ENGINEER'S duty to provide public records relating to this contract, contact the custodian of public records, Lindsay Hovind, City Clerk, at 850-648-5700, by email at [l.hovind@mexicobeachgov.com](mailto:l.hovind@mexicobeachgov.com) or via mail, at P.O. Box 13425, 201 Paradise Path, Mexico Beach, FL 32410.**

**PUBLIC RECORDS LAW.** ENGINEER acknowledges that it is familiar with the provisions of the Public Records Law of the State of Florida.

ENGINEER agrees to comply with Chapter 119, Florida Statutes, and specifically per Florida Statute 119.0701, ENGINEER agrees to keep and maintain public records that would be required by the City of Mexico Beach in order to perform the services provided for in this Agreement; ENGINEER agrees to provide public access to any required public records in the same manner as a public agency; ENGINEER agrees to protect exempt or confidential records from disclosure; ENGINEER agrees to meet public records retention requirement; and ENGINEER agrees that at the end of term of this Agreement, to transfer all public records to the City of Mexico Beach and destroy any duplicate exempt or confidential public records.

All products generated by the ENGINEER for the CITY become the property of the CITY. The CITY may require submission of any electronic file version of reports, data, maps or other submission of documentation produced for or as a result of this Statement of Qualifications in addition to paper documents.

Further, in accordance with the Public Records Laws of the State of Florida, Section 119.0701, ENGINEER must:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- B. Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records are not disclosed except as authorized by law.
- D. Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the ENGINEER upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public record disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.
- E. If an ENGINEER does not comply with a public records request, the public agency shall enforce the contract provision in accordance with the contract.

All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

## **ARTICLE 16 - INDEPENDENT ENGINEER RELATIONSHIP**

The ENGINEER is, and shall be, in the performance of all work services and activities under this Agreement, an independent ENGINEER, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the ENGINEER'S sole direction, supervision, and control.

The ENGINEER shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the ENGINEER'S relationship and the relationship of its employees to the CITY shall be that of an independent ENGINEER and not as employees or agents of the CITY.

The ENGINEER does not have the power or authority to bind the CITY in any promise, agreement or representation.

The ENGINEER shall hold the CITY, its officers, agents and employees harmless and free from any loss, damage or expense arising out of any occurrence relating to this Agreement or its performance and shall indemnify the CITY, its officers, agents and employees, customers, and successors against any damage or claim of any type arising from the negligent or intentional acts or omission of the ENGINEER.

#### **ARTICLE 17 - CONTRACT ASSIGNMENT**

The ENGINEER shall not sublet, sell, transfer, assign or otherwise dispose of the CONTRACT or any portion thereof, or of his right, title, or interest therein, without written consent of the CITY. The ENGINEER shall complete the work contemplated by the terms and conditions of this Agreement in an amount equivalent to at least 50 percent (50%) of the dollar value of work to be performed under this Contract utilizing its own business or corporate entity, so that no single labor, material man, or ENGINEER shall be permitted to perform more than 50% of the work contemplated by this Contract.

#### **ARTICLE 18 - AMENDMENT**

None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by a written instrument executed by the parties hereto.

#### **ARTICLE 19 - AUTHORITY TO PRACTICE**

The ENGINEER hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

#### **ARTICLE 20 - SEVERABILITY**

If any term or provision on this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

#### **ARTICLE 21 - CITY'S REPRESENTATIVE AND AUTHORITY**

The person designated by the CITY ADMINISTRATOR shall serve as the CITY'S REPRESENTATIVE and shall decide questions which may arise as to quality and acceptability of materials furnished and work performed, and shall interpret the intent of the Contract Documents with reasonable promptness.

The REPRESENTATIVE will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

The REPRESENTATIVE may assign Project Inspector(s) who shall serve to assist the REPRESENTATIVE in determining if the work performed and the materials used meet the Contract requirements. The Project Inspector shall be authorized to issue Field Orders. The Project Inspector shall be authorized to stop all or any portion of the work if in his opinion the work is not proceeding according to the requirements of the plans and specifications.

## **ARTICLE 22 - CONTRACT DOCUMENTS**

The other documents which comprise the entire Agreement are attached hereto, made a part hereof and consist of the following:

- Request for Qualifications
- General Instructions and Conditions
- Special Instructions and Conditions
- Exhibit B Additional Federal and State Mandated Contractual Terms
- Section 287.133(3)(a) Florida Statutes Public Entity Crimes Statement
- Drug Free Workplace Certification
- Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying
- Addendum Acknowledgement
- Anti-Collusion Clause
- Conflict of Interest Disclosure Form
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

In the event of a conflict between the terms of the above documents and the terms of this Agreement, the terms of this Agreement shall prevail.

There are no contract documents other than those listed above and there are no promises or understandings other than those stated herein.

## **ARTICLE 23 – NOTICE**

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

City of Mexico Beach  
P.O. Box 13425 201 Paradise Path  
Mexico Beach, Florida 32410  
Attention: City Administrator  
Phone: (850) 648-5700

With a copy to:

Nicholas Beninate, Esq.  
City Attorney  
Hand Arendall Harrison Sale  
P.O. Drawer 1579 Panama City, FL 32402  
Phone: (850) 769-3434  
Fax: (850) 769-6121

and if sent to the ENGINEER shall be mailed to:

Either party may change its address noted above by giving written notice to the other party in accordance with the requirements of the Section.

**ARTICLE 23 - ADDITIONAL FEDERAL AND STATE MANDATED CONTRACTUAL TERMS**

The City will request federal or state reimbursement for certain services under this agreement and, therefore, the additional terms provided by Exhibit "B" – Additional Federal and State Mandated Contractual Terms - shall apply to this Agreement.

This Agreement is entered into as of the day and year first written above and is executed in at least two original copies of which one is to be delivered to the CITY ADMINISTRATOR, and one to the CITY CLERK for filing in the official records.

**CITY OF MEXICO BEACH, FLORIDA**

By: \_\_\_\_\_  
William A. Cathey, Mayor

Attest: \_\_\_\_\_

Lindsay Hovind, City Clerk

**ENGINEER**

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

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

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

## **EXHIBIT “A” SCOPE OF SERVICES AND RATES**

### **Description of the Former Pier**

- The original pier was destroyed during Hurricane Michael and all previous structural elements have been removed
- The entire pier was 810 feet long, 14 feet wide and constructed of timber beams and timber pilings except that a small number of pilings (the ones for the ‘T’ section) were fiberglass and some of the ‘T’ section bracing was steel. The deck was approximately 16 feet above the standing water level and the water depth varies from 0 feet at the shore to 9 feet at the ‘T’ section.

### **Project Goals**

The Pier and the City have been connected throughout their history, with a strong sense of image, identity and civic pride. To accomplish the vision for the new pier, the Team will be tasked with creating initial design concepts that address the following goals:

- Create a new landmark for Mexico Beach as a destination for both City residents and visitors by replacing the existing pier.
- Honor the history and relevance of the pier to Mexico Beach.
- Provide spaces and uses for viewing the Gulf of Mexico.
- Provide a cost-effective design that promotes operational sustainability.
- Integrate the pier into the fabric of the city’s beaches.
- Create a landmark that is as symbolically inviting viewed from the water as it is from the land.
- The city would also like to focus on developing enhancements at the base of the pier for economic, educational, and recreational opportunities.
- Project design will include appropriate mitigation to ensure the new pier is resilient against future storms.

### **Design Services**

The selected Team will be responsible for all elements of engineering and architectural design required by the project, including all appropriate state and federal permitting requirements. The Team will specifically be responsible for the following scope of services:

- All deliverables as listed in the “Project Schedule and Deliverables of the Request for Qualifications”.
- Participation in public outreach and planning services for the public facilities and enhancements at the base of the pier. This scope of service will include preparation of visual materials for presentation to the City Council and community during public workshops upon request. This task also includes participation in

public meetings and conducting public surveys regarding improvements at the base of the pier. This process will be utilized to finalize the scope of improvements at the base of the pier.

- Performance of Geotechnical analysis for permitting and structural design.
- Performance of required environmental studies as required by the permitting agencies (for example, sea grass survey if required and/or biological assessment).
- Structural design of the pier.
- Architectural design of the public amenities and enhancements at the base of the pier.
- Civil site design of amenities and enhancements at the base of the pier.
- Civil site design of repairs and potential reconfiguration of the city parking area associated with the pier.
- Preparation of landscape-architectural design.
- Preparation and submittal of all required local, state, and federal permits. The Team will respond to all RFI's issued during the permitting process and coordinate questions, meetings, and responses to permit agencies as necessary.

## **Bidding Services**

The selected Team will be responsible for all bidding services in compliance with local, state, and federal competitive procurement requirements for construction. Team will be responsible for providing the following items to the city:

- Affidavit of advertisement
- Plans and specifications (the bid form will be structured by unit pricing where feasible, in lieu of lump sum)
- Planholders list
- Addendums
- Pre-Bid Meeting (Minutes)
- All bids received
- Preparation of Notice of award
- Preparation of Contract Agreement for construction
- Preparation of Notice to Proceed

\*Note: The Team will facilitate direct purchase of materials for task orders that exceed \$10,000 in order to receive tax-exempt savings on the project. These documents (e.g. tax exempt agreement), must be part of the bid specifications.

## **Construction Inspection**

If allowed under applicable grants and funding mechanisms, the selected Team may be tasked with performing periodic construction inspection throughout the life of the project. Periodic inspection reports will be maintained by the Team and provided upon request to the City. The Team will be responsible for coordinating pre-construction meeting, review of pay requests, and final punch list for construction closeout. The Team will be responsible for performing the following tasks throughout construction as part of the

### Construction Inspection Services:

- Coordinate pre-construction meeting
- Respond to any construction related questions, unforeseen conditions, etc. that arise
- Review and recommendation for payment of Pay Requests submitted by Contractor throughout construction
- Document/track all Direct Purchase Orders under the Tax Exempt Agreement submitted by Contractor during construction
- Review and preparation based on verified pricing of any Change Orders throughout construction; these will be submitted to the City for approval
- Performance of all environmental inspections as required by local, state, and federal permits applicable during construction.
- Final inspection and punch list for construction close out

**Exhibit B:  
Additional Federal and State Mandated Contractual Terms  
City of Mexico Beach, FL**

**FEDERAL REGULATIONS CONTRACT REQUIREMENTS 2 C.F.R §200.317-326 FOR COMPREHENSIVE DISASTER RECOVERY SERVICES AND FINANCIAL AND GRANT MANAGEMENT SUPPORT**

This is an acknowledgement that FEMA financial assistance will be used to fund the contract, as well as any other available funding from the federal government or the State of Florida. The awarded contractor will comply with all applicable state and federal law, regulations, executive orders, FEMA policies, procedures, and directives. The Federal Government is not a party to the awarded contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract. The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Federal requirements include, but are not limited to the following. In the event that the parties confirm that certain requirements do not apply to certain tasks, the parties will stipulate to that in the contract or task order.

**REMEDIES**

The parties are entitled to all available legal remedies under Florida law for a breach of this contract or for a breach of Consultant's standard of care.

**PROCUREMENT OF RECOVERED MATERIALS**

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired: (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

**TERMINATION FOR CONVENIENCE**

The City may terminate any awarded contract at any time for any reason by giving at least thirty (30) days' notice in writing to the awarded bidder. If the contract is terminated by the City as provided herein, the awarded bidder will be entitled to receive payment for those services reasonably performed to the date of termination.

### **TERMINATION FOR CAUSE**

If the awarded bidder fails to comply with any of the terms and conditions of the awarded contract, City may give notice, in writing, to the awarded bidder of any or all deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If all defaults are not cured and corrected within a reasonable period as specified in the notice, City may, with no further notice, declare the awarded contract to be terminated. The awarded bidder will thereafter be entitled to receive payment for those services reasonably performed to the date of termination, less the amount of reasonable damages suffered by City by reason of the awarded bidder's failure to comply with the awarded contract.

Notwithstanding the above, the awarded bidder is not relieved of liability to City for damages sustained by City by virtue of any breach of this Contract by the awarded bidder and City may withhold any payments to the awarded bidder for the purpose of setoff until such time as the amount of damages due City from the awarded bidder is determined.

### **CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

CONSULTANT shall with regard to its subcontracts to be let take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce..

### **EQUAL OPPORTUNITY CLAUSES**

Compliance with Regulations: The contractor shall comply with the Acts and the Regulations relative to Nondiscrimination in federally-assisted programs, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

During the performance of any awarded "federally assisted contracts" the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or

national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided bylaw.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes

involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **COMPLIANCE WITH DAVIS-BACON ACT**

(1) Contractor. The contractor shall comply with 40 U.S.C. § 3141 – 3144 and 3146 - 3148, as supplemented by Department of Labor regulations 29 C.F.R. pt. 5 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **COMPLIANCE WITH COPELAND “ANTI-KICKBACK” ACT**

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT 40 U.S.C. 3702 AND 3704, AS SUPPLEMENTED BY DEPARTMENT OF LABOR REGULATIONS (29 CFR PART 5)**

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess

of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The CONSULTANTS and its subcontractors shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

#### **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**CLEAN AIR ACT**

- (1) CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) CONSULTANT agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**FEDERAL WATER POLLUTION CONTROL ACT**

- (1) CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) CONSULTANT agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**ENERGY EFFICIENCY AND CONSERVATION ACT**

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Energy Policy and Conservation Act (42 U.S.C. 6201) and the provisions of the state Energy Conservation Plan adopted pursuant thereto.

**ACCESS TO RECORDS. THE FOLLOWING ACCESS TO RECORDS REQUIREMENTS APPLY TO THIS AGREEMENT:**

- (1) The Consultant agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Consultant agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

**DHS Seal, Logo, and Flags.**

The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

**Program Fraud and False or Fraudulent Statements or Related Acts.**

The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this contract.

**SUSPENSION AND DEBARMENT**

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida Division of Emergency Management and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**BYRD ANTI-LOBBYING AMENDMENT 31 U.S.C. § 1352 (AS AMENDED)**

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

### **CONFLICTS OF INTERESTS; GIFTS**

The parties have followed and agree to continue to follow Chapter 112, Florida Statute, standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts; the standards regarding solicitation and/or acceptance of gratuities, favors, or anything of monetary value from contractors or parties to subcontracts; and for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

### **FLORIDA E-VERIFY**

Engineer must comply with Florida's E-Verify law for Public Employers, Contractors, and Subcontractors provided by Florida Statute 448.095, regardless of whether the Effective Date of this contract precedes the effective date of the statute. The Statute requires, in part, that every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. Further, it requires that a public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system. If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien and the contractor shall maintain a copy of such affidavit for the duration of the contract.

### **Prohibition against contracting with scrutinized companies (Florida Statute 287.135)**

A company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of:

- (a) Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a boycott of Israel; or
- (b) One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:
  1. Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or
  2. Is engaged in business operations in Cuba or Syria.

The City may terminate this contract if the company is found to have submitted a false certification as provided under subsection (5) of Florida Statute 287.135, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria as provided by Florida Statute 287.135.