

**Agreement
For
Professional Services
RFQ #34-23**

This AGREEMENT is made and entered into on the 20th day of July 20 23 by and between the City of Clearwater, Florida (CITY) and WSP-USA, Inc. (CONSULTANT) with an effective date August 1, 2023.

WITNESSETH:

WHEREAS, the CITY desires to engage the CONSULTANT to perform certain professional services pertinent to such work in accordance with this Agreement; and

WHEREAS, the CONSULTANT desires to provide such professional services in accordance with this Agreement; and

WHEREAS, in accordance with the competitive selection process described in Section 287.055 of the Florida Statutes, the CITY selected the CONSULTANT based on Request for Qualifications (“RFQ”) #34-23 and responses by the CONSULTANT to RFQ #34-23.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties agree that the above terms, recitals, and representations are true and accurate and are incorporated herein by reference, and the Parties further agree as follows:

1.0 GENERAL SCOPE OF THIS AGREEMENT

The relationship of the CONSULTANT to the CITY will be that of a professional consultant, and the CONSULTANT will provide the professional and technical services required under this Agreement in accordance with acceptable engineering practices, by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of Florida, and ethical standards.

2.0 PROFESSIONAL TECHNICAL SERVICES

2.1 It shall be the responsibility of the CONSULTANT to work with and for the CITY to perform an array of services for the City as set forth in RFQ #34-23, Scope of Services.

2.2 The CONSULTANT’S services under this Agreement will be provided under a project specific Work Order(s). Each Work Order will include the services for a single project, phase, task or assignment, and will contain a mutually agreed-upon detailed scope of services, project goals, fee and schedule of performance in accordance with applicable fiscal and budgetary constraints. Work Orders will be incorporated by reference and attached hereto this Agreement.

Total compensation for all services shall not exceed \$100,000.00 unless specifically authorized by the City Council.

See Work Order Template attached hereto as Exhibit A.

- 2.3 The CONSULTANT shall maintain an adequate and competent staff of professionally qualified personnel available to the CITY for the purpose of rendering the required engineering and/or consultant services hereunder and shall diligently execute the work to meet the completion time established in the Work Orders. The CONSULTANT shall notify the CITY by U.S. Mail addressed to the City Engineer of any changes in company contact information, including but not limited to contact phone, address, project manager, email addresses, etc.
- 2.4 The CITY reserves the right to enter into contracts with other engineering and/or architect firms for similar services. The CONSULTANT will, when directed to do so by the CITY, coordinate and work with other engineering and/or architectural firms retained by the CITY.
- 2.5 The CITY reserves the right to remove any and all projects, phases, tasks, or assignments related to this Agreement. The CITY further reserves the right to enter into contracts with other engineering firms for services related to such projects, phases, tasks, or assignments. The CONSULTANT will, when directed to do so by the CITY, coordinate and work with other firms retained by the CITY.

3.0 PERIOD OF SERVICES

- 3.1 The CONSULTANT shall begin work promptly after receipt of a fully executed Work Order. Receipt of a fully executed Work Order shall constitute written notice to proceed.
- 3.2 If the CONSULTANT'S services are delayed for reasons beyond the CONSULTANT'S control, the time of performance shall be adjusted as appropriate.
- 3.3 It is the intent of the parties hereto that this Agreement continue in force for a period not to exceed four (4) years effective August 1, 2023, subject to the provisions for termination contained herein. Assignments that are in progress at the Termination Date shall be completed by the CONSULTANT unless specifically terminated by the CITY. Should the CONSULTANT be in the progress of completing work under this Agreement at the Termination Date, this Agreement shall continue with all terms, conditions and obligations being in full force and effect until such time as the work is completed. All provisions expressly intended to survive termination shall do so.

4.0 PROFESSIONAL SERVICES/CONSULTANT'S COMPETITIVE NEGOTIATION ACT (CCNA)

Professional Services provided under this Agreement are within the scope of the practice of architecture, landscape architecture, professional engineering, or registered land

surveying and mapping, as defined by the laws of the State of Florida. Provisions of F.S. 287.055 apply.

5.0 GENERAL CONSIDERATIONS

- 5.1** All documents including field books, drawings, specifications, calculations, geotechnical investigation reports, etc., used in the preparation of the work shall be supplied by the CONSULTANT and shall become the property of the CITY. The CITY acknowledges that such documents are not intended or represented to be suitable for use by the CITY or others for purposes other than those for which the documents are prepared. Any reuse of these documents without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the CITY's sole risk without liability or legal exposure to the CONSULTANT.
- 5.2** The CONSULTANT shall prepare preliminary construction cost estimates with each design submittal to verify the proposed design is within the City project budgets. The CONSULTANT shall prepare a final estimate of probable construction costs, following CITY approval of the bid documents and other pre-bid activities. The CITY hereby acknowledges that estimates of probable construction costs cannot be guaranteed, and such estimates are not to be construed as a promise that designed facilities will not exceed a cost limitation.
- 5.3** The CONSULTANT will provide expert witnesses, if required, to testify in connection with any suit at law. A supplemental agreement will be negotiated between the CITY and the CONSULTANT describing the services desired and providing a basis for compensation to the CONSULTANT.
- 5.4** Upon the CONSULTANT'S written request, the CITY will furnish or cause to be furnished such reports, studies, instruments, documents, and other information as the CONSULTANT and CITY mutually deem necessary.
- 5.5** The CITY and the CONSULTANT each bind themselves and their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of each other party, in respect to all covenants of this Agreement; and, neither the CITY nor the CONSULTANT will assign or transfer its interest in this Agreement without written consent of the other.
- 5.6** To the fullest extent permitted by law, the CONSULTANT agrees to indemnify and hold harmless the CITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of this CONSULTANT under this AGREEMENT. Notwithstanding any provision herein to the contrary, this paragraph shall not be construed as a waiver of any immunity to which CITY is entitled or the extent of any limitation of liability pursuant to § 768.28, Florida Statutes. Furthermore, this provision is not intended to nor shall it be interpreted as limiting or in any way affecting any defense CITY may have under § 768.28, Florida Statutes or as

consent to be sued by third parties. The obligations under this paragraph shall expressly survive termination or expiration of this Agreement.

- 5.7 The CONSULTANT agrees not to engage the services of any person or persons in the employ of the CITY to an allied capacity, on either a full or part-time basis, on the date of the signing of this Agreement, or during its term.
- 5.8 Key personnel assigned to CITY projects by the CONSULTANT shall not be removed from the projects until alternate personnel acceptable to the CITY are approved in writing by the CITY. Key personnel are identified as: Project Manager and technical experts.
- 5.9 The CONSULTANT shall attach a brief status report on the projects with each request for payment.
- 5.10 Unless otherwise required by law or judicial order, the CONSULTANT agrees that it shall make no statements, press releases or other public communication concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data, technical processes, business affairs or other information obtained or furnished in the conduct of work under this Agreement without first notifying the CITY and securing its consent in writing. The CONSULTANT also agrees that it shall not publish copyright or patent any of the site-specific data or reports furnished for or resulting from work under this Agreement. This does not include materials previously or concurrently developed by the CONSULTANT for "In House" use. Only data and reports generated by the CONSULTANT under this Agreement shall be the property of the CITY.
- 5.11 Public Records. The CONSULTANT will be required to comply with Section 119.0701, Florida Statutes, as may be amended from time to time, specifically to:

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 727-562-4092, Rosemarie.Call@myclearwater.com, 600 Cleveland Street, Suite 600, Clearwater, FL 33755.

CONSULTANT shall comply with the following:

- a) Keep and maintain public records required by the City of Clearwater (hereinafter "public agency") to perform the service being provided by the contractor hereunder.
- b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.

- c) Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- e) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
- f) The contractor hereby acknowledges and agrees that if the contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- g) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.
- h) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
 - 1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
 - 2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

- i) A notice complies with subparagraph (h)2. if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

6.0 COMPENSATION

6.1 The CONSULTANT shall be compensated for services rendered under this Agreement in accordance with the provisions of each Work Order, upon presentation of CONSULTANT'S invoice and as provided in this Agreement (attached as Exhibit B).

6.2 Compensation for services shall be invoiced by the CONSULTANT and paid by the CITY in accordance with the Florida Local Government Prompt Payment Act, § 218.70, Florida Statutes.

6.3 The CONSULTANT agrees to allow full and open inspection of payroll records and expenditures in connection with hourly rate and cost-plus fixed fee work assignments upon request of the CITY.

7.0 PROHIBITION AGAINST CONTINGENT FEES

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

8.0 TERMINATION FOR CAUSE

This Agreement may be terminated by either party with seven (7) days prior written notice, in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If this Agreement is terminated, the CONSULTANT shall be paid in accordance with the provisions of outstanding Work Orders for all work performed up to the date of termination.

9.0 SUSPENSION, CANCELLATION, OR ABANDONMENT

If the project described in any Work Order is suspended, canceled, or abandoned by the CITY, without affecting any other Work Order or this Agreement, the CONSULTANT shall be given five (5) days prior written notice of such action and shall be compensated

for professional services provided up to the date of suspension, cancellation, or abandonment.

10.0 GOVERNING LAW

This Agreement shall be administered and interpreted under the laws of the State of Florida. The exclusive venue for any proceeding or suit in law or equity arising from or incident to this Agreement will be in Pinellas County Florida.

11.0 TERMINATION FOR CONVENIENCE

Either the CITY or the CONSULTANT may terminate the Agreement at any time by giving written notice to the other of such termination and specifying the effective date of such termination at least thirty (30) days before said termination date. If the Agreement is terminated by the CITY as provided herein, the CONSULTANT will be paid for services rendered through the date of termination.

12.0 PUBLIC ENTITY CRIMES

Pursuant to Florida Statute § 287.132-133, the City of Clearwater, as a public entity, may not accept any proposal from, award any contract to, or transact any business in excess of the threshold amount provided in § 287.017, F.S., for Category Two (currently \$35,000) with any person or affiliate on the convicted vendor list for a period of 36 months from the date that person or affiliate was placed on the convicted vendor list unless that person or affiliate has been removed from the list pursuant to § 287.133 (3)(f), F.S. By submitting a proposal, CONSULTANT is certifying that Florida Statute 287.132 and 287.133 does not restrict submission.

13.0 SCRUTINIZED COMPANIES AND BUSINESS OPERATIONS

The CONSULTANT will be required to comply with Section 287.135, Florida Statutes, specifically by executing the forms provided (attached as Exhibit C).

14.0 RFQ #34-23, TERMS AND CONDITIONS

All terms and conditions as set forth in RFQ #34-23, Terms of Conditions are incorporated by reference (attached as Exhibit D).

15.0 ORDER OF PRECEDENCE

Any inconsistency in documents relating to this Agreement shall be resolved by giving precedence in the following order: (i) this Agreement and subsequent Amendments; (ii) RFQ #34-23, Terms and Conditions; and (iii) Work Orders.

16.0 INSURANCE REQUIREMENTS

Insurance Requirements are set forth in Exhibit E, which is incorporated by reference (attached as Exhibit E).

17.0 TERMINATION FOR LACK OF FUNDING

The CITY'S performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Clearwater City Council. In the event the Clearwater City Council does not appropriate funds for CITY to perform its obligations hereunder, CITY may terminate this Agreement upon thirty (30) days written notice to CONSULTANT.

18.0 E-VERIFY

CONSULTANT and its Subcontractors shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. CONSULTANT will not enter into a contract with any Subcontractor unless each party to the contract registers with and uses the E-Verify system. Subcontractor must provide CONSULTANT with an affidavit stating that Subcontractor does not employ, contract with, or subcontract with an unauthorized alien. CONSULTANT shall maintain a copy of such affidavit.

The CITY may terminate this Agreement on the good faith belief that CONSULTANT or its Subcontractors knowingly violated Florida Statutes 448.09(1) or 448.095(2)(c). If this Agreement is terminated pursuant to Florida Statute 448.095(2)(c), CONSULTANT may not be awarded a public contract for at least 1 year after the date of which this Agreement was terminated. CONSULTANT is liable for any additional costs incurred by the CITY as a result of the termination of this Agreement.

See Section 448.095, Florida Statutes (2020).

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date and year first above written.

WSP-USA, Inc.

(Consultants)

By:

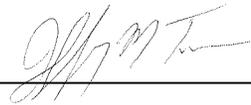


Print Name: Werner Reinefeld

Title: Florida Water Line Business Leader

WITNESS:

By:



Print Name: Jeffrey M. Trommer

Countersigned:

DocuSigned by:



Brian Aungst Sr.
Mayor

CITY OF CLEARWATER

DocuSigned by:



Jennifer Poirier
City Manager

Approved as to form:

DocuSigned by:



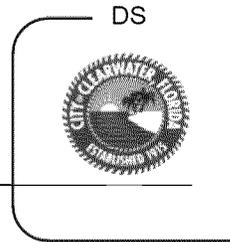
Jerrod Simpson
Sr. Assistant City Attorney

Attest:

DocuSigned by:



Rosemarie Call
City Clerk





[Consultant Logo]
 [Consultant Name]

City of Clearwater

EXHIBIT A

CONSULTANT WORK ORDER

[Supplement Number] *(Identify if applicable)*

Date: [m/d/yyyy]

1. PROJECT INFORMATION:

| | |
|-----------------------------------|---|
| Project Title: | [Project Name] |
| City Project Number: | [City Project Number] |
| City Plan Set Number: | [City Plan Set Number] if applicable |
| Consultant Project Number: | [Consultant Project Number] |

2. SCOPE OF SERVICES:

Provide a summary of the project and then thoroughly outline the tasks that will be performed as part of the pre-design phase, the design phase, bidding phase, etc. Include the following statement: "The design plans shall be compiled using the City of Clearwater CAD standards, as attached"

I. PRE-DESIGN PHASE:

Task 1.1: Task Name & Summary

II. DESIGN PHASE (if applicable):

Task 2.1: Task Name & Summary

III. FINAL DESIGN PHASE (if applicable):

Task 3.1: Task Name & Summary

IV. BIDDING PHASE (if applicable):

Task 4.1: Task Name & Summary

V. CONSTRUCTION PHASE (if applicable):

Task 5.1: Task Name & Summary

CONSULTANT WORK ORDER

[Project Title]

[Consultant Name]

[City Project Number]

City of Clearwater

3. PROJECT GOALS:

Summarize the work products (e.g. Project Catalog), that will be developed during, and at completion of this project. Include deliverables, reports, drawings, specifications, # of copies, the format in which plans will be provided, meetings and/or site visits, permits, etc.

4. FEES:

Include a table or an attachment that depicts the total cost per task and/or phase for these engineering services – see Attachment “A”

This price includes all labor and expenses anticipated to be incurred by _____ (insert consulting firm) for the completion of these tasks in accordance with Professional Services Method “A” – Hourly Rate or Method “B” – Lump Sum – Percentage of Completion by Task (choose Method “A” or “B”), for a fee not to exceed _____ Dollars (\$ x,xxx.xx).

Include a statement, that the permit application fees (include permit costs in the project fees) will be paid by the consultant and invoiced to the City as a reimbursable

5. SCHEDULE:

Insert a discussion of the schedule, including milestones, and critical events

The project is to be completed in [##] months (or days) from issuance of notice-to-proceed. The project deliverables are to be phased as follows:

- 30% Construction Plans:** [##] calendar days
- 60% Construction Plans and Permit Applications:** [##] calendar days
- 90% Construction Plans:** [##] calendar days
- Final Construction Documents:** [##] calendar days

6. STAFF ASSIGNMENT:

Insert the firm’s and the City’s staff assignments to this project

7. CORRESPONDENCE/REPORTING PROCEDURES:

Consultant’s project correspondence shall be directed to:
Insert Consultant’s designated Project Manager with copies to Consultant’s designated Project Director

All City project correspondence shall be directed to:
Insert City’s designated Project Manager (others to be copied as appropriate)

CONSULTANT WORK ORDER

[Project Title]

[Consultant Name]

[City Project Number]

City of Clearwater

8. INVOICING/FUNDING PROCEDURES:

City Invoicing Code: _____

For work performed, invoices shall be submitted monthly to:

**ATTN JAMIE GAUBTZ
CITY OF CLEARWATER, PUBLIC WORKS DEPARTMENT/ENGINEERING
PO BOX 4748
CLEARWATER, FLORIDA 33758-4748**

Contingency services will be billed as incurred only after written authorization provided by the City to proceed with those services.

9. INVOICING PROCEDURES:

At a minimum, in addition to the invoice amount(s) the following information shall be provided on all invoices submitted on the Work Order:

1. Purchase Order, Project and Invoice Numbers and Contract Amount.
2. The time period (begin and end date) covered by the invoice.
3. A short narrative summary of activities completed in the time period.
4. Contract billing method – Lump Sum or Hourly Rate.
5. If Lump Sum, the percent completion, amount due, previous amount earned and total earned to date for all tasks (direct costs, if any, shall be included in lump sum amount).
6. If Hourly Rate, hours, hourly rates, names of individuals being billed, amount due, previous amount earned, the percent completion, total earned to date for each task and other direct costs (receipts will be required for any single item with a cost of \$50 or greater or cumulative monthly expenses greater than \$100).
7. If the Work Order is funded by multiple funding codes, an itemization of tasks and invoice amounts by funding code.

10. CONSIDERATIONS:

Consultant acknowledges the following:

1. The Consultant named above is required to comply with Section 119.0701, Florida Statutes, where applicable.
2. All City directives shall be provided by the City Project Manager.
3. "Alternate equals" shall not be approved until City Project Manager agrees.
4. All submittals must be accompanied by evidence each has been internally checked for QA/QC before providing to City.
5. Consultants/Contractors are not permitted to use City-owned equipment (i.e. sampling equipment, etc.).
6. Documents posted on City website must ADA accessible.

CONSULTANT WORK ORDER

[Project Title]

[Consultant Name]

[City Project Number]

City of Clearwater

11. ADDITIONAL CONSIDERATIONS:

All work orders should include considerations for the following:

1. Sea Level Rise and Flood Resilience, as applicable.
2. Submittal of a Critical Path Method (CPM) Schedule(s).
3. Submittal of a Project Catalog with the following items, as appropriate:
 - a. Data requests, assumptions, critical correspondence, meeting agenda, sign-in sheets, meeting minutes, document comment-response log(s), technical memorandum/reports, addenda, progress reports, regulatory correspondence, and other project-related documents.
 - b. If construction project, also include design plans, conformed plans, change orders, field orders, RFIs, work change directives, addenda, progress reports, shop drawing and progress submittals, as-builts, record drawings, and other project-related documents such as O&M manuals and warranty information.
 - c. At the conclusion of the project, ENGINEER will combine this information into a Project Catalog and submit to the City for review and comment.
4. Arc Flash labeling requirements:
 - a. All electrical designs and construction shall adhere to NFPA 70 E "Standard for Electrical Safety in the Workplace".
 - b. Updated calculations of Fault and Arc Flash, and provisions for new or updated Arc Flash equipment labeling shall be included in the contract documents.

12. SPECIAL CONSIDERATIONS:

Insert a discussion of any other special considerations

13. SIGNATURES:

PREPARED BY:

APPROVED BY:

 [Printed Name]
 [Title]
 [Firm]

 Tara Kivett, P.E.
 City Engineer
 City of Clearwater

Date

Date

EXHIBIT "A"

CONSULTANT WORK ORDER – PROJECT FEES TABLE

[Project Title]

[Consultant Name]

[City Project Number]

City of Clearwater

CONSULTANT WORK ORDER

PROJECT FEES TABLE

| Task | Description | Subconsultant Services | Labor | Total |
|---|---|------------------------|-------|-------|
| 1.0 | Pre-Design | | | |
| 1.1 | Project Management Plan | | | |
| 1.2 | Progress Reports | | | |
| 1.3 | Coordination | | | |
| 1.4 | Meetings | | | |
| Pre-Design Total: | | | | |
| 2.0 | Design | | | |
| 2.1 | Ground Surveys | | | |
| 2.2 | Geotechnical Services | | | |
| 2.3 | Utility Locations by Vacuum Excavation | | | |
| Design Total: | | | | |
| 3.0 | Final Design Plans and Specifications | | | |
| 3.1 | 30% Submittal | | | |
| 3.2 | 60% Submittal | | | |
| 3.3 | 90% Submittal | | | |
| 3.4 | Final Construction Documents | | | |
| Final Design Plans and Specifications Total: | | | | |
| 4.0 | Permitting Services | | | |
| 4.1 | Permitting | | | |
| Permitting Services Total: | | | | |
| 5.0 | Construction Phase Services | | | |
| 5.1 | Preconstruction Conference | | | |
| 5.2 | Contractors RFI's | | | |
| 5.3 | Shop Drawing Review | | | |
| Construction Phase Services Total: | | | | |
| SUBTOTAL, LABOR AND SUB-CONTRACTORS: | | | | |
| 6.0 | Permit Fees | | | |
| 7.0 | Other Direct Costs (prints, photocopies, postage, etc.) (Not applicable to lump sum Work Orders) | | | |
| GRAND TOTAL: | | | | |

**EXHIBIT "A" (Include if
applicable) CONSULTANT WORK
ORDER – CITY DELIVERABLES [Project
Title]**

[Consultant Name]

[City Project Number]

City of Clearwater

CONSULTANT WORK ORDER

CITY DELIVERABLES

1. FORMAT:

The design plans shall be compiled utilizing the following methods:

1. City of Clearwater CAD standards.
2. Datum: Horizontal and Vertical datum shall be referenced to North American Vertical Datum of 1988 (vertical) and North American Datum of 1983/90 (horizontal). The unit of measurement shall be the United States Foot. Any deviation from this datum will not be accepted unless reviewed by City of Clearwater Engineering/Geographic Technology Division.

2. DELIVERABLES:

The design plans shall be produced on bond material, 24" x 36" at a scale of 1" = 20' unless approved otherwise. Upon completion the consultant shall deliver all drawing files in digital format with all project data in Autodesk Civil 3D file format.

NOTE: If approved deviation from Clearwater CAD standards is used, the Consultant shall include all necessary information to aid in manipulating the drawings including either PCP, CTB file or pen schedule for plotting. The drawing file shall include only authorized fonts, shapes, line types or other attributes contained in the standard release of Autodesk software. All block references and other references contained within the drawing file shall be included. Please address any questions regarding format to Mr. Thomas Mahony, at (727) 562-4762 or email address Thomas.Mahony@myClearwater.com.

All electronic files (including CAD and Specification files) must be delivered upon completion of project or with 100% plan submittal to City of Clearwater.

Exhibit B

PROVISION OF PAYMENT

ENGINEER OF RECORD: _____

BASIS FOR PAYMENT

The owner shall pay ENGINEER and ENGINEER agrees to accept as full compensation for its services (as established by Work Order) compensation as computed by one of the following methods:

Method "A" -Hourly Rate-

Compensation in the form of burdened hourly rates.

Burdened (direct+ indirect) Hourly Rate+ Subconsultant Cost+ Other Direct Costs.

Direct cost includes labor hourly rate. Indirect costs include fringe benefit rate, overhead, operating margin and profit.

Subconsultant Costs are actual costs incurred **times a factor of 1.00**. Actual costs shall be based on billing rates for required labor classifications.

Other Direct Costs are actual costs incurred for travel outside of Tampa Bay area, printing, copying, long distance telephone calls, etc.

Method "B" - Lump Sum -

Compensation in the form of "lump sum" for all work associated with a Work Order or task and shall be determined by mutual agreement between the ENGINEER and the City. The lump sum amount shall be negotiated based upon the Work Order scope of services and approved by both the City and the ENGINEER.

Hourly Rates -

The estimated hourly rates below represent 2023 costs and categories. Periodic changes are anticipated, and modifications may be made annually in writing to the City for review and approval.

**CITY OF CLEARWATER ENGINEER OF RECORD 8/1/23 to
7/31/27**

ENGINEER OF RECORD: WSP-USA

Please fill out chart below with job classification and hourly rate

| Job Classification | Burdened Hourly-Rate |
|--|----------------------|
| Senior Vice President | \$303 |
| Senior Project Manager/Group Manager | \$281 |
| Principal Hydrogeologist | \$281 |
| Project Manager/Associate Principal | \$267 |
| Senior Lead Engineer/Senior Lead Scientist | \$250 |
| Senior Lead Hydrogeologist | \$240 |
| Lead Engineer/Lead Scientist | \$214 |
| Landscape Architect | \$211 |
| Chief Designer | \$205 |
| Engineer/Scientist III-IV | \$180 |
| Construction Engineer | \$170 |
| Senior Hydrogeologist | \$170 |
| Senior Designer | \$165 |
| Construction Administrator/Manager | \$145 |
| Engineer/Scientist I-III | \$140 |
| Operations Specialist | \$140 |
| Senior Inspector | \$135 |
| Hydrogeologist | \$135 |
| Fiscal/Accounting | \$130 |
| Inspector | \$120 |
| Field Technician | \$118 |
| Drafter/CADD Operator | \$112 |
| Engineer Intern | \$110 |

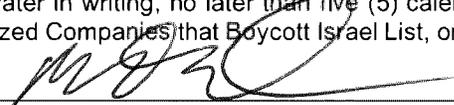
RFQ 34-23, Exhibit B_Forms

SCRUTINIZED COMPANIES THAT BOYCOTT ISRAEL LIST CERTIFICATION FORM

THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE BID/PROPOSAL. FAILURE TO SUBMIT THIS FORM AS REQUIRED MAY DEEM YOUR SUBMITTAL NONRESPONSIVE.

The affiant, by virtue of the signature below, certifies that:

1. The vendor, company, individual, principal, subsidiary, affiliate, or owner is aware of the requirements of section 287.135, Florida Statutes, regarding companies on the Scrutinized Companies that Boycott Israel List, or engaged in a boycott of Israel; and
2. The vendor, company, individual, principal, subsidiary, affiliate, or owner is eligible to participate in this solicitation and is not listed on the Scrutinized Companies that Boycott Israel List, or engaged in a boycott of Israel; and
3. "Boycott Israel" or "boycott of Israel" means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered as evidence that a company is participating in a boycott of Israel; and
4. If awarded the Contract (or Agreement), the vendor, company, individual, principal, subsidiary, affiliate, or owner will immediately notify the City of Clearwater in writing, no later than five (5) calendar days after any of its principals are placed on the Scrutinized Companies that Boycott Israel List, or engaged in a boycott of Israel.



 Authorized Signature
 Robert M. Clifford, AICP

 Printed Name
 Florida Transportation Manager/Vice President

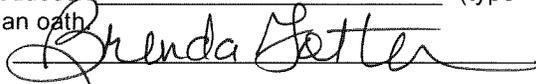
 Title
 WSP USA Inc.

 Name of Entity/Corporation

STATE OF Florida
 COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me by means of physical presence or online notarization on, this 25th day of April, 2023, by Robert M. Clifford (name of person whose signature is being notarized) as the FL Transportation Manager (title) of WSP USA Inc. (name of corporation/entity), personally known , or produced _____ (type of identification) as identification, and who did/did not take an oath.





 Notary Public
Brenda Goltermann

 Printed Name

My Commission Expires: _____
 NOTARY SEAL ABOVE

RFQ 34-23, Exhibit B_Forms

**SCRUTINIZED COMPANIES AND BUSINESS OPERATIONS WITH CUBA AND SYRIA
CERTIFICATION FORM**

**IF YOUR BID/PROPOSAL IS \$1,000,000 OR MORE, THIS FORM MUST BE COMPLETED AND
SUBMITTED WITH THE BID/PROPOSAL. FAILURE TO SUBMIT THIS FORM AS REQUIRED MAY
DEEM YOUR SUBMITTAL NONRESPONSIVE.**

The affiant, by virtue of the signature below, certifies that:

1. The vendor, company, individual, principal, subsidiary, affiliate, or owner is aware of the requirements of section 287.135, Florida Statutes, regarding companies on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaging in business operations in Cuba and Syria; and
2. The vendor, company, individual, principal, subsidiary, affiliate, or owner is eligible to participate in this solicitation and is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Sector List, or engaged in business operations in Cuba and Syria; and
3. Business Operations means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce; and
4. If awarded the Contract (or Agreement), the vendor, company, individual, principal, subsidiary, affiliate, or owner will immediately notify the City of Clearwater in writing, no later than five (5) calendar days after any of its principals are placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Sector List, or engaged in business operations in Cuba and Syria.

Authorized Signature
Robert M. Clifford, AICP
 Printed Name
 Florida Transportation Manager/Vice President
 Title
 WSP USA Inc.
 Name of Entity/Corporation

STATE OF Florida
 COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, on this 25th day of April, 2023, by Robert M. Clifford (name of person whose signature is being notarized) as the FL. Transportation Mgr. VP (title) of WSP USA Inc. (name of corporation/entity), personally known , or produced _____ (type of identification) as identification, and who did/did not take an oath.



Notary Public
Brenda Goltermann
 Printed Name

My Commission Expires: _____
 NOTARY SEAL ABOVE

RFQ 34-23, Exhibit B_Forms

VERIFICATION OF EMPLOYMENT ELIGIBILITY FORM

PER FLORIDA STATUTE 448.095, CONTRACTORS AND SUBCONTRACTORS MUST REGISTER WITH AND USE THE E-VERIFY SYSTEM TO VERIFY THE WORK AUTHORIZATION STATUS OF ALL NEWLY HIRED EMPLOYEES.

THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE BID/PROPOSAL. FAILURE TO SUBMIT THIS FORM AS REQUIRED MAY DEEM YOUR SUBMITTAL NONRESPONSIVE.

The affiant, by virtue of the signature below, certifies that:

1. The Contractor and its Subcontractors are aware of the requirements of Florida Statute 448.095.
2. The Contractor and its Subcontractors are registered with and using the E-Verify system to verify the work authorization status of newly hired employees.
3. The Contractor will not enter into a contract with any Subcontractor unless each party to the contract registers with and uses the E-Verify system.
4. The Subcontractor will provide the Contractor with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with unauthorized alien.
5. The Contractor must maintain a copy of such affidavit.
6. The City may terminate this Contract on the good faith belief that the Contractor or its Subcontractors knowingly violated Florida Statutes 448.09(1) or 448.095(2)(c).
7. If this Contract is terminated pursuant to Florida Statute 448.095(2)(c), the Contractor may not be awarded a public contract for at least 1 year after the date on which this Contract was terminated.
8. The Contractor is liable for any additional cost incurred by the City as a result of the termination of this Contract.

 Authorized Signature
 Robert M. Clifford, AICP

 Printed Name
 Florida Transportation Manager/Vice President

 Title
 WSP USA Inc.

 Name of Entity/Corporation

STATE OF Florida
 COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me by means of physical presence or online notarization on this 25th day of April, 2023, by Robert M. Clifford (name of person whose signature is being notarized) as the FL Transportation Mgr. VP (title) of WSP USA Inc. (name of corporation/entity), personally known X, or produced _____ (type of identification) as identification, and who did/did not take an oath.



Brenda Goltermann
 Notary Public
Brenda Goltermann
 Printed Name

My Commission Expires: _____
 NOTARY SEAL ABOVE

RFQ 34-23, Exhibit B_Forms

TRUTH-IN-NEGOTIATION CERTIFICATE

In compliance with the Consultants' Competitive Negotiation Act,
Section 287.055, Florida Statutes, and The Truth in Negotiations Act (TINA),

WSP USA Inc. hereby certifies
Contractor

that wage rates, fringe rates and other factual unit costs supporting the compensation
for the Engineer of Record Consulting services of RFQ #34-23
to be provided under this Agreement, concerning the City of Clearwater
are accurate, complete and current as of the time of contracting.

The hereby undersigned representative submits this certification that they are an
authorized representative of the proposer who may legally bind the proposer attest to
the accuracy of the information:

[Signature]
Authorized Signature
Robert M. Clifford, AICP
Printed Name
Florida Transportation Manager/Vice President
Title
WSP USA Inc.
Name of Entity/Corporation

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me by means of physical presence or
online notarization on, this 25th day of April, 2023, by
Robert M. Clifford (name of person whose signature is being notarized) as
the FL Transportation MGR VP (title) of WSP USA INC. (name
of corporation/entity), personally known X, or produced _____
(type of identification) as identification, and who did/did not take an oath.



[Signature]
Notary Public
Brenda Goltermann
Printed Name

My Commission Expires: _____
NOTARY SEAL ABOVE

RFQ #34-23, Exhibit D
STANDARD TERMS AND CONDITIONS

- S.1 **DEFINITIONS.** Uses of the following terms are interchangeable as referenced: “vendor, contractor, consultant, supplier, proposer, company, persons”, “purchase order, PO, contract, agreement”, “City, Clearwater”, “bid, proposal, response, quote”.
- S.2 **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor’s employees, not City employees. Accordingly, Contractor and Contractor’s employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers’ compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.
- S.3 **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.
- S.4 **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City’s written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.
- S.5 **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
- S.6 **NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.
- S.7 **NON- EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
- S.8 **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
- S.9 **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties’ obligations under this Agreement.
- S.10 **COMPLIANCE WITH APPLICABLE LAWS.**
- a. **General.** Contractor must procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, executive orders, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City’s satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will

RFQ #34-23, Exhibit D
STANDARD TERMS AND CONDITIONS

require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- (i) As applicable to Contractor, under this provision, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees (hereinafter "Contractor Immigration Warranty").
 - (ii) A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - (iii) The City retains the legal right to inspect the papers of all Contractor personnel who provide services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
 - (iv) The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
 - (v) Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act.
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Contractor and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.
- S.11 **SALES/USE TAX, OTHER TAXES.** Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.

The City is exempt from paying state and local sales/use taxes and certain federal excise taxes and will furnish an exemption certificate upon request.

RFQ #34-23, Exhibit D
STANDARD TERMS AND CONDITIONS

S.12 **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.

S.13 **PUBLIC RECORDS.** In addition to all other contract requirements as provided by law, the Contractor executing this Agreement agrees to comply with public records law.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, Rosemarie Call, Phone: 727-562-4092 or Email: Rosemarie.Call@myclearwater.com, 600 Cleveland Street, Suite 600, Clearwater, FL 33755.

The Contractor agrees to comply with the following:

- a) Keep and maintain public records required by the City of Clearwater (hereinafter "public agency" in this section) to perform the service being provided by the contractor hereunder.
- b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.
- c) Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- e) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
- f) The contractor hereby acknowledges and agrees that if the contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- g) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

RFQ #34-23, Exhibit D
STANDARD TERMS AND CONDITIONS

h) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and

2. At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

i) A notice complies with subparagraph (h)2. if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A Contractor who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

S.14 **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for five (5) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.

S.15 **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.

S.16 **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether or not any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.

S.17 **DEFAULT.**

a. A party will be in default if that party: (i) is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement; (ii) is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days; (iii) conducts business in an unethical manner or in an illegal manner; or (iv) fails to carry out any term, promise, or condition of the Agreement.

b. Contractor will be in default of this Agreement if Contractor is debarred or suspended in accordance with the Clearwater Code of Ordinances Section 2.565 or if Contractor is debarred or suspended by another governmental entity.

RFQ #34-23, Exhibit D
STANDARD TERMS AND CONDITIONS

- c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.
- d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.
- S.18 **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
- b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.
- c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
- d. Neither party will be liable for incidental, special, or consequential damages.
- S.19 **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
- S.20 **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement at its convenience, in part or in whole, upon thirty (30) calendar days' written notice.
- S.21 **TERMINATION FOR CONFLICT OF INTEREST.** The City may cancel this Agreement after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
- S.22 **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines, in its sole discretion, that it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.

RFQ #34-23, Exhibit D
STANDARD TERMS AND CONDITIONS

- S.23 **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will be entitled only to payment for those services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
- S.24 **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this Agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
- S.25 **INDEMNIFICATION/LIABILITY.**
- a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with or fulfill the obligations established by this Agreement.
 - b. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
 - c. The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.
 - d. Nothing contained herein is intended to serve as a waiver by the City of its sovereign immunity, to extend the liability of the City beyond the limits set forth in Section 768.28, Florida Statutes, or be construed as consent by the City to be sued by third parties.
- S.26 **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like, and professional manner. The City's acceptance of service or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If any materials or services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction. Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.
- S.27 **CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.
- S.28 **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of materials or services or any materials or services at all under this Agreement and acknowledges and agrees that the materials or services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or

RFQ #34-23, Exhibit D
STANDARD TERMS AND CONDITIONS

- performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
- S.29 **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
- S.30 **USE OF NAME.** Contractor will not use the name of the City of Clearwater in any advertising or publicity without obtaining the prior written consent of the City.
- S.31 **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
- S.32 **RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
- S.33 **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.
- S.34 **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble, or hindrance from Contractor or third parties.
- S.35 **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret, or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services. Nothing contained herein is intended to serve as a waiver by the City of its sovereign immunity, to extend the liability of the City beyond the limits set forth in Section 768.28, Florida Statutes, or be construed as consent by the City to be sued by third parties.
- S.36 **CONTRACT ADMINISTRATION.** This Agreement will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding this Agreement will be referred to the administrator for resolution. Supplements may be written to this Agreement for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).
- S.37 **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent

RFQ #34-23, Exhibit D
STANDARD TERMS AND CONDITIONS

such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.

- S.38 **COOPERATIVE USE OF CONTRACT.** This Agreement may be extended for use by other municipalities, counties, school districts, and government agencies with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency. Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others.
- S.39 **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Procurement Division.
- S.40 **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via electronic mail; (iv) sent via overnight courier; or (v) sent via facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via electronic mail, overnight courier, or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.
- S.41 **GOVERNING LAW, VENUE.** This Agreement is governed by the laws of the State of Florida. The exclusive venue selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Pinellas County, Florida.
- S.42 **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
- S.43 **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
- S.44 **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
- S.45 **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.

Exhibit E
RFQ 34-23, EOR Consulting Services
Insurance Requirements

INSURANCE REQUIREMENTS. The Contractor (respondent) shall, at its own cost and expense, acquire and maintain (and cause any subcontractors, representatives or agents to acquire and maintain) during the term with the City, sufficient insurance to adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better. In addition, the City has the right to review the Contractor's deductible or self-insured retention and to require that it be reduced or eliminated.

Specifically the Contractor must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement. Specific work may require additional coverage on a case by case basis:

- a. **Commercial General Liability Insurance** coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.
- b. **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 (one million dollars) combined single limit.
- c. Unless waived by the State of Florida and proof of waiver is provided to the City, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$1,000,000 (one million dollars) each employee each accident, \$1,000,000 (one million dollars) each employee by disease, and \$1,000,000 (one million dollars) disease policy limit. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.
- d. If the Contractor is using its own property, or the property of the City or other provider, in connection with the performance of its obligations under this Agreement, then **Contractor's Equipment Insurance or Property Insurance** on an "All Risks" basis with replacement cost coverage for property and equipment in the care, custody and control of others is required.
- e. **Professional Liability Insurance** coverage appropriate for the type of business engaged in by the Contractor with minimum limits of \$1,000,000 (one million dollars) per occurrence. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

6. OTHER INSURANCE PROVISIONS.

- a. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, the Contractor will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD

certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an "Additional Insured." In addition, when requested in writing from the City, Contractor will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows: **City of Clearwater**

Attn: Procurement Division, RFQ #34-23

P.O. Box 4748

Clearwater, FL 33758-4748

- b. Contractor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- c. Contractor's insurance as outlined above shall be primary and non-contributory coverage for Contractor's negligence.
- d. Contractor reserves the right to appoint legal counsel to provide for the Contractor's defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to Contractor's design, equipment, or service. Contractor agrees that the City shall not be liable to reimburse Contractor for any legal fees or costs as a result of Contractor providing its defense as contemplated herein.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and failure to request evidence of this insurance shall not be construed as a waiver of Contractor's obligation to provide the insurance coverage specified.