

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 16th day of April 2020, by and between **City of Clearwater**, (hereinafter the “Client”), and **Tindale-Oliver & Associates, Inc. dba Tindale Oliver** (hereinafter the “Consultant”).

WHEREAS, the *Client* desires to engage the *Consultant* to perform certain services for the performance for the ADA Compliance Consulting Services (hereinafter the “Project”) under the terms of this Agreement;

WHEREAS, the *Client* selected the *Consultant* in accordance with the competitive selection process and based on information and representations given by the *Consultant* in a response to RFP #02-20;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter provided, the *Client* and the *Consultant* agree as follows.

1. Scope of Agreement. The *Consultant's* relationship to the *Client* shall be that of independent *Consultant*; at all times this relationship shall be governed by and in strict compliance with the terms of this Agreement for Professional Services.

It shall be the responsibility of the *Consultant* to work with and for the *Client* to perform an array of services for the *Client* as set forth in RFP #02-20, which is incorporated by reference and attached hereto. The *Client*, in its sole discretion, reserves the right to modify, remove or change the scope of services at any time.

2. Period of Service. The *Consultant* shall be available to begin its services promptly after receipt of a fully executed copy of this Agreement and will complete the services within the timeframe indicated in individual work order assignments. However, the times for performance established in the work order schedules shall be extended for periods of delay resulting from strikes, natural disasters, delays by the *Client*, and similar circumstances over which the *Consultant* has no control. The *Consultant's* receipt of a fully executed task work order pursuant to this Agreement shall constitute written notice for *Consultant* to proceed with the Services described in that task work order.

3. Compensation.

a. Completion for the services rendered shall be prescribed in the attached work order. Work orders will be incorporated by reference and attached hereto this Agreement.

Total compensation for all services shall not exceed **\$383,657** (three hundred eighty-three thousand six hundred fifty-seven U.S. dollars) unless

specifically authorized by the City Council.

b. Anything to the contrary notwithstanding, no services undertaken by the *Consultant* or expenses incurred by the *Consultant* exceeding the identified fees and expenses shall be the liability of the *Client* unless such additional fees and expenses have been approved in writing by the *Client* in advance.

4. Additional Services. The *Consultant* shall provide services in addition to those described in task work orders only upon written request of the *Client*. *Consultant* shall be compensated for all authorized additional services only on the basis agreed upon in writing at the time such services are authorized.

5. Invoices. Invoices will be submitted by the *Consultant* upon completion of the work described in task work orders. Invoices shall be submitted on a monthly basis and indicate the percent complete of each task and resulting amount billed. *Client's* payment of each such invoice shall be within thirty (30) days of receipt of *Consultant's* invoice.

6. Termination. The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination the *Consultant* will be paid as hereinafter provided for all authorized services rendered to the date of such termination. If the *Consultant's* compensation hereunder is a lump sum fee, the amount payable to the *Consultant* in the event of termination will be a pro rata amount of such fee, determined on the basis of the relationship of the amount and value of the work performed prior to the *Consultant's* receipt of notice of termination. If the *Consultant's* compensation hereunder is determined on an hourly basis pursuant to an amendment to this Agreement, the amount payable to the *Consultant* for services so rendered shall be established on the basis of the time and authorized expenses actually incurred on the project to the date of its receipt of notice of termination, subject to a determination by the *Client* and *Consultant* that the charges are fair and reasonable in view of the amount and value of the work performed.

7. Insurance. The *Consultant* shall maintain insurance coverage's which shall be evidenced by (1) delivery to the *Client* of a Certificate of Insurance executed by the insurers and listing coverages and limits, expiration dates, and terms of policies and all endorsements, whether or not required by the *Client*, and listing all carriers issuing said policies; and (2) upon request, a certified copy of each policy, including all endorsements. The insurance requirement shall remain in effect throughout the term of the Agreement. Types of insurance and policy limits are set forth in RFP #02-20.

Each insurance policy shall include the following conditions by endorsements to the

policy:

- a. Except for workers compensation as required by law and comprehensive automobile and truck liability insurance, each policy shall require that thirty (30) days prior to expiration, cancellation, non-renewal, or any material change in coverages or limits, a notice thereof shall be given to the *Client* by certified mail. *Consultant* shall also notify *Client*, in like manner, within twenty-four (24) hours after receipt of any notices of expiration, cancellation, non-renewal, or material changes in coverage received by said *Consultant* from its insurer; and nothing contained herein shall absolve *Consultant* of this requirement to provide notice.
- b. Companies issuing the insurance policy, or policies, shall have no recourse against *Client* for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of *Consultant*.
- c. *Client* shall be endorsed to the required policy, or policies, as an additional insured.

8. Indemnification.

a. Hold Harmless. The *Consultant* shall indemnify and hold *Client*, its officers, and employees, harmless from and against (1) personal injury, bodily injury (including death) or property damages (including destruction) received, or (2) losses, penalties, damages, professional fees, including reasonable attorney fees and all costs of litigation and judgments arising out of any willful misconduct or any negligent act, error or omission of the *Consultant*, or its employees arising directly out of the performance of this Agreement or work performed hereunder, including any claims brought against the *Client*, its officers and employees. Compliance with the insurance requirements in Section 7, Insurance, shall not relieve the *Consultant* of his liability and obligations under any other portion of this Agreement. This section shall not apply to *Consultant* when losses, penalties, damages, professional fees, including attorney's fees and all costs of litigation and judgments arising out of the performance of this contract are caused by the negligence of the *Client*.

Nothing in this Agreement should be construed as a waiver of sovereign immunity by the City of Clearwater, nor shall anything herein be construed as a waiver of any provision of Section 768.28, Florida Statutes.

b. Completeness and Accuracy of Deliverables. The *Consultant* shall be responsible for the completeness and accuracy of its services, deliverables, plans, supporting data, computer programs and data files and other documents and information prepared or compiled under its direction and control, and shall correct at its expense all errors or omissions therein which may be disclosed. The time, effort,

and cost of the work necessary to correct those errors attributable to the *Consultant* shall be borne by the *Consultant*. The fact that the *Client* has accepted or approved the *Consultant's* services shall in no way relieve the *Consultant* of any of its responsibilities. This provision shall not apply to any maps, official records, contracts, or other data that may be provided by the *Client* or public or semi-public agencies which the *Consultant* should reasonably expect to be accurate and which the *Consultant* could not reasonably be expected to know to be inaccurate.

c. Claims Against the Client. The *Consultant* agrees that no charges or claim for damages shall be made by it for any unreasonable delays or hindrances attributable to the *Client* during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by the *Client* by an extension of time for a reasonable period for the *Consultant* to complete the services. Such an agreement shall be made in writing between the parties.

9. Ownership of Documents. All documents including, but not limited to, tracings, drawings, illustrations, computer files and programs, estimates, field notes, investigations, design analysis, studies, and other data or documents which are obtained or prepared in the performance of this Agreement, are to be instruments of service and copies are to be delivered to the *Client* before the final payment is made to the *Consultant*.

10. Non-discrimination.

a. The *Consultant* agrees that he will not discriminate against any of his employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State Laws regarding non-discrimination. Any violation of such provisions shall constitute a material breach of this Agreement.

b. Immigration Affidavit Certification. Statutes and executive orders require employers to abide by the immigration laws of the United States and to employ only individuals who are eligible to work in the United States.

The E-Verify program, operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA), provides an Internet-based means of verifying employment eligibility verification requirements.

Consultants are required to enroll in the E-Verify program within thirty (30) calendar days of contract award, and use E-Verify within thirty (30) calendar days thereafter to verify employment eligibility of their employees assigned to the contract at the time of enrollment in E-Verify. Additionally, Consultants shall flow down the requirement to use E-verify to their subcontracted vendors.

Consultant acknowledges and shall be fully responsible for complying with the provisions and regulations relating thereto, as either may be amended. Failure to comply with the laws referenced herein shall constitute a breach of agreement and the *client* and/or *Consultant* shall have the discretion to unilaterally terminate said agreement immediately.

11. Expenses of Litigation. In the event litigation in any way related to the services performed hereunder is initiated by one party to this Agreement against the other, the prevailing party shall be reimbursed by the other party its reasonable attorneys fees and costs.

12. Controlling Law. This Agreement is to be governed by the laws of the State of Florida, and venue shall rest solely in Pinellas County, Florida.

13. Hazardous Substances. It is understood and agreed that in seeking the professional services of the *Consultant* in this Agreement, the *Client* does not request the *Consultant* to undertake uninsurable obligations involving or related in any manner to hazardous substances.

14. Binding Effect. This Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors and assigns.

15. Merger, Amendment. This Agreement constitutes the entire agreement between the *Client* and the *Consultant*, and all negotiations and oral understandings between the parties are merged herein. This Agreement may be supplemented and/or amended only by a written document executed by both the *Client* and the *Consultant*.

16. Non-assignability. Neither party shall assign any rights or delegate any duties arising under this Agreement without prior written consent of the other party.

17. Severability. Any provision in this Agreement that is prohibited or unenforceable under Florida or federal law shall be ineffective to the extent of such prohibitions or unenforceability, without invalidating the remaining provisions hereof. Also, the non-enforcement of any provision by either party to this Agreement shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.

18. Public Records. The *Consultant* will be required to comply with Section 119.0701, Florida Statutes, and the Public Records requirements as set forth in RFP #02-20.

19. Termination for Convenience. Either the *Client* 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 *Client* as provided herein, the *Consultant* will be paid for services rendered through the date of termination.

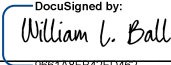
20. RFP #02-20, Standard Terms and Conditions. All terms and conditions as set forth in RFP #02-20, Standard Terms of Conditions are incorporated by reference.

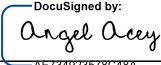
21. Order of Precedence. Any inconsistency in documents relating to this Agreement shall be resolved by giving precedence in the following order: (i) this Agreement and subsequent Amendments; (ii) RFP #02-20, Standard Terms and Conditions; and (iii) Work Orders.

23. Termination for Lack of Funding. The City of Clearwater'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 in a sufficient amount for the City to perform its obligations hereunder, the City may terminate this Agreement upon thirty (30) days written notice to Consultant.

IN WITNESS WHEREOF, the *Client* and the *Consultant* have caused this instrument to be signed by their respective duly authorized officers, all on the day and year first above written.

Tindale-Oliver & Associates, Inc. dba Tindale Oliver (Consultant)

By:  Date: 3/26/2020
DocuSigned by: William L. Ball
9861A8FB42FD462...
 William L. Ball Chief operating officer
 Print/Type Name & Title

ATTEST:  Date: 3/26/2020
DocuSigned by: Angel Acey
AE734923578C48A...

Countersigned:

CITY OF CLEARWATER

 Frank Hibbard
 Mayor

 William B. Horne II
 City Manager

Approved as to form:

Attest:

Owen Kohler
Assistant City Attorney

Rosemarie Call
City Clerk