

CITY OF ST. PETE BEACH, FLORIDA
Continuing Contract for Professional Design Services

[insert consultant and/or purpose for agreement and/or contract number]

This is a Contract (the “Contract”) entered into by and between the City of St. Pete Beach (hereinafter “CITY”) and [insert consultant’s corporate name] (hereinafter “CONSULTANT”). The CITY and CONSULTANT together shall be referred to as the “Parties.”

WHEREAS, the CITY desires to retain the CONSULTANT to perform Continuing Professional Design Services for the CITY, more fully described below in the “scope of services” section; and,

WHEREAS, the CITY desires to employ the CONSULTANT for the Continuing Professional Design Services and other services upon the terms and conditions hereinafter set forth, and the CONSULTANT is desirous of performing such services upon such terms and conditions; and,

WHEREAS, the CONSULTANT has been selected to perform these professional services pursuant to the provisions of the “Consultants’ Competitive Negotiation Act” in Section 287.055; Florida Statutes, and all applicable CITY rules, regulations and policies.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

SECTION 1 – GENERAL.

- 1.1 The above recitals are true and correct, and incorporated as part of this Contract.
- 1.2 The effective date of this Contract is the date when all parties have executed this Contract.
- 1.3 CONSULTANT shall be defined herein to include all principals of the firm of, including full time employees, professionals or otherwise, and all servants, agents, employees and/or subconsultants retained by the CONSULTANT to perform its obligations hereunder. Subconsultants shall be reviewed and approved by the CITY prior to Notice to Proceed with their prospective work assignments.
- 1.4 “Professional services” means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered

surveyor and mapper in connection with his or her professional employment or practice.

- 1.5 Prior to the start of any work under this Contract, the CONSULTANT will have submitted to the CITY a detailed resume of key engineering personnel that will be involved in performing services requested by the CITY. The CITY hereby acknowledges its acceptance of such personnel to perform services under this Contract. At any time hereafter that the CONSULTANT desires to change the key personnel in an active assignment, it shall submit the qualifications of the new personnel to the CITY for prior approval. Key personnel shall include principals-in-charge, project managers and project engineers. The provisions of this Section do not apply to personnel temporarily assigned to perform service under this Contract for durations of one (1) week or less.
- 1.6 The CONSULTANT acknowledges that the CITY has retained other consultants, engineering and otherwise, and the coordination between said consultants and the CONSULTANT may be necessary from time to time for the successful completion of the Assignments. The CONSULTANT agrees to provide such coordination as necessary within the Scope of Services.
- 1.7 The CONSULTANT will maintain an adequate and competent staff of professionally qualified persons throughout the performance of this Contract to ensure acceptable and timely completion of the Assignment.
- 1.8 Requirements for sealing all plans, reports and documents prepared by the CONSULTANT shall be governed by the laws and regulations of the State of Florida and the requirements of any regulatory agency, if required.

This Agreement may be executed by the parties in counterpart originals with the same force and effect as if fully and simultaneously executed as a single original document. The "Effective Date" of this Agreement shall be the date this Agreement has been executed by all parties.

- 1.9 The CONSULTANT shall comply with all local, state and federal directives, orders and laws as applicable to the contract.

Compliance with Fla. Stat. 448.095:

- a. Consultant agrees to comply with all applicable portions of Fla. Stat. 448.095. Consultant must use the U.S. Department of Homeland Security's E-Verify System, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired on or after January 1, 2021 during the term of this Agreement.
- b. Subconsultants (i) Consultant shall also require all subconsultants performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. (ii) Subconsultants shall provide

- Consultant with an affidavit stating the subconsultant does not employ, contract with, or subcontract with an unauthorized alien, as defined by Fla. Stat. 448.095 (iii) Consultant shall provide a copy of such affidavit to the City upon receipt and shall maintain a copy for the duration of the Agreement.
- c. Consultant must provide evidence of compliance with Fla. Stat. 448.05 by January 1, 2021. Evidence may consist of, but is not limited to, providing notice of Consultant's E-Verify number.
 - d. Failure to comply with this provision is a material breach of the Agreement, and the City may choose to terminate the Agreement at its sole discretion. Consultant may be liable for all costs associated with the City securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary). Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this agreement is terminated for a violation of the statute by the Consultant, the Consultant may not be awarded a public agreement for a period of 1 year after date of termination.

SECTION 2 – SCOPE OF SERVICES.

- 2.1 The CONSULTANT shall diligently and in a professional and timely manner perform the work included in the Scope of Services. Unless modified in writing by the parties hereto, duties of the CONSULTANT shall not be construed to exceed those services specifically set forth herein.
- 2.2 GENERAL. The CONSULTANT agrees to perform those services described in Exhibit A – Scope of Services which is attached hereto and made a part hereof.
- 2.3 ADDITIONAL SERVICE. The CITY and the CONSULTANT agree that there may be certain additional services required to be performed by the CONSULTANT during the performance of the Scope of Services that cannot be defined sufficiently at the time of execution of this Contract. Such services shall be authorized in writing as Task Orders and shall be undertaken only under terms of formal amendments to this Contract.
- 2.4 TASK ORDERS. Additional services to be provided by the CONSULTANT, as defined in Sections 2.1 and 2.2, shall be authorized in writing as Task Orders. Task Orders to be provided shall be prepared on the form delineated as Exhibit B - which is attached hereto and made a part hereof. Each Task Order shall include: a detailed description of the work to be performed; a schedule of completion (including phases) for the work authorized; and the amount and method of compensation. Task Orders shall be dated and serially numbered annually. The Task Orders may contain additional instructions or provisions specific to the authorized work for the purpose of expanding upon certain aspects of this Contract pertinent to the work to be undertaken. Such supplemental instructions or provisions shall not be construed as a modification of this contract.

- 2.5 The CITY Manager or his/her designee may authorize Task Orders for services under this continuing contract, which are equal to or less than limits prescribed for Continuing Contracts under the provision of F.S. 287.055(g) or limits set by the CITY's rules, regulations, and policies. Professional fees under such specified Task Orders shall be based on a written proposal from the CONSULTANT as may be requested in writing by the CITY's designated representative, who shall process the proposal through the appropriate departments at the CITY. A single unitary task may not be divided into more than one task for the purpose of qualifying for authorization hereunder. Nothing in this paragraph is intended to limit any other rights, responsibilities, and duties of the parties under any other provision of this continuing contract.

SECTION 3 – CITY'S RIGHTS AND REPONSIBILITIES

The CITY shall provide the service described below in a timely fashion at no cost to the CONSULTANT:

- 3.1 Furnish the CONSULTANT with existing data, records, maps, plans, specifications, reports, fiscal data and other information that is available in the CITY's files, necessary or useful to the CONSULTANT for the performance of the assignment. All of the documents conveyed by the CITY shall be and remain the property of the CITY and shall be returned to the CITY upon completion of the assignment to be performed by the CONSULTANT.
- 3.2 Make CITY personnel available when required and necessary to assist the CONSULTANT. The availability and necessity of said personnel to assist the CONSULTANT shall be determined solely at the discretion of the CITY.
- 3.3 Provide access to and make provisions for the CONSULTANT to enter upon the project lands as required for the CONSULTANT within a reasonable time, to perform surveys, observations and other work as necessary to complete the assignment.
- 3.4 Examine all reports, sketches, drawings, estimates, proposals and other documents presented by the CONSULTANT and render written decisions indicating the CITY's approval or disapproval within a reasonable time so as not to materially delay the work of the CONSULTANT.
- 3.5 Transmit instructions, relevant information and provide interpretation and definition of CITY policies and decisions with respect to design, materials and other matters pertinent to the work covered by this Contract.
- 3.6 Give prompt written notice to the CONSULTANT whenever the CITY observes, or otherwise becomes aware of, any development that affects the scope of timing of the CONSULTANT's services or becomes aware of any defect or changes necessary in the work of the CONSULTANT.

- 3.7 Arrange for submission of necessary permits/applications to governmental bodies as prepared by the CONSULTANT.
- 3.8 Furnish approvals and permits from all governmental authorities having jurisdiction and such approvals and consents from others as may be necessary for completion of the assignment not covered under the assignment.

SECTION 4 – COMPENSATION

- 4.1 GENERAL. Compensation to the CONSULTANT for services performed, shall be in accordance with one of the following methods or compensation, as defined and indicated herein:
 - a. Lump Sum Method
 - b. Hourly Rate plus Direct Cost

The type and amount of compensation for each Task Order shall be described on the Task Order form included in “Exhibit B.”

4.2 LUMP SUM METHOD

- a. Lump Sum compensation shall be the total fixed price amount payable under the Lump Sum Method (including all payroll costs, overhead costs, other direct costs, fees, subconsultants’ and specialist costs), for the services to be provided in the Task Order unless there is a change in the scope of the work, or other conditions stipulated in the Task Order, and the Task Order is modified by both the CITY and CONSULTANT to reflect the change(s) by formal amendment to this Contract.
- b. Payment to the CONSULTANT for services performed under a Task Order under the Lump Sum Method shall be monthly in proportion to the percentage of work completed during the month as proposed by the CONSULTANT and accepted by the CITY.

4.3 HOURLY RATE PLUS DIRECT COST. Compensation for services performed under the Hourly Rate plus Direct Cost Method shall be based on reimbursement of hourly costs incurred by the CONSULTANT plus Direct Cost budgeted for reimbursable cost, in its performance of services under a Task Order.

- a. DIRECT COSTS. Direct costs are Subconsultant Costs and Other Direct and Unit Costs as defined below. Direct Sub consultant Costs shall be defined as the actual compensation paid to professional and technical sub consultants of the CONSULTANT while such are engaged directly in the performance of the services under this Contract.

- b. **HOURLY RATE SCHEDULE.** A schedule of approved hourly rates currently used by the CONSULTANT, including its subconsultants by classifications of personnel likely to be employed to perform services under this Contract is contained in “Exhibit C” which is attached hereto and made a part hereof. Any revisions to the ranges of approved hourly rates shall be negotiated with and approved by the CITY prior to being charged.

- c. **OTHER DIRECT COSTS.** Other Direct Costs include the actual costs to the CONSULTANT of project- related expenses that are required to complete the Assignment/Task Order, as defined in the following paragraphs:
 - (1) **EQUIPMENT, MATERIALS AND SUPPLIES.** This item includes all equipment, materials and supplies used and consumed directly in the performance of the services hereunder not included in the CONSULTANT’s standard hourly rates, such as: special report binders, costs of plans, drawings and reports from other agencies, utility companies and other like bodies. Any equipment or material items purchased solely for the performance of the Assignment covered by this Contract which individually have a value in excess of \$100.00, shall be the property of CITY and shall be given to the CITY at the termination of this Contract, if requested.
 - (2) **REPRODUCTIONS.** This item includes the identifiable costs of copying, reproducing and printing of plans, specifications, sketches, drawings, reports, photographs and correspondence.
 - (3) **COMMUNICATIONS AND SHIPPING.** This item includes the identifiable long-distance communications, postage and express charges at actual cost.
 - (4) **TRAVEL AND SUBSISTANCE.** This item includes long-distance travel, subsistence and transportation expenses of personnel during the performance of the Assignment, not to exceed rates and limits as established by the FS Section 112.061. Mileage to be charged at \$0.445 per mile (FS 112.061(7)(d)1.a.)
 - (5) **MISCELLANEOUS.** This item includes any other identifiable project-related costs and expenses incurred by the CONSULTANT in connection with the services performed under the terms of this Contract that are not applicable to general overhead, including but not limited to special equipment rental costs and costs for temporary personnel services.

- d. **COST LIMITATION**
 - (1) The total of all costs actually incurred by the CONSULTANT, as determined and defined in this Contract, for services performed under the

authorized Task Order, will not exceed the cost limitation established, without a formal amendment to the Task Order.

- (2) In the event that the CONSULTANT's estimated total costs for the performance of services under a Task Order are forecasted by the CITY or CONSULTANT to exceed the cost limitation indicated in the Task Order, the CITY and CONSULTANT shall meet to review the forecast and, if necessary, to either increase the cost limitation for the Task Order to provide additional cost recovery to the CONSULTANT or renegotiate the scope of the services of the Task Order so that the cost limitation will not be exceeded. The results of any such review requiring modification of this Contract will be detailed in a formal amendment to the Task Order.
- (3) The CITY is not obligated to reimburse the CONSULTANT for costs incurred in excess of the cost limitation indicated for the Task Order and the CONSULTANT shall not continue performing the services and incur costs in excess of the cost limitation for the Task Order, unless the costs incurred are the results of error, omission or negligence on behalf of the CONSULTANT and which shall be paid solely by CONSULTANT. Once the Task Order has been formally amended in writing to increase the cost limitation, which has been mutually agreed to between the parties, the CONSULTANT shall continue to perform the required services. The CONSULTANT's liabilities, commitments or expenditures incurred in excess of the cost limitation for Task Order prior to approval by the CITY shall be at the CONSULTANT's risk and expense, unless mutually agreeable in writing by the CONSULTANT and the CITY.

e. TASK ORDER CONTRACT PRICE

- (1) The total Task Order Price consists of the sum of the cost limitation and any direct cost for each Task Order. This amount shall not be exceeded without formal amendment to the Task Order, unless the Contract is terminated in accordance with this Contract.
- (2) In the event, any action or combination of actions taken pursuant to this Contract are estimated by the CONSULTANT, with the written concurrence of CITY, to cause material increase or decrease in the scope of services of any Task Order, an equitable adjustment to the Fixed Fee shall be made, as well as any necessary increase or decrease in the cost recitation. Any request by the CONSULTANT or by the CITY for an adjustment of the Task Order Contract Price must be asserted in writing within forty-five (45) days from the date of receipt by the CONSULTANT of the CITY's notification of changed work, unless the CITY shall grant a further period of time for such request resolution.

f. PROGRESS PAYMENTS TO THE CONSULTANT

- (1) For a Task Order performed under the Lump Sum Method of compensation, the CONSULTANT must prepare an invoice accompanied with a narrative statement from the CONSULTANT describing the work accomplished by the CONSULTANT during the period covered by the invoice.
- (2) For a Task Order performed under the Hourly Rate Method of compensation, the CONSULTANT must submit at the end of each monthly period, an invoice of Hourly Costs incurred in such period plus an increment of the Direct Fee earned in such period. All invoices shall be itemized in an invoice format acceptable to the CITY. The portion of the Professional Fee earned in such monthly period shall be determined on the basis of relative work progress accomplished in each monthly period as agreed by the CITY's Designated Representative.

4.4 INVOICES. Invoices received by the CITY will be processed in accordance with the Florida Prompt Payment Act. All payments shall be due on the date established by the Florida Prompt Payment Act. .

4.5 PAYMENT IN THE EVENT OF CONTRACT TERMINANATION OR SUSPENSION. In the event that a Task Order or this Contract is terminated or canceled, or the CONSULTANT's services suspended on a Task Order or this Contract, prior to completion, payment shall be made in accordance with the provisions of this Contract.

4.6 ADDITIONAL COMPENSATION FOR CHANGE IN SCOPE OF ASSIGNMENT. If instructed to do so by CITY, the CONSULTANT shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the CONSULTANT, the CONSULTANT may be entitled to additional compensation. The additional compensation shall be requested by the CONSULTANT on a revised fee quotation proposal which must be submitted to the CITY for prior approval. The additional compensation, if any, shall be agreed upon before commencement of any such additional work and shall be incorporated into the assignment by formal amendment or Task Order to this Contract.

**SECTION 5 - WORK COMMENCEMENT/IMPLEMENTATION
SCHEDULE/LENGTH OF CONTRACT**

5.1 WORK COMMENCEMENT. The CONSULTANT shall commence work on each authorized Task Order within ten (10) days after receipt by the CONSULTANT of a written Notice-To-Proceed from the CITY's Designated Representative. If the CONSULTANT fails to commence work within the ten (10) day period, then the CITY shall have the right to seek other firms for the Assignment, unless the delay is due to no fault of the CONSULTANT.

- 5.2 IMPLEMENTATION SCHEDULE. The CONSULTANT must complete its work in accordance with the time schedule specified in the applicable Task Order/Assignment. In the event the work of the CONSULTANT is delayed due to no fault of the CONSULTANT, which delays the completion of any Task Order of the Assignment, the CONSULTANT is entitled to an appropriate extension of the contract time for the specific Task Order. Additional compensation to the CONSULTANT will be negotiated to the mutual agreement of the CITY and the CONSULTANT in the event such delay causes any Task Order's costs to increase for reasons beyond the CONSULTANT's control.
- 5.3 TERM. This Contract shall expire three (3) years after the effective date of this Contract and may be extended for up to two (2) additional one (1) year periods, not to exceed five (5) years maximum, upon written mutual consent of the CITY and the CONSULTANT.
- 5.4 CONTINUING CONTRACT. In accordance with 287.055 (g), this is a "continuing contract" for professional services entered into in accordance with all procedures of this act between the CITY and the CONSULTANT, whereby the CONSULTANT shall provide professional services to the CITY for projects in which construction or professional costs do not exceed the statutory limitations imposed. Additionally, the CONSULTANT shall provide for work of a specified nature as outlined in Exhibit A of this Contract as required by the CITY.

SECTION 6 - CITY'S "DESIGNATED" REPRESENTATIVE

- 6.1 GENERAL. The CITY hereby designates the CITY Manager or his/her designee to represent the CITY in all matters pertaining to and arising from the work and performance of this contract. The CITY Manager or designee shall have the following responsibilities:
- a. Examination of all reports, sketches, drawings, estimates, proposals and other documents presented by the CONSULTANT and rendering, in writing, decisions indicating the CITY's approval or disapproval within a reasonable time so as not to materially delay the work of the CONSULTANT.
 - b. Transmission of instructions, receipt of information and interpretation and definition of CITY policies and decisions with respect to design, materials and other matters pertinent to the work covered by this Contract.
 - c. Giving prompt written notice to the CONSULTANT whenever the CITY observes, or otherwise becomes aware of, any defects or changes necessary in the project.
 - d. Following the CONSULTANT's preparation of any necessary applications to governmental bodies, to arrange for submission of all applications.

- e. When appropriate, authorizing Task Orders equal to or less than limits prescribed for Continuing Contracts pursuant to the provisions of FS 287.055(g) and applicable rules, regulations, r policies of the City.

SECTION 7 - CHANGES IN SCOPE

7.1 The CITY or the CONSULTANT may request changes in the Scope of Services of a Task Order. Such change(s), including any increase or decrease in the amount of the CONSULTANT's compensation for any Task Order pursuant to this Contract, which are mutually agreed upon by and between the CITY and the CONSULTANT, shall be incorporated by written formal amendment.

SECTION 8 - TERMINATION OF CONTRACT

8.1 **TERMINATION BY CITY FOR CAUSE.** The CITY may terminate this Contract for any one or more of the following reasons:

- a. If adequate progress on any phase of the assignment is not being made by the CONSULTANT as a direct result of the CONSULTANT's failure to perform.
- b. The quality of the services performed by the CONSULTANT is not in conformance with commonly accepted design codes and standards, standards of the CITY and the requirements of Federal and/or State regulatory agencies in effect as of the date of this Contract, and the particular services involved are considered by the CITY to be essential to the proper completion of any Assignment.
- c. The CONSULTANT or any employee or agent of the CONSULTANT is indicted or has a direct charge issued against him/her for any crime arising out of or in conjunction with any work that has been performed by the CONSULTANT.
- d. The CONSULTANT becomes involved in either voluntary or involuntary bankruptcy proceedings or makes an assignment for the benefit of creditors.
- e. The CONSULTANT violates the Standards of Conduct provisions of this Contract herein.
- f. In the event of any of the causes described in this Contract, the CITY's Designated Representative may send a certified letter to the CONSULTANT requesting that the CONSULTANT show cause why the Contract should not be terminated. If adequate assurances or acceptable reasons are not given to the CITY within fifteen (15) days of the receipt by the CONSULTANT of said show cause notice, the CITY may consider the CONSULTANT to be in default and may immediately terminate this Contract.

8.2 TERMINATION BY CONSULTANT FOR CAUSE. The CONSULTANT may cancel this Contract for the following reasons:

- a. The CITY fails to meet its obligations and responsibilities as contained in the sections of this Contract describing the CITY's Rights and Responsibilities.
- b. The CITY fails to pay the CONSULTANT in accordance with this Contract.
- c. In the event of either of the causes described in this Contract, the CONSULTANT may send a certified letter requesting that the CITY show cause why the Contract should not be terminated. If adequate assurances are not given to the CONSULTANT within fifteen (15) days of the receipt by the CITY of said show cause notice, then the CONSULTANT may consider the CITY to be in default and may immediately terminate this Contract.

8.3 TERMINATION BY CITY WITHOUT CAUSE. Notwithstanding any other provision of this Contract, the CITY shall have the right at any time to terminate this Contract in its entirety without cause, or terminate by specific Assignment without cause, provided that ten (10) days prior written notice is given to the CONSULTANT of the CITY's intent to terminate. In the event that a Task Order is terminated, The CITY shall identify the specific Task Order(s) being terminated and the specific Task Order(s) to be continued to completion pursuant to the provisions of this Contract. This Contract will remain in full force and effect as to all authorized Task Orders which are to be continued to completion under this type of arrangement.

8.4 FISCAL NON-FUNDING. If funds for the requested services herein are not appropriated via the annual budget adoption process, the City reserves the right to cancel the Contract immediately upon written notice to the Consultant.

8.5 PAYMENT IN THE EVENT OF TERMINATION. In the event this Contract or any Assignment is terminated or canceled prior to final completion without cause, payment for unpaid portion of the services provided by the CONSULTANT to the date of termination and any additional services thereafter will be determined by negotiation between the CITY and the CONSULTANT. No amount shall be allowed for anticipated profit on unperformed services or other work. In the event of termination for cause, the CITY may adjust any payment to take into account any additional direct costs to be incurred by the CITY due to such default.

8.6 ACTION FOLLOWING TERMINATION

- a. Upon receipt of notice of termination, given by either party, the terminated party shall promptly discontinue all services and other work, unless the notice provides otherwise.
- b. In the case of the CITY terminating the CONSULTANT, the CONSULTANT shall within ten (10) days, or any extension thereto as may be mutually agreed to, deliver or otherwise make available to the CITY all reports, drawings, plans,

specifications and other data and documents that have been obtained or prepared by the CONSULTANT in performing the Services under this Contract, regardless of whether the work on such documents has been completed or is in progress and said documents shall remain the property of the CITY. Notwithstanding the foregoing, the CONSULTANT shall not be held liable for the accuracy or reliability of any partially completed work delivered in accordance with this provision

8.7 SUSPENSION

- a. The performance of the CONSULTANT's service under any provision of this Contract may be suspended by the CITY at any time. In the event the CITY suspends the performance of the CONSULTANT's services hereunder, the CITY shall so notify the CONSULTANT in writing, such suspension becoming effective upon the date of its receipt by the CONSULTANT, and CITY shall promptly pay to the CONSULTANT all fees which have become due and payable to the CONSULTANT to the effective date of such suspension. The CITY shall thereafter have no further obligation for payment to the CONSULTANT for the suspended services unless and until the CITY notifies the CONSULTANT that the services of the CONSULTANT called for hereunder are to be resumed. Upon receipt of written notice from the CITY that the CONSULTANT's services hereunder are to be resumed, the CONSULTANT shall complete the services of the CONSULTANT called for in this Contract and the CONSULTANT shall, in that event, be entitled to payment of the remaining unpaid compensation which becomes payable to the CONSULTANT under this Contract, same to be payable at the times and in the number specified herein. In no event will the compensation or any part thereof become due or payable to the CONSULTANT under this Contract unless and until the CONSULTANT has attained that state of work where the same would be due and payable to the CONSULTANT under the provisions of this Contract.
- b. If the aggregate time of the CITY's suspension(s) of the CONSULTANT's Services under any Task Order of this Contract exceeds sixty (60) days, then the CONSULTANT and the CITY shall, upon request of the CONSULTANT, meet to assess the services performed hereunder up to the time of such meeting, the services remaining to be performed and the total compensation paid to the CONSULTANT hereunder and, during such meeting, shall have the option of negotiating a change in compensation to be paid to the CONSULTANT for the balance of the Services to be performed hereunder. No increase in compensation to the CONSULTANT shall be allowed unless it is based upon clear and convincing evidence of an increase in the CONSULTANT's costs attributable to the aforesaid suspension(s).

SECTION 9 - CLAIMS AND DISPUTES/REMEDIES

- 9.1 CLAIMS AND DISPUTES. Any claims, disputes and/or matters in question between the parties arising out of or relating to this Contract, including claims for extra

compensation, shall be filed in writing by the aggrieved party to the other party within forty-five (45) days of its occurrence. Should such claims not be formally submitted within said forty-five (45) day period, the aggrieved party agrees not to make such claim against the other party at any time in the future. Should any claim or dispute not be mutually resolved between the parties within sixty (60) days thereafter, the aggrieved party shall then seek to resolve the matter in accordance with the “Remedies” provisions of this Contract.

- 9.2 **REMEDIES.** Except as provided in Section 9.1 herein, all claims, disputes and/or matters in question between the CITY and the CONSULTANT arising out of or relating to this Contract, or the breach of it will be decided by Mediation if the parties hereto mutually agree, or in a court of competent jurisdiction. Venue for any dispute or formal litigation concerning this contract shall be in the appropriate court with territorial jurisdiction over the City of St. Pete Beach, Florida. In the event of a dispute or litigation, each party to such dispute or litigation shall be solely responsible for its own attorneys’ fees and costs. This contract shall not be construed for or against any party hereto, without regard to which party is wholly or partly responsible for its drafting.

SECTION 10 - INDEMNITY AND INSURANCE

- 10.1 **GENERAL.** To the fullest extent permitted by Florida law, the CONSULTANT shall 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 the contract.
- 10.2 **INSURANCE.** The CONSULTANT will possess or obtain and continuously maintain the following insurance coverage, from a company or companion authorized to do business in the State of Florida, and will provide Certificates of insurance to the CITY, evidencing such insurance, within fifteen (15) days following the CONSULTANT’s receipt of Notice to Proceed on the Assignment from the CITY. The insurance coverage shall contain a provision, which requires that prior to any changes or material alterations in the coverage, except aggregate coverage, thirty (30) days prior written notice will be given to the CITY. Specific insurance requirements may include:
- a. **WORKER’S COMPENSATION.** as required by Florida Law for all applicable employees, agent, representatives and subcontractors, if any.
 - b. **COMMERCIAL GENERAL LIABILITY.** The CONSULTANT must provide coverage for all operations as detailed in the Scope of Services including, but not limited to, Contractual, Products and completed Operations and Personal Injury. The limits will be not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

- c. **AUTOMOBILE LIABILITY.** The CONSULTANT must provide coverage for all owned and non-owned, hired or borrowed vehicles for limits of not less than \$1,000,000 combined single limit.
- d. **PROFESSIONAL LIABILITY INSURANCE.** Annual Professional Liability Insurance must be maintained with coverage in an amount as detailed in the City of St. Pete Beach Request for Qualifications (RFQ) titled “Engineering and Consulting Services”. Said Professional Liability Insurance shall provide for all sums which the CONSULTANT shall be obligated to pay as damages for claims arising out of negligent performance by the CONSULTANT, or any person or subcontractor employed by the CONSULTANT, in conjunction with this Contract. This insurance shall also be maintained for a minimum of three (3) years after completion of the CONSULTANT’s services and/or construction and acceptance of the facilities designed by the CONSULTANT under the scope of this Contract including any amendment thereto.
- e. **CERTIFICATES OF INSURANCE.** The CONSULTANT shall furnish all Certificates of Insurance forwarded directly to the following:

City of St. Pete Beach
155 Corey Avenue
St. Pete Beach, FL 33706

with information copied to the Designated Representative identified in this Contract. The Certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount and classification required by these provisions.

SECTION 11 - NEGOTIATION DATA

- 11.1 The CONSULTANT hereby certifies, covenants and warrants that accounting documentation and supporting data which has established compensation provided for in this Contract are accurate, complete and current as of the date of negotiation of the compensation terms contained in this Contract. It is further agreed that the CONSULTANT’s compensation under this Contract may be adjusted to exclude any significant sums where the CITY determines the CONSULTANT’s compensation was increased due to inaccurate or incomplete wage rates and other factual unit costs. All such price adjustments shall be made prior to the end of this Contract. Records of costs incurred under the terms of this Contract shall be maintained and made available to the CITY during the period of this Contract and for five (5) years after final payment is made.
- 11.2 Copies of these documents and records shall be furnished upon request to the CITY at no cost. For the purpose of this Section, the end of this Contract shall be deemed to be the date of final acceptance of the work by the CITY.

SECTION 12 - OWNER OF DOCUMENTS

- 12.1 It is understood and agreed that all documents, including detailed reports, plans, original drawings, survey field notebooks and all other data other than working papers, prepared or obtained by the CONSULTANT in connection with its services hereunder, shall be delivered to, or shall become the property of the CITY prior to final payment to the CONSULTANT. The CONSULTANT shall retain reproducible copies of all Documents for its files at Direct Reimbursable Cost. All Documents including drawings prepared by the CONSULTANT pursuant to this Contract are instruments of service in respect to the services described in the Assignment. Any reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to the CONSULTANT; and the CITY shall indemnify to the maximum extent permitted by law and hold harmless the CONSULTANT from all claims, damages, losses and expenses including attorney's and expert's fees arising out of or resulting therefrom. Any such verification or adaptation by the CONSULTANT will entitle the CONSULTANT to further compensation at rates to be agreed upon by the CITY and the CONSULTANT.
- 12.2 Any Documents given to or prepared or assembled by the CONSULTANT and its subcontractors under this Contract shall be kept solely as property of the CITY and shall not be made available to any individuals or organizations without the prior written approval of the CITY.
- 12.3 The CONSULTANT may maintain copies of all work performed under this Contract for the CITY.
- 12.4 The CONSULTANT shall not publish any information concerning this project without the prior written consent of the CITY.
- 12.5 The CONSULTANT should abide by the Florida Sunshine law, more fully described in "Exhibit C."

SECTION 13 - STANDARDS OF CONDUCT

- 13.1 **CONSULTANT EMPLOYEES.** 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 Contract and that the CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of making of this Contract.
- 13.2 **CONSULTANT COMPLIANCE WITH LAWS.** The CONSULTANT shall comply with all Federal, State and local laws and ordinances in effect on the date of this Contract and applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex or national origin in the performance of work under this Contract.

13.3 CONFLICT OF INTEREST. The CONSULTANT hereby certifies that no undisclosed conflict of interest exists with respect to the present Contract, including any conflicts that may be due to representation of other clients, other contractual relationships of the CONSULTANT, or any interest in property which the CONSULTANT may have. The CONSULTANT further certifies that any apparent conflict of interest that arises during the term of the Contract will be immediately disclosed in writing to the CITY. Violation of this Section will be considered as Justification for immediate termination of this Contract under the provisions of Section 8.1.

13.4 REMOVAL OF EMPLOYEE. The CITY is empowered to require the CONSULTANT to remove any employee or representative of the CONSULTANT from working on this Assignment which the CITY determines is not satisfactorily performing his assigned duties or is demonstrating improper conduct. The CITY shall notify the CONSULTANT in writing of the CITY's objections prior to the CONSULTANT's removal of any employee or representative.

13.5 PUBLICATION. The CONSULTANT shall not publish any documents or release information to the media without prior approval of the CITY.

SECTION 14 - ACCESS TO RECORDS/AUDIT

14.1 RECORDS MAINTENANCE. The CONSULTANT shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services under this Contract. All time records and cost data shall be maintained in accordance with generally accepted accounting practices. The CONSULTANT shall also maintain the financial information and data necessary to determine overhead rates in accordance with the requirements of Federal and State regulatory agencies and this Contract. The CITY, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents and other evidence for inspection, audit and copying. Copying of CONSULTANT's books, records, documents, time records and cost accounts and other evidence shall be at the CITY's expense.

14.2 ACCESS TO RECORDS. The CONSULTANT shall maintain and allow access to the records required under this Section for a period of five (5) years after the completion of the services provided under this Contract and date of final payment for said services, or date of termination of this Contract as may have been exercised under the terms of this Contract.

SECTION 15 - CODES AND DESIGN STANDARDS

15.1 All of the services to be performed by the CONSULTANT shall in the minimum be in accordance with commonly accepted design codes and standards, standards of the CITY and the requirements of any Federal and/or State regulatory agencies in effect as of the date of this Contract. The CONSULTANT shall be responsible for keeping apprised of any changing codes or requirements, which requirements must be applied to the Assignment to be performed under this Contract. Any new codes or requirements

becoming effective subsequent to the effective date of this Contract that require an additional level of effort to be performed by the CONSULTANT beyond that covered under the scope of this Contract shall be subject to negotiation for an increase in scope and compensation by an amendment to this Contract.

SECTION 16 - ASSIGNABILITY

16.1 The CONSULTANT shall not sublet, assign or transfer any interest in this Contract, without prior written approval of the CITY, provided that claims for the money due or to become due the CONSULTANT from the CITY under this Contract may be assigned to a bank, trust company or other financial institution without such CITY approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION 17 - CONTROLLING LAWS

17.1 This Contract is to be governed by the laws of the State of Florida.

SECTION 18 - FORCE MAJEURE

18.1 Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 19 - EXTENT OF CONTRACT

19.1 This Contract, together with the RFQ titled "Engineering and Consulting Services" (issued September 2, 2020), the proposal submitted October 2, 2020 and the Exhibits hereinafter identified and listed in this Section 19, incorporated herein and made a part hereof by this reference, constitute the entire Agreement between the CITY and the CONSULTANT and supersede all prior written or oral understandings in connection therewith. This Contract may only be amended, supplemented or modified by a formal Amendment or Change Order to this Contract. The Exhibits supplemental to and made a part of this Contract are as follows:

Exhibit A: Scope of Services

Exhibit B: Task Order Format and Standard Hourly Rates

Exhibit C: Sunshine Law

IN WITNESS WHEREOF, the Parties have executed this Contract on the day and year set forth below.

[insert CONSULTANT corporate name here]:

City of St. Pete Beach:

Signature: _____

Signature: _____

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

ATTEST:

Andrew Dickman
City Attorney

Amber LaRowe City Clerk

EXHIBIT "A"
SCOPE OF SERVICES

EXHIBIT "B"
TASK ORDER FORMAT

EXHIBIT "C"
SUNSHINE LAW