

**AGREEMENT NO. 2018-63**  
**Financial Auditing Services**

**THIS AGREEMENT** ("Agreement") is made and entered into this 4 day of OCT, 2018, by and between the CITY OF NORTH PORT, FLORIDA, a municipal corporation of the State of Florida, hereinafter referred to as the "CITY" and Mauldin & Jenkins, LLC, a Florida Limited Liability Company, a Florida registered to conduct business in the State of Florida, hereinafter referred to as "CONSULTANT."

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

**1. CONSULTANT'S SERVICES**

- A. The CONSULTANT agrees to diligently and timely perform services for the CITY relating to Financial Auditing Services as identified in the Request for Proposal No. 2018-63 and CONSULTANT'S proposal submitted September 4, 2018. The overall Scope of Services is described in **Exhibit "A"** with detailed tasks and associated Fee Schedule in **Exhibit "B,"** both attached hereto and incorporated by reference.
- B. This Agreement shall commence immediately upon the execution of the Agreement by both the CITY and the CONSULTANT and upon CONSULTANT'S receipt of the written Notice to Proceed from the CITY'S purchasing office, and shall continue through the completion of the project unless terminated. The estimated completion date is end of fiscal year 2022.

**2. COMPENSATION AND PAYMENT FOR CONSULTANT'S SERVICES**

**A. COMPENSATION**

1. CONSULTANT shall receive **Two Hundred Seventy-Six Thousand One Hundred Dollars and No Cents (\$276,100.00)** as compensation for its services. This compensation shall include all profit, direct and indirect labor costs, personnel related costs, overhead and administrative costs, travel related out-of-pocket expenses and costs, and all other costs which are necessary to provide the services as outlined in this Agreement and its Exhibits.
2. **NON-APPROPRIATION:** The parties acknowledge and agree that the obligations of CITY to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein to which CITY is a party, are and shall remain subject to the provisions of Florida Statutes, Section 166.241, regardless of whether a particular obligation has been expressly so conditioned. CITY agrees to exercise all lawful and available authority to satisfy any financial obligations of CITY that may arise under this Agreement; however, since funds are appropriated annually by the City Commission on a fiscal year basis, the CITY'S legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the City Commission (nor shall such liability arise if, a request for such appropriations is excluded from the budget approved by the City Commission). Notwithstanding the foregoing, no Commissioner, officer, employee, director, member or other natural person or agent of CITY shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by CITY under this Section. This Agreement shall not constitute an indebtedness of CITY nor shall it constitute an obligation for which CITY is obligated to levy or pledge any form of taxation or for which CITY has levied or pledged any form of taxation.

**B. METHOD OF PAYMENT**

1. The CITY shall pay the CONSULTANT through payment issued by the Finance Department in accordance with the Florida Local Government Prompt Payment Act, Chapter 218, Florida Statutes, upon receipt of the CONSULTANT'S invoice and written approval of same by the CITY'S Administrative Agent indicating that services have been rendered in conformity with this Agreement. The CONSULTANT shall submit an invoice for payment to the CITY for those specific tasks as described in the Scope of Services that were completed during that invoicing period.
2. For those specific services that were partially completed during an invoicing period, progress payments shall be paid in proportion to the percentage of completed work on those specific services when approved in writing by the CITY'S Administrative Agent.
3. The CONSULTANT'S invoices shall be in a form satisfactory to the City of North Port Finance Department, who shall initiate all disbursements.

**3. INDEMNIFICATION**

- A. To the extent permitted by Florida law, the CONSULTANT shall indemnify, defend, and hold harmless the CITY, its Commissioners, officers, agents and employees, from all liabilities, fines, claims, assessments, suits, judgments, damages, losses and costs, including consequential, special, indirect, and punitive damages, (including, but not limited to, reasonable attorneys' fees and court costs, whether such fees and costs are incurred in negotiations, at the trial level or on appeal, or in the collection of attorneys' fees), arising out of any acts, actions, breaches, neglect or omissions of the CONSULTANT, or CONSULTANT'S officers, employees, agents, sub-contractors, sub-consultants, and other persons employed or utilized by the CONSULTANT in the performance of, or the failure to perform, this Agreement. This Agreement does not constitute a waiver of sovereign immunity or consent by the CITY or its subdivisions to suit by third parties.
- B. The CITY shall provide all available information and assistance that the CONSULTANT may reasonably require regarding any claim. In the event of a claim, the CITY shall promptly notify the CONSULTANT in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (such as federal express or ups) which provides evidence of delivery, at the address provided for receipt of notices in this Agreement.
- C. This Agreement for indemnification survives termination or completion of the Agreement. The insurance coverage and limits required in this Agreement may or may not be adequate to protect the CITY and such insurance coverage will not be deemed a limitation on the CONSULTANT'S liability under the indemnity provided in this section. In any proceedings between the parties arising out of or related to this indemnity provision, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).
- D. Further, CONSULTANT shall fully indemnify, defend, and hold harmless the City of North Port, Florida, from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right.
- E. Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the CITY as set forth in Florida Statutes, Section 768.28.

#### 4. CONSULTANT'S INSURANCE

##### A. INSURANCE

Before performing any work, CONSULTANT shall procure and maintain, during the life of this Agreement, the insurance listed below, unless otherwise specified. The policies of insurance shall be primary and written on forms acceptable to the CITY and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida and meet a minimum financial AM Best and Company rating of no less than "Excellent." No changes are to be made to these specifications without prior written specific approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with CONSULTANT.

1. Workers' Compensation and Employers' Liability Insurance: Coverage to apply for all employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of \$100,000 each accident; \$100,000 each employee; and \$500,000 policy limit for disease.
2. Professional Liability Insurance: Minimum \$1,000,000 per occurrence for this project with a \$1,000,000 policy term general aggregate. Coverage shall be extended beyond the policy year term either by a supplemental extended reporting period (ERP) with as great of duration as available, with no less coverage and reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made. The CITY prefers all Professional Liability Insurance be written on an Occurrence Form; however, in the event that the professional liability insurance required by the Agreement is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained for a period of two (2) years or an extended reporting period (ERP) with tail coverage will be obtained and maintained for a period of two (2) years beginning at the time work under this Agreement is completed.
3. Comprehensive Commercial General Liability Insurance: Occurrence from required. Aggregate must apply separately to this Agreement. Minimum \$500,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed ops; and \$100,000 fire damage.
4. Automobile Insurance: To include all vehicles owned, leased, hired, and non-owned vehicles with limits of not less than \$300,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this Agreement.

##### B. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or thru other means, agree to waive all rights of subrogation against the CITY, its Commissioners, officers, officials, employees and volunteers, and the CITY'S insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work performed by the CONSULTANT for the CITY. It is the CONSULTANT'S responsibility to notify their insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. Additionally, the CONSULTANT, its officers, officials, agents, employees, volunteers, and any sub-consultants, agree to waive all rights of subrogation against the CITY and its insurance carriers for any losses paid, sustained or incurred, but not covered by insurance, that arise from the contractual relationship or work performed. This waiver also applies to any deductibles or self-insured retentions for which the CONSULTANT or its agents may be responsible.

##### C. POLICY FORM

1. All policies, required by this Agreement, with the exception of Professional Liability and Workers' Compensation, or unless specific approval is given by Risk Management through the CITY'S Purchasing Office,

are to be written on an occurrence basis and shall name the City of North Port, Florida, its Commissioners, officers, agents, employees and volunteers as additional insured as their interest may appear under this Agreement. Claims Made Policies will be accepted for professional liability and hazardous materials and such other risks as are authorized by the CITY'S Purchasing Office. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, CONSULTANT agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.

2. Insurance requirements itemized in this Agreement, and required of the CONSULTANT, shall be provided by or in behalf of all sub-consultants to cover their operations performed under this Agreement. The CONSULTANT shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to sub-consultants.
3. Each insurance policy required by this Agreement shall:
  - a. Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
  - b. Be endorsed to state that coverage shall not be suspended, voided, or cancelled by either party except after notice is delivered in accordance with the policy provisions. The CONSULTANT is to notify the CITY'S Purchasing Office by written notice as provided in this Agreement.
4. The CITY shall retain the right to review, at any time, coverage, form, and amount of insurance.
5. **The procuring of required policies of insurance shall not be construed to limit CONSULTANT'S liability nor to fulfill the indemnification provisions and requirements of this Agreement. The extent of CONSULTANT'S liability for indemnity of the CITY shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the CONSULTANT and its carrier.**
6. The CONSULTANT shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the CITY is an insured under the policy. CONSULTANT'S insurance is considered primary for any loss, regardless of any insurance maintained by the CITY. CONSULTANT is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.
7. All certificates of insurance must be on file with and approved by the CITY before commencement of any work under this Agreement. All certificates of insurance required herein must be accompanied by a copy of the additionally insured documents/endorsements. Certificates of Insurance evidencing Claims Made or Occurrences form coverage and conditions to this Agreement, as well as the Agreement number and description of work, are to be furnished to the CITY'S Purchasing Office (4970 City Hall Boulevard, Suite 337, North Port, FL 34286) prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. All insurance certificates shall be received by the CITY'S Purchasing Office before the CONSULTANT will be allowed to commence or continue work. The Certificate of Insurance issued by the underwriting department of the insurance carrier shall certify compliance with the insurance requirements provided herein.

8. Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed under this Agreement shall be provided to the CONSULTANT'S insurance company and the CITY'S Purchasing Office as soon as practicable after notice to the insured.

## 5. RESPONSIBILITY OF THE CONSULTANT

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all reports, designs, specifications, other documents and data used or produced by or at the behest of the CONSULTANT under this Agreement. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents and data.
- B. If the CONSULTANT is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- C. 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 solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Agreement.
- D. CONSULTANT shall perform its services in accordance with generally accepted industry standards and practices customarily utilized by competent CONSULTANT firms in effect at the time CONSULTANT'S services are rendered. The CONSULTANT covenants and agrees that it and its employees shall be bound by the Standards of Conduct of Florida Statutes, Section 112.313, as it relates to work performed under this Agreement. The CONSULTANT agrees to incorporate the provisions of this paragraph in any sub-contract into which it might enter with reference to the work performed.
- E. The CONSULTANT shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof.
- F. The CONSULTANT shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at the CONSULTANT'S offices for the purpose of inspection, audit, and copying during normal business hours by the CITY, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services.
- G. Public Records Law: In accordance with Florida Statutes, Section 119.0701, CONSULTANT shall comply with all public records laws, and shall specifically:
  1. Keep and maintain public records required by the CITY to perform the service.
    - a. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies.  
(See <http://dos.dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
    - b. "Public records" means and includes those items specified in Florida Statutes, Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance

or in connection with the transaction of official business with the CITY. CONSULTANT'S records under this Agreement include but are not limited to, supplier/sub-contractor invoices and contracts, project documents, meeting notes, e-mails and all other documentation generated during this Agreement.

2. Upon request from the CITY'S custodian of public records, provide the CITY, at no cost, 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 by law. All records kept electronically must be provided to the CITY, upon request from the CITY'S custodian of public records, in a format compatible with the information technology systems of the CITY.
3. Ensure that project 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, if CONSULTANT does not transfer the records to the CITY following completion of this Agreement, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.
4. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in CONSULTANT'S possession or keep and maintain public records required by the CITY to perform the service. If CONSULTANT transfers all public records to the CITY upon completion of this Agreement, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONSULTANT keeps and maintains public records upon the completion of this Agreement, CONSULTANT shall meet all applicable requirements for retaining public records.
5. **IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES OR TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, (941) 429-7063 OR HOTLINE (941) 429-7270; E-MAIL: kpeto@cityofnorthport.com.**
6. Failure of CONSULTANT to comply with these requirements shall be a material breach of this Agreement. Further, CONSULTANT may be subject to penalties under Florida Statutes, Section 119.10.

## 6. OWNERSHIP AND USE OF DOCUMENTS

- A. It is understood and agreed that all the documents, or reproducible copies, developed by the CONSULTANT in connection with its services, including but not limited to reports, designs, specifications, and data, shall be delivered to, and shall become the property of the CITY as they are received by the CITY and when CONSULTANT has been fully compensated as set forth herein. CONSULTANT may keep copies of all work products for its records. The CONSULTANT hereby assigns all its copyright and other proprietary interests in the products of this Agreement to the CITY. Specific written authority is required from the CITY'S Administrative Agent for the CONSULTANT to use any of the work products of this Agreement on any non-CITY project.
- B. Notwithstanding the above, any reuse of the work products by the CITY on other projects will be at the risk of the CITY.

## 7. TIMELY PERFORMANCE OF CONSULTANT'S PERSONNEL

- A. The timely performance and completion of the required services is vitally important to the interest of the CITY. The CONSULTANT shall assign a Project Manager, together with such other personnel as are necessary, to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Agreement. The personnel assigned by the CONSULTANT to perform the services of this Agreement shall comply with the information presented in the professional services response proposal made a part hereof by reference. The CONSULTANT shall ensure that all key personnel, support personnel, and other agents, are fully qualified and capable to perform their assigned tasks. Any change or substitution to the CONSULTANT'S key personnel must receive written approval from the CITY'S administrative agent before said change or substitution can become effective.
- B. The services to be rendered by the CONSULTANT shall commence within one (1) week of the CONSULTANT'S receipt of the written Notice to Proceed from the CITY.
- C. The CONSULTANT specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth herein, subject only to delays caused through no fault of the CONSULTANT or the CITY. Time is of the essence in the performance of this Agreement.
- D. The CONSULTANT agrees to provide to the CITY'S Administrative Agent with monthly written progress reports concerning the status of the work. The CITY'S Administrative Agent may determine the format for this progress report. The CITY shall be entitled at all times to be advised, at its request and in writing, as to the status of work to be performed by the CONSULTANT.
- E. In the event unreasonable delays occur on the part of the CITY or regulatory agencies as to the approval of any plans, permits, reports, or other documents submitted by the CONSULTANT which delay the Project Schedule completion date, the CITY shall not unreasonably withhold the granting of an extension of the Project Schedule time limitation equal to the aforementioned delay. The Project Schedule is attached hereto as **Exhibit "C"** and incorporated by reference.

## 8. OBLIGATIONS OF CITY

- A. The CITY'S Administrative Agent is designated to serve as project coordinator and to do all things necessary to properly administer the terms and conditions of this Agreement. If necessary, a specific program manager will be authorized to perform the responsibilities of the CITY'S Administrative Agent. The CITY shall designate any specific program manager in the Notice to Proceed. The responsibility of the CITY'S Administrative Agent shall include:
  - 1. Examination of all reports, sketches, drawings, estimates, proposals, and other documents presented by the CONSULTANT, and to render in writing, decisions pertaining thereto within a reasonable time.
  - 2. Transmission of instructions, receipt of information, interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
  - 3. Review for approval or rejection all of the CONSULTANT'S documents and payment requests.
- B. The CITY shall, upon request, furnish the CONSULTANT with all existing data, plans, studies and other information in the CITY'S possession which may be useful in connection with the work of this Project, all of which shall be and remain the property of the CITY and shall be returned to the CITY'S Administrative Agent upon completion of the services to be performed by the CONSULTANT.

- C. The CITY'S Administrative Agent shall conduct periodic reviews of the work of the CONSULTANT necessary for the completion of the CONSULTANT'S services during the period of this Agreement, and may make other CITY personnel available, where required and necessary to assist the CONSULTANT. The availability and necessity of said personnel to assist the CONSULTANT shall be determined solely within the discretion of the CITY. The CITY'S technical obligations to this Project, if any, are stated in Specific Authorizations and Work Authorizations.
- D. The CITY shall not provide any services to the CONSULTANT in connection with any claim brought on behalf of or against the CONSULTANT.

## 9. TERMINATION

- A. Termination with or without Cause: The performance of work under this Agreement may be terminated with or without cause by the City Manager or designee in whole or in part or whenever the City Manager or designee determines that termination is in the CITY'S best interest. Any such termination shall be effected by the delivery to the CONSULTANT of a written notice of termination at least thirty (30) days before the date of termination, specifying the extent to which performance of the work under this Agreement is terminated and the date upon which such termination becomes effective. Except as otherwise directed, the CONSULTANT shall stop all work on the date of receipt of the notice of termination or other date as specified in the notice; place no further orders or sub-contracts for material, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and sub-contracts; and settle all outstanding liabilities and claims. CONSULTANT will be paid only for such work performed and materials supplied up to the termination. Under no circumstances shall the CITY make any payment to CONSULTANT for services that have not been performed or that are performed subsequent to the termination date. In the event of termination the CONSULTANT shall deliver to the CITY all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by the CONSULTANT in connection with its services. The CITY shall, upon receipt of the aforesaid documents, pay to the CONSULTANT and the CONSULTANT shall accept as full payment for its services, a sum of money equal to (1) the fee for each completed and accepted task as shown in Exhibit A – Scope of Services and Exhibit B – Fee Schedule, plus (2) the percentage of the work completed in any commenced but uncompleted task, less (3) all previous payments in accordance with Section 2 of this Agreement and any amounts withheld by the CITY to settle claims against or to pay indebtedness of the CONSULTANT in accordance with the provisions of this Agreement.
- B. Funding in Subsequent Fiscal Years: It is expressly understood by the CITY and the CONSULTANT that funding for any subsequent fiscal year of the Agreement is contingent upon appropriation of monies by the City Commissioners, and the continuing receipt of state or federal grant funding, if applicable. In the event that funds are not available or appropriated, the CITY reserves the right to terminate the Agreement. The CITY will be responsible for payment of any outstanding invoices and work completed by the CONSULTANT prior to such termination.
- C. Abandonment: In the event that the CONSULTANT abandons performance under this Agreement, the City Manager or designee may terminate this Agreement upon three (3) calendar days' written notice to the CONSULTANT indicating the CITY'S intention to do so. The written notice shall state the evidence indicating the CONSULTANT'S abandonment.
- D. The CONSULTANT shall have the right to terminate services only in the event of the CITY failing to pay the CONSULTANT'S properly documented and submitted invoice within ninety (90) calendar days of the approval by the CITY'S Administrative Agent, or if the project is suspended by the CITY for a period greater than ninety (90) calendar days.



- E. The City Manager or designee reserves the right to terminate and cancel this Agreement in the event the CONSULTANT shall be placed in either voluntary or involuntary bankruptcy, a receiver is appointed for the CONSULTANT, or an assignment is made for the benefit of creditors.
- F. In the event CONSULTANT breaches this Agreement, the CITY shall provide written notice of the breach and CONSULTANT shall have ten (10) days from the date the notice is received to cure. If CONSULTANT fails to cure within the ten (10) days, the City Manager or designee shall have the right to immediately terminate the Agreement and/or refuse to make any additional payment, in whole or in part, and if necessary, may demand the return of a portion or the entire amount previously paid to CONSULTANT due to:
1. The quality of a portion or all of the CONSULTANT'S work not being in accordance with the requirements of this Agreement;
  2. The quantity of the CONSULTANT'S work not being as represented in the CONSULTANT'S Payment Request, or otherwise;
  3. The CONSULTANT'S rate of progress being such that, in the CITY'S opinion, substantial or final completion, or both, may be inexcusably delayed;
  4. The CONSULTANT'S failure to use Agreement funds, previously paid the CONSULTANT by the CITY, to pay CONSULTANT'S project related obligations including, but not limited to, sub-consultants, laborers, or material and equipment suppliers;
  5. Claims made, or likely to be made, against the CITY or its property;
  6. Loss caused by the CONSULTANT;
  7. The CONSULTANT'S failure or refusal to perform any of the obligations to the CITY, after written notice and a reasonable opportunity to cure as set forth above.
- G. In the event that the CITY makes written demand upon the CONSULTANT for amounts previously paid by the CITY as contemplated herein, the CONSULTANT shall promptly comply with such demand. The CITY'S rights hereunder survive the term of this Agreement, and are not waived by final payment and/or acceptance.

## 10. INDEPENDENT CONTRACTOR

The CONSULTANT is, and shall be, in the performance of all work, services, and activities performed under this Agreement, an independent contractor, and not an employee, agent or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the CITY shall be that of an independent CONSULTANT and not as employees or agents of the CITY. The CONSULTANT does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for in this Agreement. The CONSULTANT shall not pledge the CITY'S credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of

indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

#### **11. NONDISCRIMINATION**

The City of North Port, Florida, does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services. CONSULTANT shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

#### **12. ENTIRE AGREEMENT**

This Agreement constitutes the sole and complete understanding between the parties and supersedes all other agreements between them, whether oral or written, with respect to the subject matter.

#### **13. AMENDMENT**

No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. For any increase in the compensation to CONSULTANT the City Commission for the CITY and the duly authorized representative for CONSULTANT shall agree in writing to this change. For all other changes, except as provided herein, the City Manager or designee and CONSULTANT'S representative may agree to amendments that do not increase compensation to CONSULTANT.

#### **14. ASSIGNMENT**

The CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the City Manager or designee, except that claims for the money due or to become due the CONSULTANT from the CITY under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the CITY. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the CITY.

#### **15. WAIVER**

The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

#### **16. GOVERNING LAW, VENUE, AND SEVERABILITY**

The rights, obligations, and remedies of the parties under this Agreement shall be governed by the laws of the State of Florida and the exclusive venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.

**17. AUTHORITY**

The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.

**18. NO HIRE**

The CONSULTANT shall not hire any CITY employee associated with this project throughout the duration of the Agreement and for a period of one (1) year after completion.

**19. NOTICES**

Any notices, invoices, reports, or any other type of documentation required by this Agreement shall be sent by certified mail, return receipt requested, or via a recognized national courier service in a manner that provides for written or electronic record of delivery, to the addresses listed below:

**CONSULTANT'S REPRESENTATIVE:**

Wade Sansbury  
Partner  
Mauldin & Jenkins LLC  
1401 Manatee Ave West  
Bradenton, FL 34205  
TEL (941) 741.2255  
FAX (941) 747.6035  
EMAIL: wsansbury@mjcpa.com

**CITY'S ADMINISTRATIVE AGENT:**

Scott Skipper  
Accounting Manager  
City of North Port,  
4970 City Hall Boulevard  
North Port, FL 34286  
TEL (941) 429-XXXX  
EMAIL: sskipper@cityofnorthport.com

**WITH COPIES OF NOTICES PROVIDED TO:**

City Attorney's Office  
4970 City Hall Boulevard  
North Port, FL 34286  
EMAIL: northportcityattorney@cityofnorthport.com

**20. PARAGRAPH HEADINGS**

Paragraph headings are for the convenience of the parties and for the reference purposes only and shall be given no legal effect.

**21. ATTORNEYS' FEES**

In any proceedings between the parties arising out of or related to this Agreement, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).

**22. CONFLICTS**

In the event of any conflict between the provisions of this Agreement and RFP No. 2018-63 or the CONSULTANT'S response, which are made a part hereof by reference, this Agreement shall control.

## 22. SCRUTINIZED COMPANIES

- A. As required by Florida Statutes, Section 287.135(5), for contracts of \$1,000,000.00 or less, the CONSULTANT shall certify on a form provide by the CITY, that it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes, Section 215.4725, and that it is not engaged in a boycott of Israel.
- B. As required by Florida Statutes, Section 287.135(5), for contracts of \$1,000,000.00 or more, the CONSULTANT shall certify on a form provided by the CITY, that all of the following are true:
1. It is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes, Section 215.4725, and that it is not engaged in a boycott of Israel; and
  2. It is not on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in Iran Petroleum Energy Sector list, created pursuant to Florida Statutes, Section 215.473; and
  3. It is not engaged in business operations in Cuba or Syria.
- C. If the CONSULTANT provides a false certification or has been placed on one of the above-noted Lists of Scrutinized Companies, or has engaged in business operations in Cuba or Syria, the CONSULTANT will be in breach of this Agreement and the CITY may terminate the Agreement.
- D. Penalty:
1. A consultant that has been found to have provided a false certification may be subject to a civil penalty equal to the greater of \$2 million or twice the amount of the Agreement, plus all reasonable attorney's fees and costs, including any costs for investigations that led to the finding of the false certification; and
  2. Shall be ineligible to bid on any contract with the CITY for three (3) years after the date the CITY determined that the consultant submitted a false certification.

IN WITNESS WHEREOF, the parties have executed the agreement as of the date first above written.

ATTEST:

CITY OF NORTH PORT, FLORIDA

By:   
Katie Peto, Interim City Clerk

By:   
Peter D. Lear, CPA, CGMA City Manager

APPROVED AS TO FORM AND CORRECTNESS:

By:   
Amber L. Slayton, City Attorney

WITNESS:

By: [Signature]

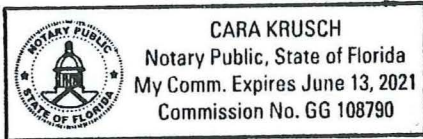
CONSULTANT:

By: [Signature]

STATE OF FLORIDA  
COUNTY OF Manatee

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of September, 2018, by Wade P. Sansbury, who is personally known to me, or who produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public



## EXHIBIT A- SCOPE OF SERVICES

The entity to be audited under this RFP is the City of North Port, Florida including all departments/divisions of the City. The funds to be audited are those included or includable in the City's CAFR.

### A. Reporting Requirements

1. Criteria – Section 11.45, Florida Statutes, requires each local government entity to have completed, within nine (9) months of the fiscal year-end, an annual financial audit of its accounts and records. The City is requiring the CONSULTANT (also referred to as "Auditor" herein) to audit its financial statements for the five (5) fiscal years ending September 30, 2018 to September 30, 2022. These audits are to be performed in accordance with:

- 1.1 Section 11.45, Florida Statutes, and other applicable statutes;
- 1.2 Rules adopted by the Auditor General for form and content of local government entity audits (Chapter 10.550 and 10.600, Rules of the Auditor General);
- 1.3 Statements issued and adopted by the Governmental Accounting Standards Board;
- 1.4 Statements on Auditing Standards issued by the American Institute of Certified Public Accountants;
- 1.5 Generally Accepted Government Auditing Standards (Yellow Book);
- 1.6 United States Office of Management and Budget (OMB) Uniform Guidance for Federal Grants;
- 1.7 Florida Single Audit Act;
- 1.8 Statements and interpretations issued by the Financial Accounting Standards Board, if applicable;
- 1.9 Provisions of any other rule, regulation, statute, ordinance, or order which may pertain to the engagements.

2. The City will send its Comprehensive Annual Financial Report to the Government Finance Officers Association for review in their Certificate of Achievement for Excellence in Financial Reporting program. The deadline for this submittal is March 31. Completion of the audit shall have a target date of March 1 to allow the City enough time to assemble the Comprehensive Annual Financial Report to meet the GFOA deadline.

3. If required by the Federal Uniform Guidance and/or State Single Audit Act, the schedule(s) of federal and/or state financial assistance and related Auditor's report(s), as well as the reports on internal and state controls and compliance will be necessary.

4. The accounting personnel of the City will prepare and provide copies of working trial balances used to prepare the financial statements. The financial statements and footnotes will also be prepared by the City's Finance Department. The City's Accounting Division personnel will be available during the audit to assist the Auditor by providing information, documentation, and explanations.

5. Office space will be provided near the financial records. Telephones and internet access will be made available as well as the use of a copier/scanner during the engagement. The Auditor will be required to provide its own equipment and other office materials.

6. The Auditor shall provide the following:

6.1 Independent Auditor's Report on the basic financial statements of the City, in conformity with generally accepted accounting principles.

6.2 Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*.

6.3 If required by the Federal Uniform Guidance and/or Single Audit Act, Schedules of Federal and State Financial Assistance and accompanying Notes to the Schedules of Federal and State Financial Assistance.

6.4 If required by the Federal Uniform Guidance and/or Single Audit Act, Independent Auditor's Report on Compliance for Each Major Federal Program and State Project and on Internal Control.

6.5 If required by the Federal Uniform Guidance and/or Single Audit Act, Schedule of Findings and Questioned Costs.

6.6 If required by the Federal Uniform Guidance and/or Single Audit Act, Summary Schedule of Prior Audit Findings and Corrective Action Plan.

6.7 If required by the Federal Uniform Guidance and/or Single Audit Act, Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations.

6.8 Independent Auditor's Management Letter as required by Section 11.45, Florida Statutes and defined in Rule 10.550, Rules of the Auditor General for Local Governmental Entity Audits. The draft of the management letter is to be discussed with key staff members before its issuance in final form.

7. *Time table*: All required reports shall have a target due date of March 1.

**B. Reports to be Issued** - Following the completion of the audit of the fiscal year's financial statements, the Auditor shall issue:

1. Reports, if required, mentioned in section 1. B. 6. above.
2. Any other required reports and schedules required by Federal Uniform Guidance and/or State Single Audit Act.

In the required report(s) on internal controls, the Auditor shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

Reportable conditions that are also material weaknesses shall be identified as such in the report. Non-reportable conditions discovered by the Auditors shall be reported in a separate management letter.

The report on compliance shall include all material instances of noncompliance. All nonmaterial instances of noncompliance shall be reported in a separate management letter.

The separate management letter shall include, but not be limited to:

1. A statement as to whether or not corrective actions have been taken to address significant findings and recommendations made in the preceding annual financial audit report.
2. A statement as to whether or not the City complied with Section 218.415, Florida Statutes, regarding the investment of public funds.
3. Any recommendations to improve the City's financial management, accounting procedures, and internal controls.
4. Matters that are not clearly inconsequential, considering both quantitative and qualitative factors, including the following:
  - Violations of laws, rules, regulations, and contractual provisions or abuse that have occurred, or were likely to have occurred, and were discovered within the scope of the audit.
  - Improper or illegal expenditures discovered within the scope of the audit that may or may not materially affect the financial statements.
    - Deficiencies in internal control that are not reportable conditions, including, but not limited to:
      - Improper or inadequate accounting procedures (i.e., the omission of required disclosures from the annual financial statements).
    - Failures to properly record financial transactions.
    - Other inaccuracies, shortages, defalcations, and instances of fraud discovered by, or that come to the attention of, the Auditor.
5. A statement as to whether or not the City has met one or more of the financial emergency conditions described in Section 218.503(1), Florida Statutes, and identification of the specific condition(s) met.
6. A statement as to whether or not the financial report filed with the Florida Department of Financial Services pursuant to Section 218.32(1)(a), Florida Statutes, is in agreement with the annual financial report for the current audited period and, if not, explanations of any significant differences.
7. The following information regarding the Auditor's application of financial condition assessment procedures pursuant to Rule 10.556:
  - A statement that the Auditor applied financial condition assessment procedures pursuant to Rule 10.556(7).



- ☐ If deteriorating financial conditions are noted, a statement that the City's financial condition is deteriorating and a description of conditions causing the Auditor to make this conclusion. Findings regarding deteriorating financial condition must be prepared in accordance with Rule 10.557.

The Auditors shall be required to make an immediate written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties:

- ☐ City Commission
- ☐ City Manager
- ☐ City Finance Director
- ☐ Audit Committee, if directed by City Commission

### C. Special Considerations

1. *Assistance in Implementing Government Accounting Standards Board Statements:* The Auditor shall assist the City in implementing all applicable Government Accounting Standards Board (GASB) accounting and reporting standards, as issued or revised.
2. The Auditor shall assist the City in preparing the Comprehensive Annual Financial Report. The City shall retain ultimate responsibility for preparation of this document; however, the Auditor shall provide the following assistance:
  - 2.1 Proof reading of entire document.
  - 2.2 Overall review including layout, design, and suggested improvements.
3. Timeliness is critical in the performance of the audit. The Auditor should coordinate with the Finance Director and/or designee(s), and endeavor to accomplish the audit in a phased-in approach throughout the year, if deemed necessary, to reduce the year-end workload on both the audit firm and City staff. City staff will make financial records available to the Auditor throughout the fiscal year to assist in this regard. End-of-year records will be furnished to the Auditor as they become available after the fiscal year ends.
4. The schedule of federal awards and state financial assistance and related Auditor's reports, as well as the reports on the internal control over financial reporting and compliance, are to be issued as part of the Comprehensive Annual Financial Report.

### D. Other Considerations

*Irregularities and Illegal Acts:* Auditors shall be required to make an immediate, written report to the City Manager, or appropriate elected official, of any irregularities and illegal acts or indications of illegal acts of which they become aware.

*Working, Paper Retention and Access to Working Papers:* All working papers and reports must be retained **at the Auditor's expense** for a minimum of three (3) years, unless the firm is notified in writing by the City of the need to extend the retention period. The Auditor will be required to make working papers available, upon request, to the City of North Port. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

Other Audit Services: Periodically the City of North Port may require separate audits and/or consulting engagements to be performed. The Auditor will be expected to perform these audits and/or consulting engagements requested by the City outside of the standard audit at a mutually agreed upon hourly rate.

**E. Project Guidelines and Criteria**

Engagement partners, managers, other supervisory staff, and specialists may be changed if those personnel leave the firm, are promoted, or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the City. However, in either case, the City will retain the right to approve or reject replacements.

Auditors mentioned in response to this Request for Proposal can only be changed with the express prior written permission of the City, which will retain the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the Auditor, provided that replacements have substantially the same or better qualifications or experience.

**F. Continuing Education (CPE)**

As part of our continuing education program, Mauldin and Jenkins CPAs, LLC will sponsor and provide at least twenty (20) hours of in-house governmental accounting and auditing continuing education to the City of North Port.

## EXHIBIT B – FEE SCHEDULE

### SECTION I – BASIC AUDIT

#### COST PROPOSAL

DESCRIPTION	UNIT (HOURS)	HOURLY RATE	EXTENDED COST
<b>2018 BASIC AUDIT</b>			
PARTNERS	55	235	12,925
MANAGERS	165	200	33,000
SUPERVISORY STAFF	80	140	11,200
STAFF	150	100	15,000
OTHER (SPECIFY)	10	80	800
M&J DISCOUNT FROM STANDARD FEES			(18,925)
<b>SUB-TOTAL FOR ALL INCLUSIVE MAXIMUM PRICE FOR 2018 BASIC AUDIT</b>			54,000
<b>2019 BASIC AUDIT</b>			
PARTNERS	55	235	12,925
MANAGERS	165	200	33,000
SUPERVISORY STAFF	80	140	11,200
STAFF	150	100	15,000
OTHER (SPECIFY)	10	80	800
M&J DISCOUNT FROM STANDARD FEES			(18,925)
<b>SUB-TOTAL FOR ALL INCLUSIVE MAXIMUM PRICE FOR 2019 BASIC AUDIT</b>			54,000
<b>2020 BASIC AUDIT</b>			
PARTNERS	55	240	13,200
MANAGERS	165	205	33,825
SUPERVISORY STAFF	80	145	11,600
STAFF	150	105	15,750
OTHER (SPECIFY)	10	80	800
M&J DISCOUNT FROM STANDARD FEES			(20,175)
<b>SUB-TOTAL FOR ALL INCLUSIVE MAXIMUM PRICE FOR 2020 BASIC AUDIT</b>			55,000

<b>2021 BASIC AUDIT</b>			
PARTNERS	55	240	13,200
MANAGERS	165	205	33,825
SUPERVISORY STAFF	80	145	11,600
STAFF	150	105	15,750
OTHER (SPECIFY)	10	80	800
M&J DISCOUNT FROM STANDARD FEES			(19,175)
<b>SUB-TOTAL FOR ALL INCLUSIVE MAXIMUM PRICE FOR 2021 BASIC AUDIT</b>			<b>56,000</b>
<b>2022 BASIC AUDIT</b>			
PARTNERS	55	245	13,475
MANAGERS	165	210	34,650
SUPERVISORY STAFF	80	150	12,000
STAFF	150	105	15,750
OTHER (SPECIFY)	10	85	850
M&J DISCOUNT FROM STANDARD FEES			(19,625)
<b>SUB-TOTAL FOR ALL INCLUSIVE MAXIMUM PRICE FOR 2022 BASIC AUDIT</b>			<b>57,100</b>
<b>TOTAL FOR ALL INCLUSIVE MAXIMUM PRICE FOR 2018 THROUGH 2022 BASIC AUDIT</b>			<b>276,100</b>

**SECTION II – SINGLE AUDIT/MAJOR PROGRAMS**  
**COST PROPOSAL**

<b>SINGLE AUDIT/MAJOR PROGRAMS</b>		
<b>SINGLE AUDIT/MAJOR PROGRAMS 2018</b>	<b>EACH</b>	<b>3,750</b>
<b>SINGLE AUDIT/MAJOR PROGRAMS 2019</b>	<b>EACH</b>	<b>3,750</b>
<b>SINGLE AUDIT /MAJOR PROGRAMS 2020</b>	<b>EACH</b>	<b>3,750</b>
<b>SINGLE AUDIT/MAJOR PROGRAMS 2021</b>	<b>EACH</b>	<b>4,000</b>
<b>SINGLE AUDIT/MAJOR PROGRAMS 2022</b>	<b>EACH</b>	<b>4,000</b>
<b>TOTAL FOR ALL INCLUSIVE MAXIMUM PRICE FOR 2018-2022 SINGLE AUDIT/MAJOR PROGRAMS</b>		<b>19,250</b>

### EXHIBIT C PROJECT SCHEDULE

Basic Audit	2018
Basic Audit	2019
Basic Audit	2020
Basic Audit	2021
Basic Audit	2022

SINGLE AUDIT/MAJOR PROGRAMS 2018	2018
SINGLE AUDIT/MAJOR PROGRAMS 2019	2019
SINGLE AUDIT /MAJOR PROGRAMS 2020	2020
SINGLE AUDIT/MAJOR PROGRAMS 2021	2021
SINGLE AUDIT/MAJOR PROGRAMS 2022	2022