

AGREEMENT NO. 2020-12
PROFESSIONAL ENGINEERING SERVICES FOR DESIGN OF CITY HALL GENERATOR

THIS AGREEMENT ("Agreement") is made and entered by and between the CITY OF NORTH PORT, FLORIDA, a municipal corporation of the State of Florida, hereinafter referred to as the "CITY" and TLC ENGINEERING SOLUTIONS, INC. a Florida for Profit Corporation registered to conduct business in the State of Florida, with a local business address of 13099 S. Cleveland Avenue, Suite 500, Ft. Myers, FL 33907, hereinafter referred to as "CONSULTANT."

NOW, THEREFORE, in consideration of their mutual agreements and promises hereinafter contained, the parties bind themselves, their partners, successors, assigns, and legal representatives to all covenants, agreements, and obligations contained in this Agreement and the bid documents submitted in response to Request for Proposal No. 2020-12 ("RFP"), and do hereby further agree as follows:

1. CONSULTANT'S SERVICES

- A. CONSULTANT agrees to diligently and timely perform services for the CITY relating to Professional Engineering Services as identified in the RFP and CONSULTANT'S proposal submitted **October 15, 2019**. The overall Scope of Services is described in **Exhibit A** with detailed tasks and associated fees provided in **Exhibit B**, both exhibits are attached hereto and incorporated as if set forth fully herein.
- B. This Agreement shall commence immediately upon the execution of this Agreement by both the CITY and CONSULTANT and upon CONSULTANT'S receipt of a written Notice to Proceed from the CITY'S Purchasing office and shall continue through the completion of the project. The estimated completion date is **July 22, 2020 (Bidding and construction services completion date to be determined)**.

2. COMPENSATION AND PAYMENT FOR CONSULTANT'S SERVICES

- A. COMPENSATION
 - 1. CONSULTANT shall receive **SEVENTY-SEVEN THOUSAND ONE HUNDRED NINETY-FIVE DOLLARS AND ZERO CENTS (\$77,195.00)** 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.
 - 2. 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 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 CONSULTANT through payment issued by the Finance Department in accordance with the Florida Local Government Prompt Payment Act, Florida Statutes, Section 218.70, *et seq*, upon receipt of 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. 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, progress payments shall be paid in proportion to the percentage of completed work on those specific services approved in writing by the CITY'S Administrative Agent based on the percentage of the amount for those specific services.
3. CONSULTANT'S invoices shall be in a form satisfactory to the City of North Port Finance Department, who shall initiate disbursements.

3. INDEMNIFICATION

- A. TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CONSULTANT MUST 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 AGREEMENT. THE 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 MUST PROVIDE ALL AVAILABLE INFORMATION AND ASSISTANCE THAT THE CONSULTANT MAY REASONABLY REQUIRE REGARDING ANY CLAIM. IN THE EVENT OF A CLAIM, THE CITY MUST 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 SHALL SURVIVE 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. 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. THE TERMS OF THIS SECTION SURVIVE THE TERMINATION OF THIS AGREEMENT.**

- F. FURTHER, THE 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.**

4. CONSULTANT'S INSURANCE

A. INSURANCE

Before performing any work, CONSULTANT shall procure and maintain, during the life of the 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 the City Manager or designee's prior written approval. 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: (PER CHAPTER 440, FLORIDA STATUTES): The CONSULTANT shall procure and maintain during the life of this Agreement workers' compensation insurance for all its employees to be engaged in work on the project under this Agreement and in case any such work is sublet, the CONSULTANT shall require the sub-contractor similarly to provide workers' compensation insurance for all of the latter's employees to be engaged in such work; unless such employees are covered by protection afforded by the CONSULTANT'S workers' compensation insurance. For additional information contact the Florida Department of Financial Services, Workers' Compensation Division at (850) 413-1601 or on the web at www.fldfs.com. In case any class of employees engaged in hazardous work on the project under this Agreement is not protected under the Workers' Compensation Statute, the CONSULTANT shall provide, and shall cause each sub-contractor to provide, employers' liability insurance for the protection of such of its employees. The minimum liability limits of such insurance shall not be less than herein specified or in that amount specified by law for that type of damage claim.

Proof of such insurance shall be filed by the CONSULTANT with the CITY within ten (10) days after the execution of this Agreement. Coverage is to apply for all employees in the statutory limits in compliance with the applicable state and federal laws. The policy must include employers' liability with a limit of \$1,000,000 for each accident; \$1,000,000 each employee; and \$1,000,000 policy limit for bodily injury or disease.

2. Professional Liability Insurance: Minimum \$1,000,000 per occurrence for this project, and 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 this 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 Form CG 00 01): The CONSULTANT shall procure and maintain and require all sub-contractors to procure and maintain during the life of this Agreement, a comprehensive general liability policy, including but not limited to bodily injury, property damage, broad form contractual liability, and Explosion, Collapse and Underground (XCU) coverage. The general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Proof of such insurance shall be filed by the CONSULTANT with the CITY within ten (10) days after the execution of this Agreement. The policy must include comprehensive general liability with a limit of \$1,000,000 for general aggregate; \$1,000,000 for each occurrence; \$1,000,000 for products and completed ops; \$100,000 for damage to rented premises; and \$100,000 for fire damage.

The policy shall be endorsed to include the following additional insured language: "City of North Port, Florida, and its commissioners, officers, employees, agents, and volunteers shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant."

4. Business Automobile Liability: The CONSULTANT shall procure and maintain and require all sub-contractors to procure and maintain during the life of this Agreement, business automobile liability insurance including on all owned, hired, and non-owned automobiles. Automobile liability insurance must be written on a standard ISO form (CA 00 01) covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8), and non-owned (Code 9) autos.

Proof of such insurance shall be filed by the CONSULTANT with the CITY within ten (10) days after the execution of this Agreement. The policy must include automobile liability with a limit of \$1,000,000 for Combined Single Limit (CSL) for each accident; \$1,000,000 for bodily Injury (per person); \$1,000,000 for bodily Injury (per accident); and \$1,000,000 for property damage (per accident).

The policy shall be endorsed to include the following additional insured language: "City of North Port, Florida, and it commissioner, officers, employees, agents, and volunteers shall be named as an additional insured with respect to liability arising out of the activities performed

by, or on behalf of the Consultant, including automobiles owned, leased, hired or borrowed by the Consultant.”

B. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or through other means, agree to waive all rights of subrogation against the CITY, its 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 CONSULTANT for the CITY. It is CONSULTANT’S responsibility to notify its insurance company of the waiver of subrogation and request written authorization or the proper endorsement. Additionally, CONSULTANT, its officers, officials, agents, employees, volunteers, and any subcontractors, 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 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 Risk Management through the CITY’S Purchasing Office gives specific approval, are to be written on an occurrence basis and the Comprehensive Commercial General Liability Insurance shall name the City of North Port, Florida, and 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 CONSULTANT, shall be provided by or in behalf of all subconsultants to cover their operations performed under this Agreement. CONSULTANT shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subconsultants.
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. CONSULTANT is to notify the CITY’S Purchasing Office by written notice via certified mail, return receipt requested.
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 CONSULTANT and its carrier.**
6. 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 (CG 20101185 or combination of CG 2010370704 and CG 20370704). 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 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 CONSULTANT'S insurer(s) and the CITY'S Purchasing Office as soon as practicable after notice to the insured.

5. RESPONSIBILITY OF CONSULTANT

- A. 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 CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents and data.
- B. If CONSULTANT is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- C. CONSULTANT warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for 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 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. CONSULTANT covenants and agrees that it and its employees shall be bound by the standards of conduct in Florida Statutes, Section 112.313, as it relates to work performed under this Agreement. CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.
- E. CONSULTANT shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof. 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.
- F. 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 CONSULTANT'S offices for 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.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/subcontractor 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 Agreement term and, if CONSULTANT does not transfer the records to the CITY following completion of the Agreement, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.
4. Upon completion of the 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 the 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 the Agreement, CONSULTANT shall meet all applicable requirements for retaining public records.
5. **IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, 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: Publicrecordsrequest@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

It is understood and agreed that all the documents, or reproducible copies, developed by 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. 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 CONSULTANT to use any of the work products of this Agreement on any non-CITY project. 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

The timely performance and completion of the required services is vitally important to the interest of the CITY. 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. CONSULTANT'S personnel assigned 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. 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 CONSULTANT'S key personnel must receive the CITY'S Administrative Agent's written approval before said changes or substitution can become effective.

- A. The services to be rendered by CONSULTANT shall commence within one (1) calendar week of CONSULTANT'S receipt of written Notice to Proceed from the CITY.
- B. 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, subject only to delays caused through no fault of CONSULTANT or the CITY. Time is of the essence in the performance of this Agreement.
- C. CONSULTANT agrees to provide to the CITY'S Administrative Agent, 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 CONSULTANT.
- D. 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 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 as **Exhibit C**, which is attached hereto and incorporated as if set forth fully herein.

8. OBLIGATIONS OF THE 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, the CITY may authorize a specific program manager 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 CONSULTANT, and render in writing, decisions pertaining thereto within a reasonable time.
 - 2. Transmission of instructions, receipt of information, interpretation and definition of the CITY'S 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 CONSULTANT'S documents and payment requests.
- B. The CITY shall, upon request, furnish 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 CONSULTANT.
- C. The CITY'S Administrative Agent shall conduct periodic reviews of the work of CONSULTANT necessary for the completion of CONSULTANT'S services during the period of this Agreement, and may make other CITY personnel available, where required and necessary to assist CONSULTANT. The availability and necessity of said personnel to assist 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 CONSULTANT in connection with any claim brought on behalf of or against 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 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 the Agreement is terminated and the date upon which such termination becomes effective. Except as otherwise directed, the CONSULTANT shall stop work on the date of receipt of the notice of termination or other date 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.
- B. Upon termination CONSULTANT shall deliver to the CITY all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by CONSULTANT in connection with its services. The CITY shall, upon receipt of the aforesaid documents, pay to CONSULTANT and 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 – Consultant's Fee Schedule, plus (2) the percentage of the work completed in any commenced but uncompleted task, less (3) all previous payments made to CONSULTANT in accordance with Section 2 of this Agreement and any amounts withheld by the CITY to settle claims against or to pay indebtedness of CONSULTANT in accordance with the provisions of this Agreement.
- C. FUNDING IN SUBSEQUENT FISCAL YEARS: It is expressly understood by the CITY and CONSULTANT that funding for any subsequent fiscal year of the Agreement is contingent upon appropriation of monies by the City Commission, 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 CONSULTANT prior to such termination.

- D. In the event that CONSULTANT has abandoned performance under this Agreement, then the City Manager or designee may terminate this Agreement upon three (3) calendar days' written notice to CONSULTANT indicating its intention to do so. The written notice shall state the evidence indicating CONSULTANT'S abandonment.
- E. CONSULTANT shall have the right to terminate services only in the event of the CITY failing to pay 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.
- F. The City Manager or designee reserves the right to terminate and cancel this Agreement in the event CONSULTANT is placed in either voluntary or involuntary bankruptcy, a receiver is appointed for CONSULTANT or an assignment is made for the benefit of creditors.
- G. In the event CONSULTANT breaches this Agreement, the CITY shall provide written notice of the breach and CONSULTANT shall have ten (10) calendar days from the date the notice is received to cure. If CONSULTANT fails to cure to the City's satisfaction within the ten (10) calendar 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 CONSULTANT'S work not being in accordance with the requirements of this Agreement;
 - 2. The quantity of CONSULTANT'S work not being as represented in CONSULTANT'S Payment Request, or otherwise;
 - 3. CONSULTANT'S rate of progress being such that, in the CITY'S opinion, substantial or final completion, or both, may be inexcusably delayed;
 - 4. CONSULTANT'S failure to use Agreement funds, previously paid CONSULTANT by the CITY, to pay CONSULTANT'S project related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
 - 5. Claims made, or likely to be made, against the CITY or its property;
 - 6. Loss caused by CONSULTANT; or
 - 7. 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.
- H. In the event that the CITY makes written demand upon CONSULTANT for amounts previously paid by the CITY as contemplated in the clause, 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

CONSULTANT is and shall be, in the performance of all work services and activities 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 CONSULTANT'S sole direction, supervision, and control. CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects CONSULTANT'S relationship and the relationship of its employees to the CITY shall be that of an independent contractor and not as employees or agents of the CITY. 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. 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. 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. ENTIRE AGREEMENT

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

12. 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 for the services, 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'S Administrative Agent and CONSULTANT'S representative shall agree in writing to the change.

13. ASSIGNMENT

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 to 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.

14. 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.

15. 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 are 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.

16. 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.

17. NO HIRE

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.

18. 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:

Lawrin T. Ellis, PE
TLC Engineering Solutions, Inc.
13099 S. Cleveland Avenue, Suite 500
Ft. Myers, FL 33907
TEL: 239.292.4240
FAX: 239.275.3511
EMAIL: lawrin.ellis@tlc-eng.com

THE CITY'S ADMINISTRATIVE AGENT:

Derek Applegate, Project Manager
City of North Port
4970 City Hall Blvd.
North port, FL 34286
TEL: 941.429.7028
Email: dapplegate@cityofnorthport.com

WITH COPIES OF NOTICES TO:

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

19. PARAGRAPH HEADINGS

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

20. 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).

21. CONFLICTS

In the event of any conflict between the provisions of this Agreement and RFP No. 2020-12 or CONSULTANT'S response, which are made a part hereof by reference, the 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, 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: _____
Heather Taylor, CMC, Interim City Clerk

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

Date: _____

APPROVED AS TO FORM AND CORRECTNESS:

By: _____
Amber L. Slayton, City Attorney

CONSULTANT:
TLG ENGINEERING SOLUTIONS, INC.

By: _____
Lawrin T. Ellis, PE
Principal in Charge

Date: 02/25/2020

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me on February 25, 2020,
by Lawrin T. Ellis, who is personally known to me or who produced
_____ as identification.

Lisa N. Latkowski
Notary Public



EXHIBIT A

SCOPE OF SERVICES

TLC Engineering Solutions (TLC) will provide services as outlined in the City of North Port Request for Proposal No. 2020-12, Professional Engineering Services for Design of City Hall Generator, and associated Addendum No. 1 dated September 26, 2019. This shall consist of electrical, plumbing/fuel, structural and civil engineering services.

The scope is for the study, analysis and design of the electrical emergency distribution system for the City Hall building. Purpose of the project is to provide the major power distribution components necessary to operate the entire building, with portions being utilized as an emergency operations center (EOC). The scope does not include engineering for revisions of specific rooms or areas within the building, such as interior space renovations or associated work for change in staff functions.

TLC will use sub-consultants for work in civil and structural engineering. TLC will also employ a local electrical contractor for assistance in investigating conditions of the existing facilities.

Design modifications may occur during the design and construction process, because it is impossible to foresee or anticipate every design issue until the design work is completed. Modifications can result in increases or decreases in actual design and construction cost. Therefore, it is important that a reasonable allowance or contingency be included in the fees and construction budget to accommodate any changes in design as developed for this proposal.

The following phased tasks will be utilized to better define key elements of the scope, organize the design approach and proceed through construction of the project. Also refer to Exhibit B, Fee Schedule, for listing of specific tasks within each phase.

1. Concept Development

1.1 Kickoff meeting - This phase will consist of a kickoff meeting, a thorough electrical field investigation of the entire facility, documentation of existing conditions, and further analysis of the City's requirements for the project to confirm the design approach. All key decision-makers from the City will be required to participate in the meetings. Electrical emergency service requirements for operation of portions of the second and third floor in the City Hall building as an emergency operations center will be a key topic of discussion. This initial phase is key to the start of the project.

1.2 Site Investigation - The site investigation will include obtaining access to all major electrical gear.

1.3 Electrical Contractor - The local electrical contractor will provide the proper equipment and suitably rated protection to allow this investigation while the system is energized.

1.4 Data Analysis - Data gathered through meetings and site investigation will then be analyzed.

1.5 Progress Meeting - A wrap-up meeting will be held to review the findings, and recommendations discussed will be documented in meeting minutes.

2. 30% Plans

2.1 Cadd Setup - Existing cadd files of the building and site that are available from TLC Engineering archives will be utilized to set up sheets for this project, that will become the contract documents.

2.2 Electrical Equipment Layouts - Based on the agreements made in the study phase, the schematic electrical design will be produced to represent the proposed additions and renovations of the facility emergency electrical systems. This will include building floor plans and site plans

2.3 Electrical Riser Diagram - A one-line diagram of the proposed electrical distribution system will be developed. Based on decisions made in the study phase, this may potentially require extensions of the main electrical service for the City Hall to interconnect with a new emergency generator and automatic transfer switching located at the central energy plant.

2.4 Diesel Fuel Tank Layout - Schematic design of the diesel fuel supply system for the generator will be developed. This will include a main fuel tank, piping systems, required pumping systems, and integration with the generator day tank.

2.5 Site Civil Investigation and Survey - Based on the extent of work agreed upon in the concept phase, the civil engineer's initial investigation and survey will be completed. This will include researching existing plans and data available for existing drainage design, underground utilities, and property setbacks; communicate and coordinate with the surveyor to ensure the proper amount of survey data is collected; conduct a site visit to confirm drainage patterns and piping; provide a localized topographic survey, location of improvements and tree locations. Topo will be extent to verify existing drainage patterns. Agency submittals will be made for site/civil work. Internal SDR submittal will be made for review by City Staff. Submissions to the Army Corps of Engineers and Southwest Florida Water Management District will not be required or provided.

2.6 Probable Cost Opinion - An opinion of probable construction cost will be developed for all disciplines.

2.7 Progress Meeting - Drawings and all other documents will be presented in a progress review meeting, and documents then submitted for City review.

2.8 FEMA Quarterly Report - TLC will assist with providing documentation to the City's consultant, Pegasus, for submission of the FEMA quarterly report.

3. 90% Plans

3.1 Electrical Plans - 90 percent drawings will be produced for electrical, including incorporation of any agreed upon comments from the City for their review of the 30% plans.

3.2 Fuel System - 90 percent drawings will be produced for fuel supply, including incorporation of any agreed upon comments from the City for their review of the 30% plans.

3.3 Structural - 90 percent drawings will be produced for structural systems, including incorporation of any agreed upon comments from the City for their review of the 30% plans.

3.4 Civil Site Plans - Civil submissions will continue as needed for response to City for SDR review comments. The design team will assimilate the City staff review comments into the site and drainage design; review agency comments provided in the submittal process; revise the civil site plan, drainage plan, utility modifications (if necessary) and Best Management Practices plan for the project; respond to Agency comments and re-submit for review and permitting.

3.5 Specifications - Draft technical specification book will be produced.

3.6 FEMA Quarterly Report - All documents will be submitted to the City for review. TLC will assist with providing documentation to the City's consultant, Pegasus, for submission of the FEMA quarterly report.

4. Final Plans

4.1 Electrical drawings - Electrical, including incorporation of any agreed upon comments from the City for their review of the 90% plans.

4.2 Fuel System drawings - Fuel supply systems, including incorporation of any agreed upon comments from the City for their review of the 90% plans.

4.3 Specifications – Final technical specification book will be produced and incorporate any of the City's standard general conditions sections.

4.4 Structural drawings – structural systems, including incorporation of any agreed upon comments from the City for their review of the 90% plans.

4.5 Civil Site - Civil submissions will continue as needed for response to City for SDR review comments.

5. Bidding & Permitting

5.1 Pre-Bid Meeting - The City will advertise for invitation to contractors to bid the project. TLC will assist the City in conducting a pre-bid meeting with interested parties to review the scope and walk through the facility.

5.2 Electrical Bid Review - TLC will respond to contractor's questions during the bidding period, and issue addendum to the documents as required. TLC will assist the City with review of bids, for scope and general opinion of costs.

5.3 Fuel System Bid Review - TLC will respond to contractor's questions during the bidding period, and issue addendum to the documents as required. TLC will assist the City with review of bids, for scope and general opinion of costs.

5.4 Structural Bid Review – Structural engineer will respond to contractor's questions during the bidding period, and issue addendum to the documents as required. We will assist the City with review of bids, for scope and general opinion of costs.

5.5 Civil Bid Review – Civil engineer will respond to contractor’s questions during the bidding period, and issue addendum to the documents as required. We will assist the City with review of bids, for scope and general opinion of costs.

5.6 FEMA Report - TLC will assist with providing documentation to the City’s consultant, Pegasus, for submission of the FEMA quarterly report.

After award of the contract, TLC will provide signed and sealed drawings to the contractor for permit submission. TLC will provide responses to any permit review comments.

6. Construction Administration

6.1 Electrical - TLC will provide construction phase services, which shall include review of shop drawing submittals and response to contractor’s request for information (RFI). Site visits will be conducted periodically to become familiar with the progress and quality of the construction work and to determine if the work is being performed in general accordance with the construction documents. TLC will attend regular construction meetings with the City and contractor, on site.

6.2 Fuel System - TLC will provide construction phase services, as described above in item 6.1 above, including for the fuel systems.

6.3 Structural - Provide construction phase services, as described above in item 6.1 above, including for structural systems.

6.4 Civil Site - Provide construction phase services, as described above in item 6.1 above, including for the site work. Civil engineer shall prepare Record Drawings based on As-Built survey data provided by the Contractor for certifications required by the Municipality and FDEP.

6.5 As-Built Drawings - TLC will review contractor’s as-built drawings.

6.6 FEMA Close-Out Report – TLC will assist with providing documentation to the City’s consultant, Pegasus, for submission of the FEMA close-out report, following completion of construction and receipt of close-out documents from the contractor.

END OF EXHIBIT A

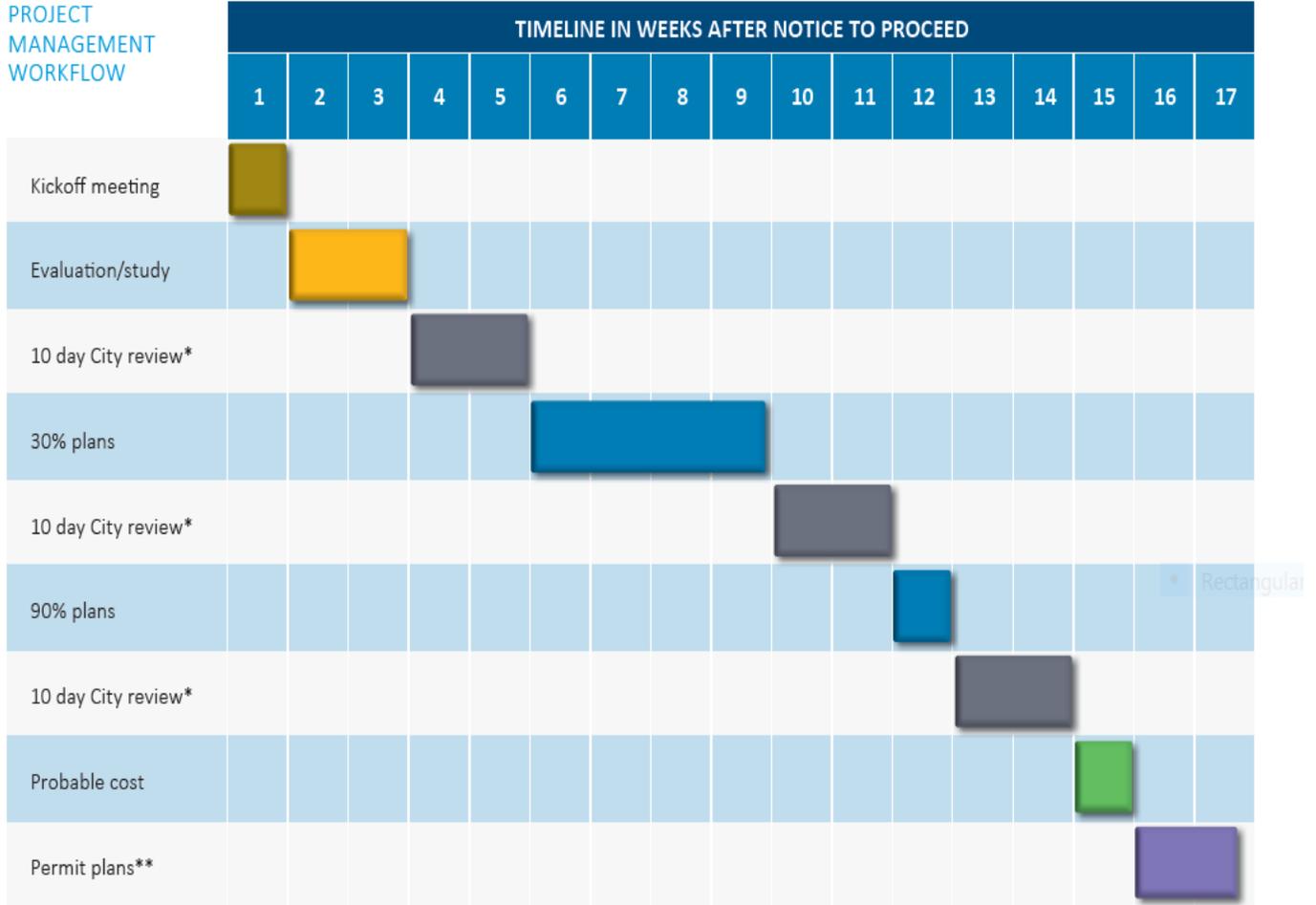
EXHIBIT B

FEE SCHEDULE

TLC Hourly Rate (\$/hr)	\$205	\$175	\$150	\$120	\$95	\$70		
Project Phase Task	Director	Senior Engineer	Project Engineer	Engineer	Designer	Technician Clerical	Fee per Task	Fee per Submission
Concept Development								
Kickoff meeting	0	7	0	0	0	0	\$1,225	Concept \$4,795
Site Investigation	0	7	0	0	0	0	\$1,225	
Electrical Contractor - Assistance on Site (lump sum)							\$500	
Data analysis	0	4	0	0	1	0	\$795	
Progress Meeting	0	6	0	0	0	0	\$1,050	
30% Plans								
Cadd Setup of Bldg & Site Plans	0	1	0	0	4	1	\$625	30% Plans \$18,790
Electrical Plans, Schedules, Details	0	5	2	2	7	0	\$2,080	
Electrical Riser Diagram	0	2	1	1	3	0	\$905	
Diesel Fuel Tank Layout	0	1	4	4	1	0	\$1,350	
Structural Layout (subconsultant lump sum)							\$2,655	
Site Civil Survey & Plan (subconsultant lump sum)							\$8,545	
Probable Cost Opinion	0	4	1	1	0	0	\$970	
Progress Meeting	0	6	0	0	0	0	\$1,050	
Assist w/ FEMA Quarterly Report	0	2	0	0	2	1	\$610	
90% Plans								
Electrical Plans for Review	0	5	3	3	8	0	\$2,445	90% Plans \$19,250
Fuel System	0	4	4	4	3	0	\$2,065	
Structural Plans for Review (subconsultant lump sum)							\$2,655	
Civil Site Plans for Review (subconsultant lump sum)							\$9,430	
Specifications	0	7	0	0	0	4	\$1,505	
Assist w/ FEMA Quarterly Report	0	4	0	0	4	1	\$1,150	
Final Plans								
Electrical Drawings	0	6	3	2	7	0	\$2,405	Final Plans \$7,195
Fuel System Drawings	0	2	1	1	0	0	\$620	
Specifications	0	4	0	0	0	4	\$980	
Structural (subconsultant lump sum)							\$590	
Civil Site (subconsultant lump sum)							\$2,600	
Bidding/Permitting								
Pre-bid meeting	0	6	0	0	0	0	\$1,050	Bid/Permit \$6,710
Electrical bid review, RFI's, permit drawings	0	7	2	0	4	4	\$2,185	
Fuel System bid review, RFI's, permit drawings	0	3	3	3	2	2	\$1,665	
Structural (subconsultant lump sum)							\$250	
Civil Site (subconsultant lump sum)							\$950	
Assist w/ FEMA Quarterly Report	0	2	0	0	2	1	\$610	
Construction Administration								
Electrical	0	30	5	5	10	18	\$8,810	CA \$20,455
Fuel System	0	5	5	5	4	8	\$3,165	
Structural (subconsultant lump sum)(2 site visits)							\$2,250	
Civil Site							\$3,700	
Review As-Built Drawings	0	2	1	0	3	0	\$785	
Assist w/ FEMA Close-out Report	0	7	0	0	4	2	\$1,745	
Total Manhour Breakdown - TLC	0	139	35	31	69	46	\$43,070	
City Hall Generator - Total Fees with Subconsultants								\$77,195

END OF EXHIBIT B

EXHIBIT C PROJECT SCHEDULE



* Understanding that time is of the essence, it is anticipated that in order to maintain the schedule for this essential project, we will continue our design during the review process and comments will be incorporated as the next phase is completed. And, specifically, submission for site review/permitting will need to begin immediately after completion of the study phase and continue through the Cities reviews.

** The possibility of a more lengthy permitting process will be anticipated. If this is expected, we will consider recommending reduction of the number of review submittals. For example, after completion of the 30% plans, proceeding directly to 90% plans.

END OF EXHIBIT C

FEMA REQUIRED FORMS FOR CONSULTANT AND SUB-CONSULTANTS

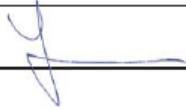
**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Recipient, TLC Engineering Solutions, Inc. certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (2) Where the Recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

By: 

Signature

Lawrin T. Ellis, PE Principal in Charge

Name and Title

13099 S. Cleveland Ave., Ste. 500

Street Address

Ft. Myers, FL 33907

City, State, Zip

10-10-2019

Date

City of North Port

Recipient's Name

H0131

DEM Contract umber

4337-28-R

FEMA Project Number

Rectang

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Recipient, HEES & ASSOCIATES, INC. certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

HEES & ASSOCIATES, INC.

By: _____

Signature

KARL F. HEES, PRES.

Name and Title

1381 5TH STREET

Street Address

SARASOTA, FL 34236

City, State, Zip

2/18/20

Date

City of North Port

Recipient's Name

H0131

DEM Contract umber

4337-28-R

FEMA Project Number

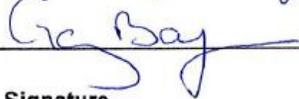
**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Recipient, Southwest Engineering + Design certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

Southwest Engineering + Design

By: 
Signature

GARY BAYNE, P.E. PRESIDENT
Name and Title

660 CHARLOTTE ST. STE 8
Street Address

PUNTA GORDA, FL. 33980
City, State, Zip

2-18-20
Date

City of North Port

Recipient's Name

H0131
DEM Contract umber

4337-28-R
FEMA Project Number

END OF FEMA REQUIRED FORMS FOR CONSULTANT AND SUB-CONSULTANTS

**FEMA FEE DOCUMENTATION
SUB-CONSULTANT PROPOSALS TO TLC ENGINEERING SOLUTIONS, INC
FOR STRUCTURAL AND CIVIL ENGINEERING**

1381 Fifth Street
Sarasota, Florida 34236
Ph-941-955-4555
Fax-941-955-9333
Email-karl@heesassociates.com



HEES & ASSOCIATES, INC.
Structural Engineering

November 27, 2019

Mr. Brett Sands
TLC
13099 South Cleveland, Suite 500
Fort Myers, Florida 33907

**RE: North Port City Hall Central Plant Expansion
Structural Services Proposal - #19HA133**

Dear Brett:

Hees & Associates, Inc. (H&A) appreciates the opportunity to provide structural engineering services for the above referenced project and submits the following proposal for your review.

The proposed renovations to an existing campus are located in North Port, Florida and this proposal includes the addition of a new generator foundation and enclosure, as well as any miscellaneous new equipment pads. The structures are assumed to be in a flood zone, but not a velocity zone.

The scope of services by H&A will be to provide structural analysis and design for the load bearing components of the above, prepare reproducible CADD drawings for construction and permitting (based on TLC AutoCAD backgrounds), and coordinate with TLC for the final design

After the completion of Construction Documents (CD's), H&A will be available to answer questions during bidding. During Construction Administration (CA), we will review shop drawings relative to the structural portion of the work for general compliance with the intent of the structural contract documents. H&A will provide up to 2 site visits with reports. If additional site visits are required to observe the structural portion of the work for general compliance with the structural contract documents, or to provide consultations and/or fixes for construction errors, they will be billed at our hourly rates.

Services specifically excluded are: the soil investigation, geotechnical engineering, engineering services which are normally provided by Specialty Engineers, printing and distribution of drawings for permitting, bidding and/or construction, in depth examination of alternative structural systems and architectural design/detailing responsibilities.

Any revisions to the scope of work or any changes to a portion of the structure, which has been completed, will be done at the prevailing hourly rates for the personnel involved.

Mr. Brett Sands
Page Two
November 27, 2019

If after receipt of the completed architectural plans, it is determined that the actual scope differs from that expected, H&A reserves the right to re-negotiate a base fee.

The fee for the above structural services will be as follows:

Construction Documents.....	\$5,900.00
Construction Administration (w/ up to 2 site visits).....	\$2,500.00
<u>Additional Site Visits (As requested).....</u>	<u>Hourly at the attached rates</u>

The above fees are due and payable based on percentage completion of the work. Invoices will be submitted on a monthly basis. Payment is anticipated within 30 days of invoicing.

Please note that the attached General Conditions, Scope of Services and Fee Schedule are applicable and form part of our agreement. Please initial where indicated and return and accepted copy of this proposal.

Thank you for considering Hees & Associates for this exciting project. If you require any additional information, please feel free to contact me at your convenience.

Sincerely,

Hees & Associates, Inc.
C.O.A. #27043 Karl F
Hees
Karl F. Hees, P.E.
President

Digitally signed by
Karl F Hees
Date: 2020.02.21
11:44:29 -05'00'

Enclosure: Contract, Scope of Services, General Conditions, Rate Schedule

The terms and conditions of this proposal including the terms on the attached General Conditions are accepted:

BY: _____ DATE: _____
Signature

Printed Name

Title

To commence, please sign and return the proposal, if acceptable, and initial the General Conditions, which are a part of the contract.

1381 Fifth Street
Sarasota, Florida 34236
Ph-941-955-4555
Fax-941-955-9333
Email-karl@heesassociates.com



HEES & ASSOCIATES, INC.

GENERAL BUSINESS TERMS AND CONDITIONS

These Business Terms and Conditions are attached to, and made a part of, Proposals and Agreements for services by Hees & Associates, referred to herein as the "Design Professional."

1. Information from Client

The Client shall provide all information reasonably requested by the Design Professional including, but not necessarily limited to, supporting information, extraordinary project considerations, special services required, deeds, easements, rights of way, and all other information requested by the Design Professional in order for it to provide the services described in this Agreement. The Design Professional shall be entitled to rely upon such information, and shall have no liability as a result of any inaccuracy or incompleteness of any such information.

2. Billings and Payments

Fixed fees shall be billed monthly for that portion of the Design Professional's services rendered through the billing date, plus reimbursable expenses. Time/Material ("T/M") fees shall be billed monthly based on the time and materials incurred to the billing date, plus reimbursable expenses. Client agrees to carefully read all billing invoices/statements and promptly notify Hees & Associates, in writing, of any claimed errors or discrepancies, within fifteen (15) days from the date of the Invoice/statement. If Hees & Associates does not hear from Client in writing, it is presumed that Client agrees with correctness, accuracy, and fairness of the billing Invoice/statement. Should the scope of the work be increased, Client agrees to an increase in the fee based on the increased responsibility assumed, time to be expended, and liability to be incurred. A T/M estimate, if provided, is a good faith estimate for information purposes only, and under no circumstances shall Design Professional be limited in the amount to which it is entitled to be compensated by any such estimate. In any and all instances in which a T/M estimate is given, the Client acknowledges that the actual fee and amount of reimbursable expenses may be more or less based upon the actual time, materials and expenses incurred (with the amount of the fee to be paid to be determined based on the Design Professional's rate code schedule in effect at the time the services are rendered). Additional Services provided shall be billed monthly. The continuous progress of the Design Professional's services requires prompt payment. Payment is due upon receipt of the Design Professional's Invoices. The Design Professional shall be entitled to recover interest at the rate of 12% per annum on Invoices which are not paid within 30 days and, in addition, the Design Professional may, after seven days' notice to the Client, suspend or terminate (in the Design Professional's sole discretion) its services under this Agreement until all outstanding amounts (for both services and reimbursable expenses) have been paid in full, including applicable interest. The foregoing provisions of this Agreement to the contrary notwithstanding, in the event that any of the Design Professional's statements are not paid within 60 days from the receipt thereof by the Client, and even if the Design Professional has not given a seven-day notice to the Client regarding the same, the Design Professional may suspend further services under this Agreement until any and all such outstanding statements have been paid in full, including applicable interest. Any prepayment made at or about the execution of the Agreement shall be credited to the Client's account at the time of final payment.

3. Reimbursable Expenses

Project related expenses such as travel; lodging; subsistence; long distance communication; postage; shipping; reports, drawing and/or specification reproduction; and Client authorized overtime, are all reimbursable expenses. Unit billings will be charged per the Design Professional's current rate code schedule. Out-of-pocket expenses will be billed at cost plus 10%.

4. Taxes

In the event that any taxes or fees on the Design Professional's services or reimbursable expenses are imposed by any governmental authority, the same shall be added to the Design Professional Invoices under this Agreement, and shall be the responsibility of the Client.

5. Subconsultant Contract Administration

Charges for subconsultants to the Design Professional will be billed to the Client at cost plus 15%.

6. Adjustment of Hourly Rates and Renegotiation of Fees

Hourly rates and all rates in the Design Professional's current rate code schedule are subject to periodic review and adjustment. Moreover, the Design Professional reserves the right to renegotiate fixed fees to reflect changes in price indices and pay scales applicable to the period when services are rendered. The Design Professional and the Client agree to exercise good faith in any such renegotiation.

7. Permit and Application Fees

The Client shall pay all Project-related fees, including, but not limited to, any and all legal and administrative fees incident to plan review, platting, permitting, DRI, PUD, rezoning applications and impact fees, and the Design Professional shall have no liability therefore whatsoever.

8. Budgetary Limitations

The Client shall advise the Design Professional in writing either before execution, or within 15 days of execution, of this Agreement, of any budgetary limitations for the overall Project Cost or Construction Cost. The Design Professional will endeavor to work within those limitations. However, the Design Professional does not guarantee that any opinions it may render regarding the probable cost of construction or of any aspect of the Project will not differ materially from quoted fees, submitted bids, negotiated prices or actual costs ultimately incurred. If Client wishes greater assurance as to probable construction costs, or if formal estimates are otherwise desired, the Client must employ the services of an independent cost estimator.

9. Excluded Services

The Design Professional will provide only those services described in the Scope of Services that is a part of this Agreement. The Design Professional shall have no responsibility or liability whatsoever for any services beyond those specifically described in the Scope of Services, and any and all other services are specifically excluded.

10. Construction Phase

During any site visits or when the Design Professional otherwise observes the contractor's(s') work in progress, the Design Professional shall not supervise, direct or have control over the contractor's(s') work, nor shall the Design Professional have any authority over, or responsibility for, the means, methods, techniques, sequences or procedures of construction selected by the contractor(s), or for any safety precautions or programs incident to the work of the contractor(s), or for any failure of the contractor(s) in furnishing or performing its(their) work. The Design Professional neither guarantees the performance of any construction contracts by contractor(s), nor assumes responsibility or liability for the contractor's(s') failure to furnish or perform its(their) work in accordance with the applicable contract documents.

11. Delays

The Design Professional shall take reasonable steps to perform its services in a timely fashion, but the Client recognizes and agrees that factors both within and outside the Design Professional's control may delay the Design Professional's services, as well as the work performance, permitting, license issuance and overall construction of the Project. While the Design Professional shall take such steps as it reasonably can to meet the Client's reasonable scheduling demands, under no circumstances shall the Design Professional be responsible for any damages for delay, whether the same are caused in whole or in part by any circumstances within the Design Professional's control.

12. Legal Interpretations Not Provided

The services and work proposed to be performed pursuant to this Agreement are based upon the services of a professional engineer, professional land surveyor, professional land planner and/or professional landscape architect, and do not and will not under any circumstances constitute the rendering of legal advice, legal opinions or legal services. Any interpretation of laws, rules, regulations or ordinances are based solely upon the professional opinions of the Design Professional as a design professional. The Client understands that the same are not intended as legal opinions, and the Client shall in any and all such instances secure adequate legal counsel as may be needed for the Client's needs related to the Project.

13. Cooperation with Other Consultants or Client's Attorney

A number of issues may arise relating to this Project for which legal advice and services may be required. Any and all legal advice or services are beyond the scope of this Agreement, and the Client agrees that the Client shall retain such attorneys as may be necessary in order to render legal advice and services as needed for the Project. Such attorneys shall participate as professional team members, and the Client will serve as project coordinator between the Design Professional and such attorneys and any and all other consultants or professionals who may be necessary for the success of the Project, and the Client shall ensure the cooperation with the Design Professional of such attorneys and other consultants who have contracted directly with the Client. The fees and costs billed by such attorneys and other consultants shall be the sole responsibility of the Client, and the Design Professional shall have no responsibility or liability therefore whatsoever.

14. Ownership of Instruments of Services

All reports, plans, specifications, field data, notes and other documents, including electronic media, prepared by the Design Professional as Instruments of service, shall remain the property of the Design Professional.

15. Agreement Not to Hire Employees

In consideration of the services to be provided by Design Professional pursuant hereto and, in recognition of the time and expenses incurred by the Design Professional in the hiring and training of its employees, Client hereby agrees that, during the term of this Agreement, and for a period of one year following the date of termination of this Agreement, Client shall not solicit for employment, offer employment to, or engage or hire (either as an employee, leased employee, or as an independent contractor) any person who, during the term of this Agreement, was an employee of the Design Professional. The Client acknowledges and agrees that in the event of a breach of this provision (which, by its own terms, will survive the termination of this Agreement), the Client shall pay the Design Professional liquidated damages, and not as a penalty, an amount equal to one year's compensation of the employee who has been hired, based upon the compensation that was being paid to such employee immediately prior to his or her termination of employment with the Design Professional. Client and Design Professional may, by mutual agreement, elect to waive this provision.

16. Termination for Cause

This Agreement may be terminated by the Client upon 30 days' written notice in the event of a material breach hereof by the Design Professional, provided that the Design Professional does not cure such material breach within the 30-day period after it receives written notice of the same (describing the alleged breach in detail) or, in relation to matters which cannot be cured within such 30 days, unless the Design Professional has failed to initiate reasonable steps to cure such breach. In the event of a cure or the undertaking of reasonable steps to cure by the Design Professional within such 30-day period, the Client shall have no right to terminate for cause. This Agreement may be terminated by the Design Professional in the event that any of its statements have not been paid within seventy days of the date when such payment was due, provided that the Client shall have the right to cure such default by making payment (including applicable interest) within seven days of its receipt of a written notice from the Design Professional describing the default in payment.

17. Termination for Convenience

This Agreement may be terminated for convenience by the Client upon 30 days' advance written notice to the Design Professional. In such event, the Design Professional shall be entitled to be compensated for all services performed, and to be reimbursed for all reimbursable expenses incurred, through the effective date of termination; provided, however, that the Design Professional shall also be entitled to a termination expense equal to 10% of the total amount of fees to which the Design Professional is entitled through the effective date of termination. The Design Professional shall also have the right to terminate this Agreement for convenience upon 30 days' written notice to the Client, in which event the Design Professional shall be entitled to be compensated for all services rendered, and to be reimbursed for all reimbursable expenses reasonably incurred, through the effective date of termination. In the event of such a termination for convenience by either the Client or the Design Professional, all such amounts shall be paid to the Design Professional no later than 15 days following the effective date of such a termination for convenience. In either event, the amounts set forth herein shall be the sole amounts the Design Professional is entitled to receive and, in the event of a termination for convenience, neither party shall have any liability to the other for breach of contract as a result of such a termination for convenience.

18. Hazardous Materials

Services related to asbestos, PCB, and any and all other hazardous or toxic materials are expressly excluded from this Agreement. The Client agrees that the Client shall provide a site that complies with all applicable laws and regulations, and the Client shall defend, indemnify and hold harmless the Design Professional, and its officers, directors, employees, agents, servants and representatives, from any and all claims of any nature whatsoever, including, but not limited to, reasonable attorneys' fees, which arise out of or relate to the presence of any asbestos, PCB, or other hazardous or toxic materials on the Project site. In the event any asbestos, PCB, or other hazardous or toxic materials are found to be present on the Project site, the Design Professional may, at its option and without any liability

for any direct, incidental or consequential damages, suspend services until the Client (acting through appropriate specialist consultants) abates or removes any and all such asbestos, PCB, hazardous or toxic materials from the Project site.

19. Standard of Care and Allocation of Risk

The Design Professional's services under this Agreement will be consistent with the degree of care and skill exercised by reasonably prudent members of the Design Professional's profession who are acting in the community in which the services are provided under similar circumstances. If the Design Professional's services fall below this standard of care, then the Client shall provide notice of the same to the Design Professional and allow the Design Professional an opportunity to correct such services before the Design Professional shall be liable for any damages suffered or incurred by the Client as a result of such failure of the Design Professional to meet the aforesaid standard of care. The Design Professional and the Client recognize that this Project involves risk. While the Design Professional shall be liable for its negligent acts and errors, the Design Professional and the Client hereby agree as follows regarding the Design Professional's liability arising out of or relating to this Agreement and/or the Project to which it relates: (i) In relation to any negligent omissions by the Design Professional, the Design Professional's liability shall be limited to the cost, expenses or damages suffered or incurred by the Client as a result or consequence of any such negligent omissions, but in no event shall the Design Professional be liable for the cost of the labor, equipment, services or materials which the Design Professional negligently omitted which, if they had not been omitted, would have been included in the Project and paid for by the Client in any event; and (ii) in relation to both the provisions of "(i)" just preceding this clause, and in relation to any and all other claims for losses, expenses, costs, liabilities and damages of any kind whatsoever for which the Design Professional may otherwise be liable, the Client agrees that the maximum amount for which the Design Professional may be responsible or liable is the Design Professional's fees in relation to this Project.

FURTHER AS PART OF THIS ALLOCATION OF RISK AND LIMITATION OF LIABILITY AND PURSUANT TO FLORIDA STATUTE SECTION 558.0035 THE CLIENT AGREES AND WILL NOT HOLD INDIVIDUALLY LIABLE ANY DESIGN PROFESSIONAL EMPLOYEE OR DESIGN PROFESSIONAL AGENT OF THE DESIGN PROFESSIONAL FOR ANY ECONOMIC DAMAGES, EXCEPT THOSE DAMAGES INVOLVING PERSONAL INJURIES OR THOSE TO PROPERTY NOT THE SUBJECT OF THIS AGREEMENT, THAT MAY RESULT FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF THE PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT.

It is the intent of the Design Professional and Client that this allocation of risk and limitation of liability comply fully with Florida law in all respects. If any word, clause or provision of this Limitation of Liability section is determined not to be in compliance with Florida law, it shall be stricken and the remaining words, clauses and provisions shall remain in full force and effect.

20. Waiver of Consequential Damages

Any other provisions of this Agreement to the contrary notwithstanding, and to the fullest extent permitted by law, except as expressly set forth in clause "(i)" of the Standard of Care and Allocation of Risk section set forth above, neither the Client nor the Design Professional, or any of their respective officers, directors, partners, employees, contractors, subcontractors, consultants or subconsultants, shall be liable to the other, or shall make any claim, for any incidental, indirect, resulting or consequential damages arising out of or connected in any way to this Project or to this Agreement. This mutual waiver of incidental, indirect, resulting and consequential damages shall include, but not necessarily be limited to, any and all claims for loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other form of incidental, indirect, resulting or consequential damages that either party may have incurred, regardless of whether or not any such party's cause of action is based upon contract, tort, statute or otherwise. Both the Client and the Design Professional shall require similar waivers of incidental, indirect, resulting and consequential damages protecting all the entities and persons named herein in all contracts and subcontracts with others involved in this Project; provided, however, that the failure to require such waivers shall not in any way negate the full extent of the waiver expressed in this paragraph as between the Client and the Design Professional.

21. Indemnification

In addition, and notwithstanding any other provisions of this Agreement, the Client will, to the fullest extent permitted by law, indemnify, defend and hold harmless the Design Professional, its officers, directors, employees, agents and sub-consultants (collectively for this Indemnification section Design Professional) against all damages, liabilities or costs including reasonable attorney's fees and defense costs, arising out of or in any way connected with this Project or the performance by any of the parties above named of the services under this Agreement.

Client's duty to defend under this Indemnification section is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Design Professional. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to the Client.

The Client's obligation to indemnify and defend the Design Professional will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Design Professional for any matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

If any word, clause or provision of this Indemnification section is determined not to be in compliance with Section 725.06, Florida Statutes, including any amendments thereto, it shall be stricken and the remaining words, clauses and provisions shall remain in full force and effect. It is the intent of the Client and the Design Professional that this indemnification comply fully with Section 725.06, Florida Statutes, including any amendments thereto, in all respects.

The Client and the Design Professional agree that the limitation of the indemnification to the figure listed above is a monetary indemnification limitation figure which bears a commercially reasonable relationship to this Agreement. Furthermore, this indemnification is in addition to and not in lieu of any common law indemnification to which the Design Professional is entitled.

22. Mediation, Venue and Attorneys' Fees

Prior to the filing of any litigation by the Client or the Design Professional against the other (and, except as described below, as a precondition to any such filing), the Client and the Design Professional shall engage in pre-suit mediation. Such mediation may be requested by either party, at any time, and shall be conducted the same as if such mediation were ordered by a Florida Circuit Court (i.e., in accordance with, and subject to, all of the laws and rules applicable to court ordered mediation). Such mediation shall be conducted within a reasonable period of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request the Circuit Court in the county in which the Project is located (or the Mediation Coordinator, if any, for the Courts of the county in which the Project is located) to appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not peremptorily. While the request for and the conducting of such a mediation shall be a precondition to the filing of a civil action, in the event that either party is in jeopardy of losing its right to sue (e.g., the statute of limitations is about to expire), then a suit may be filed before mediation is conducted, provided that mediation is requested before, or simultaneously with, the filing of such suit, and is conducted before the named defendant in the suit is required to respond to the Complaint. If the scheduling of the mediation requires, the plaintiff in the suit shall therefore grant the defendant an appropriate extension of time to respond to the Complaint so as to permit the mediation to be conducted before the defendant must so respond.

The Client and the Design Professional agree that any litigation between them arising out of, resulting from or relating to this Agreement or the Project shall be venued, and shall only be venued (i.e., exclusively), in a state court of competent jurisdiction in the county in which the Project is located.

In the event of any litigation between the Client and the Design Professional arising out of, resulting from or relating to this Agreement or the Project, the prevailing party shall be entitled to recover the prevailing party's reasonable attorneys' fees and court costs, at the trial and at all appellate levels.

23. Severability

In the event that any provision of this Agreement is found to be invalid or unenforceable for any reason (whether on its face or as applied), the same shall be deemed excised and such excision shall have no effect upon the remaining provisions hereof. It is the intent of the parties that this Agreement be enforced to the fullest extent permitted by law.

24. Entire Understanding and Lack of Waiver

This Proposal/Agreement represents the entire understanding between the Client and the Design Professional in respect to this Project, and may only be modified in writing. The failure of either party to require strict performance by the other shall not constitute a waiver of any of such party's rights pursuant to this Agreement, or to thereafter require strict performance by such other party.

Initials: _____

Date: _____

1381 Fifth Street
Sarasota, Florida 34236
Ph-941-955-4555
Fax-941-955-9333
Email-karl@heesassociates.com



HEES & ASSOCIATES, INC.

RATE SCHEDULE

(Valid from January 2020 through December 2020)

Managing Principal.....	\$150.00/hr
Expert Witness.....	\$250.00/hr
Threshold Inspector.....	\$120.00/hr
Engineering Manager.....	\$110.00/hr
Project Engineer.....	\$95.00/hr
Staff Engineer.....	\$85.00/hr
Threshold Inspector Representative.....	\$85.00/hr
Construction Administrator.....	\$75.00/hr
CADD Designer.....	\$75.00/hr
Clerical.....	\$45.00/hr
Mileage.....	\$0.58/mile (\$.58/mile for 2019- will modify for each subsequent year per IRS standards.)



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February 11, 2020

Brett Sands
TLC Engineering
13099 S. Cleveland Ave, Suite 500
Fort Myers, FL 33907

RE: City of North Port Emergency Generator (Revised)

Brett:

We are pleased to present this Professional Service Agreement for the engineering services required for the development of the above referenced project. This scope of services was based on information provided. It was our understanding that you will require site and civil engineering services for the above mentioned project to accommodate a site and grading plan for an emergency generator slab and enclosure. This proposal will include localized topographic survey, location and tree survey, site and grading design. This proposal will establish our proposed services and associated fees we believe are necessary to successfully complete this project.

PHASE 2 – CONCEPT PLAN – PROVIDED BY TLC

PHASE 3 – CONSTRUCTION DOCUMENTS, 30%-60%

Task No. 3.1 Data Collection and Review

SED will research existing plans and data available for, existing drainage design, underground utilities, property setbacks, etc.

Task No. 3.2 Coordination of Field Survey

SED will communicate and coordinate with the surveyor to ensure the proper amount of localized survey data is collected.

Task No. 3.3 Site Visit

SED will conduct a site visit to confirm drainage patterns and piping.

Task No. 3.4 Survey Services

SED shall provide a localized topographic survey, location of improvements and tree locations. Topo will extent to verify existing drainage patterns. This is not a boundary survey.

Task No. 3.5 Civil Drawings

SED will produce the civil site plan, drainage plan, utility modifications (if necessary) and Best Management Practices plan for the project.



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Task No. 3.6 Quality Control

SED will perform our internal QA/QC reviews

Task No. 3.7 Review Meeting

SED will attend the project progress review meeting with City staff.

Task No. 3.8 Engineers Estimate

SED will provide an Opinion of Probable Cost for the site work required for this project.

Phases 3 / Fixed Fee- \$8,545.00

PHASE 4-CONSTRUCTION DOCUMENTS 90%

Task No. 4.1 Incorporate City Comments

SED will assimilate the City staff review comments into the site and drainage design.

Task No. 4.2 Submit to City SDR for Review

SED will prepare and submit to the City of North Port for the SDR review.

Task No. 4.3 Civil Drawings

SED will revise the civil site plan, drainage plan, utility modifications (if necessary) and Best Management Practices plan for the project.

Task No. 4.4 Quality Control

SED will perform our internal QA/QC reviews

Task No. 4.5 Attend SDR Meeting

SED will attend the SDR meeting with City staff.

Task No. 4.6 Engineer's Estimate

SED will provide an Opinion of Probable Cost for the site work required for this project.

Task No. 4.7 Specifications

SED will provide the specifications for the Civil components of the project.

Task No. 4.8 Grant Document Support

SED will provide graphics and document support for the Civil portion of this project for the Grant application.

Phases 4 / Fixed Fee- \$9,430.00



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PHASE 5-PERMIT/BID DOCUMENTS

Task No. 5.1 **Incorporate City Comments**

SED will assimilate the City staff review comments into the final site and drainage design.

Task No. 5.2 **Civil Drawings**

Provide the Client with the final signed and sealed construction plans for bidding.

Task No. 5.3 **Engineers Estimate**

SED will provide a final Opinion of Probable Cost for the site work required for this project.

Task No. 5.4 **Specifications**

SED will provide the final specifications for the Civil components of the project.

Phase 5 / Fixed Fee- \$2,600.00

PHASE 6-BIDDING AND AWARD

Task No. 6.1 **Bidding Assistance – RFI's**

SED will assist with the bid document preparation and respond to Bidder's Request for Additional Information.

Phase 6 / Fixed Fee- \$950.00

PHASE 7- CONSTRUCTION PHASE SERVICES

Task No. 7.1 **Periodic Site Observations**

SED will provide bid documents to facilitate an invitation to bid process. We will receive sealed bids at our office and open bids for our review and analysis. SED will provide the Client a bid summary and recommendation.

Task No. 7.2 **Shop Drawing Review**

The Engineer shall prepare Record Drawings based on As-Built survey data provided by the Contractor for certifications required by the Municipality, FDEP and Water Management District.

Task No. 7.3 **Final Inspection**

The Engineer will review and comment on construction shop drawings submitted by the contractor. The approved shop drawings will be forwarded to the required Agency for final acceptance.



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Task No. 7.4 As-Built Survey Review

SED will provide periodic observation during the construction process. It is required that the Engineer be present at all required utility testing including but not limited to pressure pipe testing, air testing, exfill/infill testing, lift station startup, etc. The Engineer will review all materials testing done during the construction process. The purpose of the periodic observations is so the Engineer can certify that the construction was completed in substantial compliance with the approved plans.

Task No. 7.5 Record Drawings and Certifications

The Engineer will review and comment on construction shop drawings submitted by the contractor. The approved shop drawings will be forwarded to the required Agency for final acceptance.

Phase 7 / Fixed Fee- \$3,700.00

Fee Summary

Phase 3	\$8,545.00
Phase 3	\$9,430.00
Phase 4	\$2,600.00
Phase 5	\$950.00
<u>Phase 6</u>	<u>\$3,700.00</u>
Project Fee Total	\$25,225.00

It is understood that additional professional services can be provided only as agreed upon by the Client and Southwest Engineering & Design, Inc., in writing and in accordance with the attached Provisions and Fees. Authorized additional professional services shall be subject to the Provisions of the Contract.

Please note that this proposal does NOT include the following:

- SWFWMD Permitting as directed by TLC
- ALTA survey unless otherwise noted.
- The Environmental and Cumulative Impacts - if required This is not a boundary survey. 100 Year Storm Event Modeling and Floodplain Calculations
- Permit application fees (Water Management Dist., FDEP, NPDES, Municipal, etc.)
- Offsite Utility extension – water and sewer from the Municipal Utility other than indicated within the above Scope of Services
- Offsite Natural Gas, Cable, Phone, Fiber-Optic, etc. Extension



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- ACOE Permitting if required
- Brownfield data and additional permitting requirements
- Municipal Excavation and Earth Moving Permit
- Preliminary and Final Plat Services
- Construction Stake-out and As-Built Survey
- Traffic Study and/or Signalization Plans other than those indicated within the above Scope of Services.
- Outdoor and offsite Signs and Sign Location Plans
- Sketch and Description of Easements if required from reviewing Agencies
- Off-street and On-street Lighting for parking
- Structural plans for buildings, bridges, retaining walls, custom stormwater structures, etc.

If this Agreement is acceptable to you, please sign and return one copy to our office as authorization to begin work. We look forward to working with you on this project.

Yours truly,

SOUTHWEST ENGINEERING & DESIGN, INC.

A handwritten signature in blue ink that reads "Gary Bayne".

Gary W. Bayne, P.E.
President



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Provisions

1. Authorization To Proceed

Execution of this Agreement by the Client and Southwest Engineering & Design, Inc. will be authorization for Southwest Engineering & Design, Inc. to proceed with the work, unless otherwise provided in this Agreement. Use of Purchase Order to authorize work will not alter the terms of this agreement.

2. Applications and Permits

Southwest Engineering & Design, Inc. will make every effort to apply for required permits and agency approvals. Due to the ongoing change of agency requirements, we cannot assure to this client that every conceivable permit or approval has been applied for.

3. Cost

Cost estimates and project economic evaluations provided by Southwest Engineering & Design, Inc. are opinions based on experience and judgment. Since Southwest Engineering & Design, Inc. has no control over market conditions or bidding procedures, Southwest Engineering & Design, Inc. cannot warrant that bids, ultimate construction cost, or Project economics will not vary from these opinions.

4. Additional Fees

Additional fees may occur for the processing of the project. The following items will not be included: reproduction of plans, submission fees, travel expense (lodging, meals etc.) job related mileage at \$0.55 per mile, long distance calls, postage and express mail. All items will be billed at cost plus 10 %.

5. Scope Of Services

It shall be understood that this Agreement is based upon information supplied to us and our understanding of the project. The fee(s) stated may not necessarily represent the full scope of service required for this project. The fee(s) stated represent our best effort to set forth those services which we believe will be required by you and/or those we have determined to be needed to accomplish a particular objective. If a variation from the original concept or understanding of the project occurs, we shall advise you of such and seek your direction on how to proceed.

Services required as a result of a change in the original scope of services or requirements for additional services will be billed to you at the rates stated herein



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No work beyond the original scope of services will be performed after advising you of such requirements without your approval.

6. Services not Specified

If additional services are required beyond the original scope of service, they will be billed at the following hourly rates:

Principal	\$170.00
Senior Project Engineer	\$140.00
Project Manager	\$130.00
Project Engineer	\$115.00
Staff Engineer	\$100.00
Construction Services (GPS)	\$90.00
Engineer Designer/Sr. Technician	\$90.00
Construction Services	\$75.00
Junior Engineer	\$90.00
Engineering Technician	\$60.00
Cadd Technician	\$65.00
Administrative	\$55.00

Work will not be performed without prior knowledge and approval by the client. These rates are based upon normal working hours and will be billed at the hourly rates previously stated. If overtime work is required and approved, those rates will be billed at time and a half.

7. Fees

The stated fees are fixed for a time period of one year from the date of this Agreement. If all phases of this Agreement are not started within that one year period, this firm has the right to terminate those areas of this Agreement. If service is initiated, but is not concluded within twelve (12) month period due to conditions that this firm has no control over, the fee stated will be adjusted upward at the rate of one percent (1%) per month for each month the services continue.

8. Payment to Southwest Engineering & Design, Inc.

Southwest Engineering & Design, Inc. will submit monthly invoices for services rendered and expenses incurred. The invoices will be based upon Southwest Engineering & Design, Inc. total services actually completed at the time of billing. The client shall make payment within 30 days in response to Southwest Engineering & Design, Inc. monthly invoice. Successive invoices may include interest charges of 1 ½ % per month on unpaid balances. Client agrees to pay all charges including attorneys fees involved in the collection of unpaid balance.



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9. Termination

The obligation to provide further services under this Agreement may be terminated by the Client for cause and by Southwest Engineering & Design, Inc. in the event of failure by the Client to perform in accordance with the terms thereof. Such termination by either party requires 7 days written notice. In the event of termination, Southwest Engineering & Design, Inc. shall be paid for services rendered to date of termination, all reimbursable expenses and reasonable termination expenses. For termination by the Client for convenience Southwest Engineering & Design, Inc. shall be paid for services rendered plus termination expenses equal to 10% of the fee.

10. Contract Assignment

Neither the Client nor Southwest Engineering & Design, Inc. shall transfer, sublet or assign any rights under this agreement without prior written consent of the other party. Subcontracting to sub-consultants normally contemplated by Southwest Engineering & Design, Inc. shall not be considered an assignment for purpose of this Agreement.

11. Acceptance

This Agreement and fee schedule stated herein is based on your acceptance and authorization to proceed with the stated work, within 30 days of the date of this Agreement. If authorization is not received within the stated time period, we reserve the right to re-evaluate the terms and conditions contained herein.

12. Access to The Site

Southwest Engineering & Design, Inc. will have access to the site for activities necessary for the performance of the services. Southwest Engineering & Design, Inc. will take reasonable precautions to minimize damage due to these activities, but has not included cost of restoration of any resulting damage in the fee.

13. Standards Of Care

The standards of care applicable to Southwest Engineering & Design, Inc. services will be the degree of skill and diligence normally employed by professional engineers or consultants performing similar services at the same time, in the same locale, and under similar circumstances. The Client agrees that services provided will be rendered without any other warranty, expressed or implied.

14. Dispute Resolution

The Client and Southwest Engineering & Design, Inc. agree that all disputes between them arising out of, or relating to, this Agreement shall be submitted to non binding



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mediation, unless the Client and Southwest Engineering & Design, Inc. both mutually agree otherwise.

15. Use of Documents

The Client agrees that Southwest Engineering & Design, Inc. services are on behalf of, and for the exclusive use of, the Client for this project and that all documents whether in written, printed or electronic format furnished to the Client are instruments of service and shall be utilized solely for this Project. Any reuse without written verification or adaptation by Southwest Engineering & Design, Inc. for other than specific purpose intended will be at the Clients sole risk and without liability or legal exposure to Southwest Engineering & Design, Inc. or their independent consultants. Client shall indemnify and hold harmless Southwest Engineering & Design, Inc. and there independent consultants from all claims, damages, losses and expenses including all attorneys' fees arising from such reuse.

16. Limitation Of Liability

To the maximum extent permitted by law, the Client agrees to limit Southwest Engineering & Design, Inc. total liability for all claims to the total compensation paid to Southwest Engineering & Design, Inc. under this Agreement. The Client agrees to not personally charge employees of Southwest Engineering & Design, Inc. with any liability arising out of the performance of this Agreement.

Re: Project - City of North Port Generator site Date January 20, 2020

Signatures of the parties below indicate execution of this Agreement:

APPROVED FOR CLIENT:

ACCEPTED FOR
SOUTHWEST ENGINEERING & DESIGN, INC.:

Signed: _____

Signed: Gary W. Bayne

By: _____

By: Gary W. Bayne, P.E.

Title: _____

Title: President

Date: _____

Date: January 20, 2020



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Project Information Sheet

To be returned with Signed Proposal: (Please list the name of project as it should appear on the final Report)

_____ in _____ County,
SED requires the following information.

Client/Firm (responsible for payment of invoice): _____

Contact Person: _____

Address: _____

City, State: _____

Phone No: _____ Fax No. _____

Email Address: _____

Alternate Contact Person: _____

Address: _____

City, State: _____

Phone No: _____ Fax No. _____

Email Address: _____

**END OF FEMA FEE DOCUMENTATION
SUB-CONSULTANT PROPOSALS TO TLC ENGINEERING SOLUTIONS, INC
FOR STRUCTURAL AND CIVIL ENGINEERING**