

AGREEMENT #2016-23
PROFESSIONAL ENGINEERING SERVICES – CONTINUING CONTRACT FOR
CITY OF NORTH PORT UTILITIES

THIS CONTINUING CONTRACT ("Agreement") is made and entered into this 14 day of September, 2016, by and between the CITY OF NORTH PORT, a municipal corporation of the State of Florida, hereinafter referred to as the "CITY" and CDM SMITH INC., 2180 West First Street, Suite 400, Fort Myers, FL 33901, a Massachusetts Corporation registered to conduct business in the State of Florida, hereinafter referred to as "CONSULTANT."

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

1. CONSULTANT'S SERVICES

- A. The CONSULTANT agrees to diligently and timely perform services for the CITY relating to Professional Engineering Services as identified in the Request for Proposal No. 2016-23 and Consultant's proposal submitted June 21, 2016. The overall Scope of Services is described in Attachment A.
- B. This Agreement shall commence immediately upon the execution of the Agreement by both the City and the Consultant. The term of the Agreement shall begin on the date of execution and continue through September 30, 2019, with the option to renew for two (2) additional one-year terms, subject to CONSULTANT's satisfactory performance and mutual agreement of the CITY and CONSULTANT to renew the agreement, on the same terms and conditions.

2. COMPENSATION AND PAYMENT FOR CONSULTANT'S SERVICES

A. COMPENSATION

- 1. CONSULTANT shall receive payments in accordance with the fees set forth in the Fee Schedule (Attachment B) and approved Work Assignment(s) (Attachment C) as compensation for its services. The scope of services, schedule, and maximum compensation for each work assignment shall be determined individually as the need for a project assignment arises. Work Assignments issued under this Agreement shall not exceed thresholds set forth in Florida Statute §287.055(g). Work Assignments shall require approval of the City Manager or his designee. Said 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 but not those indicated as non-reimbursable below. The Scope of Services, Fee Schedule, and Work Assignment Form (Attachments A, B, and C respectively) are attached hereto and incorporated within.
- 2. No claim for reimbursement for these expenses shall be made to the City.
 - a. Travel related expenses and costs including labor.
 - b. Four (4) sets of signed and sealed permitting plans.
 - c. Computer usage, telephone expenses, fax, copies, printing, and postage.
 - d. Subcontractor mark-up.

3. The City's performance and obligation to pay under this Agreement are contingent upon an appropriation by the City Commission.

B. METHOD OF PAYMENT

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

3. LIABILITY OF CONSULTANT

The Consultant shall indemnify and hold harmless the City, its Commissioners, officers and employees, from all liabilities, damages, losses and costs (including, but not limited to, reasonable attorneys' fees and court costs, whether such fees and costs are incurred in negotiations, at the trial level or on appeal, or in the collection of attorneys' fees), to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant, or Consultant's officers, employees, agents, and other persons employed or utilized by the Consultant in the performance of, or the failure to perform, the Agreement.

In the event of a claim, the City shall promptly notify the Consultant in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, at the address provided for receipt of notices in this Agreement. Such notification may also be provided by fax transmission to the following fax number:

FAX: 239.339.6418

The City shall provide all available information and assistance that the Consultant may reasonably require regarding any claim. 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 shall 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).

Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the CITY as set forth in Florida Statute § 768.28.

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 prior written specific approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with Consultant.

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

SPECIAL REQUIREMENTS: The City of North Port is to be named additional insured on Comprehensive Commercial General Liability Policy. ***Certification of same shall be required. Certificates of Insurance must be accompanied by a copy of the additional insured endorsement (CG 20101185 or combination CG20100704 and CG20370704 will be accepted.*** All certificates of insurance must be on file with and approved by the CITY before commencement of any work activities under this Agreement.

Any and all deductibles to the above referenced policies are to be the responsibility of the Consultant. The Consultant's insurance is considered primary for any loss, regardless of any

insurance maintained by the City. The 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.

All insurance policies must be issued by companies of recognized responsibility licensed to do business in Florida and must contain a provision that prohibits cancellation unless the City is provided notice as stated within the policy. It is the Consultant's responsibility to provide notice to the City.

B. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or thru other means, agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers, and the City's insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work performed by the Consultant for the City. It is the Consultant's responsibility to notify their insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. Additionally, the Consultant, its officers, officials, agents, employees, volunteers, and any 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 the Consultant or its agents may be responsible for.

C. POLICY FORM

1. All policies, required by this Agreement, with the exception of Professional Liability and Workers Compensation, or unless specific approval is given by Risk Management through the City's Purchasing Office, are to be written on an occurrence basis, shall name the City of North Port, its Commissioners, officers, agents, employees and volunteers as additional insured as their interest may appear under this Agreement. Insurer(s), with the exception of Professional Liability and Workers Compensation, shall agree to waive all rights of subrogation against the City of North Port, its Commissioners, officers, agents, employees or volunteers.

2. Insurance requirements itemized in this Agreement, and required of the Consultant, shall be provided by or in behalf of all subcontractors to cover their operations performed under this Agreement. The Consultant shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.

3. Each insurance policy required by this Agreement shall:

Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.

Be endorsed to state that coverage shall not be suspended, voided or cancelled by either party except after notice is delivered in accordance with the policy provisions. The Consultant is to notify the City 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 the CONSULTANT and its carrier.
6. The Consultant shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the City is an insured under the policy.
7. 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, the 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.
8. Certificates of Insurance evidencing Claims Made or Occurrences form coverage and conditions to this Agreement, as well as the Agreement number and description of work, are to be furnished to the City's Purchasing Office (4970 City Hall Boulevard, Suite 337, North Port, FL 34286) prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. All insurance certificates shall be received by the City's Purchasing Office before the Consultant will be allowed to commence or continue work. The Certificate of Insurance issued by the underwriting department of the insurance carrier shall certify compliance with the insurance requirements provided herein.
9. Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed under this Agreement shall be provided to the Consultant's insurance company and the City's Purchasing Office as soon as practicable after notice to the insured.

5. RESPONSIBILITY OF THE CONSULTANT

- A. The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all reports, designs, specifications, other documents and data used or produced by or at the behest of the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents and data.
- B. If the Consultant is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- C. The Consultant warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Consultant), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other

than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Agreement.

- D. Consultant shall perform its services in accordance with generally accepted industry standards and practices customarily utilized by competent consultant firms in effect at the time Consultant's services are rendered. The Consultant covenants and agrees that it and its employees shall be bound by the Standards of Conduct of Florida Statutes, Section 112.313, as it relates to work performed under this Agreement. The Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.
- E. The Consultant shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- F. The Consultant shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at the Consultant's offices for the purpose of inspection, audit, and copying during normal business hours by the City, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services.
- G. In accordance with F.S. §119.0701, Consultant shall comply with all public records laws, and shall specifically:
 - 1. Keep and maintain public records required by the CITY to perform the service.
 - a. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies. (See <http://dos.dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
 - b. "Public records" means and includes those items specified in Florida Statutes 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, emails 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 that is compatible with the information technology systems of the CITY.
 - 3. Ensure that project records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the

contract term and, if the CONSULTANT does not transfer the records to CITY following completion of the contract, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.

4. Upon completion of the contract, 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 the CONSULTANT transfers all public records to the CITY upon completion of the contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon the completion of the contract, the CONSULTANT shall meet all applicable requirements for retaining public records.
5. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, (941) 429-7056 OR HOTLINE 429-7270; EMAIL padkins@cityofnorthport.com.
6. Failure of the CONSULTANT to comply with these requirements shall be a material breach of this Agreement. Further, the CONSULTANT may be subject to penalties under Florida Statutes 119.10.

6. OWNERSHIP AND USE OF DOCUMENTS

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

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. The Consultant shall assign a Project Manager, together with such other personnel as are necessary, to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Agreement. The personnel assigned by the Consultant to perform the services of this Agreement shall comply with the information presented in the professional services response proposal made a part hereof by reference. The Consultant shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any

change or substitution to the Consultant's key personnel must receive the City's Administrative Agent's written approval before said changes or substitution can become effective.

- A. The services to be rendered by the Consultant shall commence within one (1) week of the Consultant's receipt of written Notice to Proceed from the City.
- B. The Consultant specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth, subject only to delays caused through no fault of the Consultant or the City.
- C. The 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 the 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 the Consultant which delay the Project Schedule completion date, the City shall not unreasonably withhold the granting of an extension of the Project Schedule time limitation equal to the aforementioned delay.

8. OBLIGATIONS OF CITY

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

determined solely within the discretion of the City. The City's technical obligations to this Project, if any, are stated in Letters of Interest and Work Authorizations.

- D. The City shall not provide any services to the Consultant in connection with any claim brought on behalf of or against the Consultant.

9. TERMINATION

- A. The City Manager or designee shall have the right at any time upon thirty (30) calendar days' written notice to the Consultant to terminate the services of the Consultant and, in that event, the Consultant shall cease work and shall deliver to the City all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by the Consultant in connection with its services. The City shall, upon receipt of the aforesaid documents, pay to the Consultant and the Consultant shall accept as full payment for its services, a sum of money equal to (1) the fee for each completed and accepted task as shown in Attachment A – Scope of Services and Attachment B – Consultant's Fee Schedule, plus (2) the percentage of the work completed in any commenced but uncompleted task, less (3) all previous payments in accordance with Section 2 and any amounts withheld by the City to settle claims against or to pay indebtedness of the Consultant in accordance with the provisions of the Agreement.
- B. FUNDING IN SUBSEQUENT FISCAL YEARS: It is expressly understood by the City and the Consultant that funding for any subsequent fiscal year of the Agreement is contingent upon appropriation of monies by the City Commissioners, and the continuing receipt of state or federal grant funding, if applicable. In the event that funds are not available or appropriated, the City reserves the right to terminate the Agreement. The City will be responsible for payment of any outstanding invoices and work completed by the Consultant prior to such termination.
- C. In the event that the 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 the Consultant indicating its intention to do so. The written notice shall state the evidence indicating the Consultant's abandonment.
- D. The Consultant shall have the right to terminate services only in the event of the City failing to pay the Consultant's properly documented and submitted invoice within ninety (90) calendar days of the approval by the City's Administrative Agent.
- E. The City Manager or designee reserves the right to terminate and cancel this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy, a receiver is appointed for the Consultant or an assignment is made for the benefit of creditors.
- F. In the event Consultant breaches this Agreement, the City shall provide written notice of the breach and Consultant shall have ten (10) days from the date the notice is received to cure. If Consultant fails to cure within the ten (10) days, the City Manager or designee shall have the right to immediately terminate the Agreement and/or refuse to make any additional payment, in whole or in part, and, if necessary, may demand the return of a portion or the entire amount previously paid to Consultant due to:

1. The quality of a portion or all of the Consultant's work not being in accordance with the requirements of this Agreement;
2. The quantity of the Consultant's work not being as represented in the Consultant's Payment Request, or otherwise;
3. The Consultant's rate of progress being such that, in the City's opinion, substantial or final completion, or both, may be inexcusably delayed;
4. The Consultant's failure to use Agreement funds, previously paid the Consultant by the City, to pay Consultant's Agreement 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 the CONSULTANT;
7. The Consultant's failure or refusal to perform any of the obligations to the City, after written notice and a reasonable opportunity to cure as set forth above.

In the event that the City makes written demand upon the Consultant for amounts previously paid by the City as contemplated in the clause, the Consultant shall promptly comply with such demand. The City's rights hereunder survive the term of this Agreement, and are not waived by final payment and/or acceptance.

10. INDEPENDENT CONTRACTOR

The Consultant is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the City. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Consultant's sole direction, supervision, and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees or agents of the City. The Consultant does not have the power or authority to bind the City in any promise, agreement or representation other than as specifically provided for in this Agreement. The Consultant shall not pledge the City's credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

11. 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 Commissioners for the City and the duly authorized representative for the Consultant shall agree in writing to this change. For all other changes, the City's Administrative Agent and the Consultant's representative shall agree in writing to the change.

13. ASSIGNMENT

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

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 shall be in Sarasota County, 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

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

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:

Paul Pinault, P.E.
Principal in Charge
CDM Smith Inc.
2180 West First Street, Suite 400
Fort Myers, FL 33901
TEL: 239.938.9600
FAX: 239.339.6418
EMAIL: PinaultP@cdmsmith.com

CITY'S ADMINISTRATIVE AGENT:

Utilities Director
City of North Port
6644 West Price Blvd
North Port, FL 34291
TEL: 941.240.8010
FAX: 941.240.8022
EMAIL: rnewkirk@cityofnorthport.com

Changes in the respective addresses may be made from time to time by either party by written notice to the other party.

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).

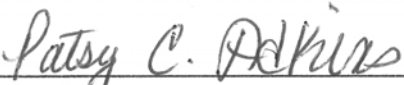
21. CONFLICTS

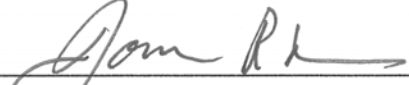
In the event of any conflict between the provisions of this Agreement and RFP No. 2016-23 or the Consultant's response, which are made a part hereof by reference, the Agreement shall control.

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

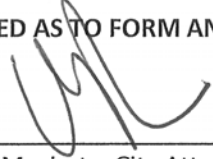
ATTEST:

CITY OF NORTH PORT, FLORIDA

By: 
Patsy Atkins, City Clerk, MMC

By: 
Jonathan R. Lewis, City Manager, ICMA-CM

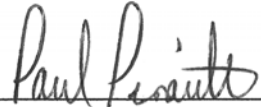
APPROVED AS TO FORM AND CORRECTNESS:

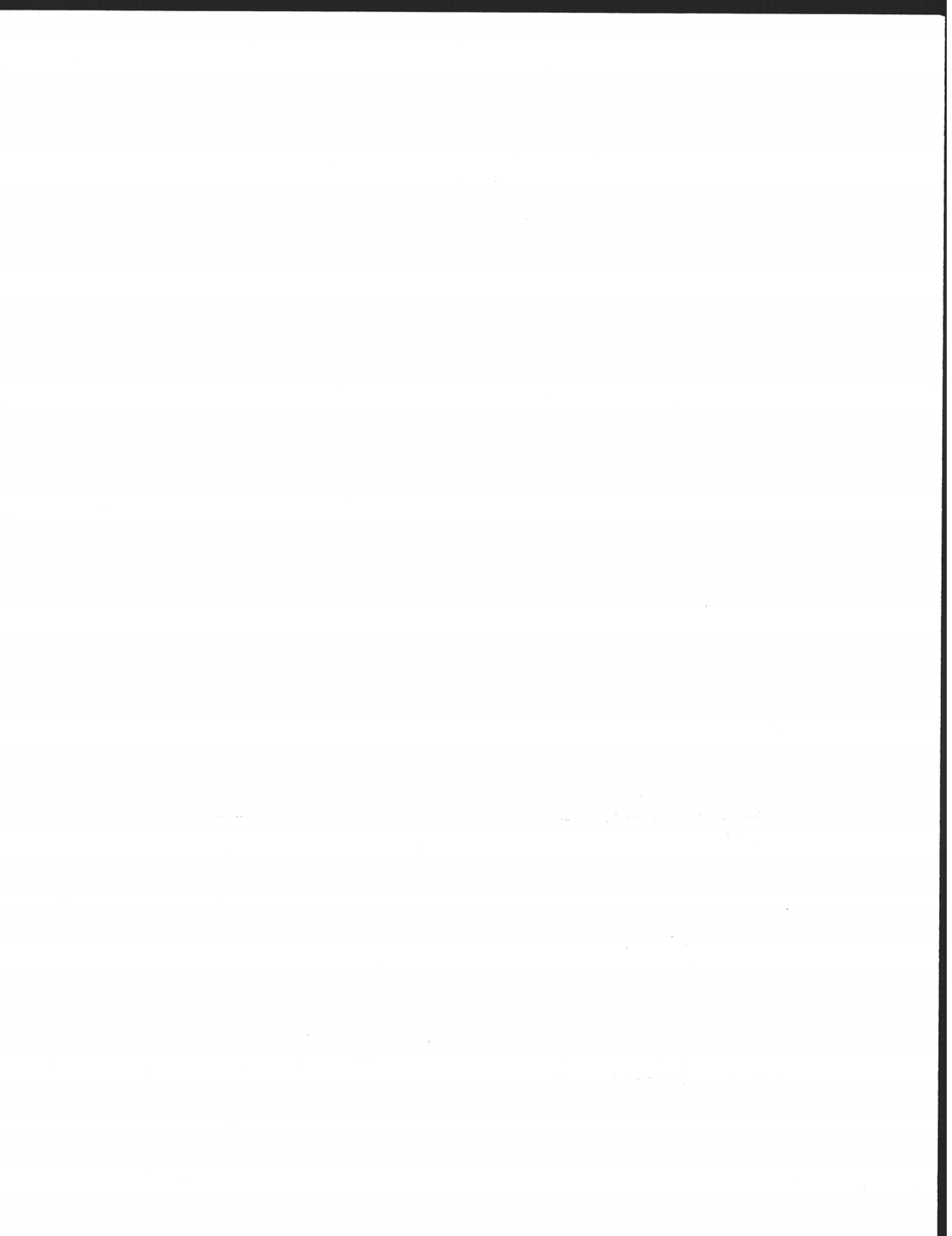
By: 
Mark Moriarty, City Attorney

WITNESS:

CDM SMITH INC.:

By: 

By: 
Paul Pinault, Principal in Charge



ATTACHMENT A – SCOPE OF SERVICES

General Scope of Services – Agreement No. 2016-23

The following scope of services is general guide to the work that the City expects to be performed under Agreement No. 2016-23 and is not a complete listing of all services that may or may not be required or desired. An additional scope of work specific to each task will be developed as each Letter of Interest is issued.

In accordance with Florida Statute §287.055(2)(g), “a continuing contract is a contract for professional services entered into in accordance with all the procedures of the Consultants Competitive Negotiation Act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed \$2 million, for study activity if the fee for professional services for each individual study under the contract does not exceed \$200,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.”

Under this agreement, the Consultant shall be performing work of a specific nature. Any work assignment over \$100,000.00 will require Commission approval.

The consultant shall perform, on an as-needed basis, professional services necessary for Engineer of Record projects for North Port Utilities. Consultant shall conduct analyses and prepare reports regarding maintenance and operation of existing facilities, systems and connections; provide technical assistance on utilities operational, technical and engineering issues. Consultant shall provide required services for select utilities projects incorporated into the North Port Utilities Capital Improvement Plan (CIP). Other work may include a variety of tasks and special projects associated with utilities engineering services. Engineering service specialties shall include, but are not limited to, construction cost estimation; civil; structural; mechanical; Electrical/instrumentation including plant SCADA system planning, installation, and training; environmental; and, industrial. Other service specialties shall include, but are not limited to, biological and ecological evaluations; geological; geotechnical and hydrogeological investigations; mapping and surveying.

Professional services and functions as required by various disciplines, may include, but are not limited to:

1. Civil – with emphasis on municipal water, wastewater, and reclaimed water
2. Structural
3. Mechanical, plumbing
4. Electrical/Instrumentation – SCADA installation and programming
5. Environmental
6. Geological
7. Potable water, wastewater and reclaimed water technologies
8. Hydrogeological, hydrological, hydraulics and computer water modeling
9. Geotechnical, soils, mechanics, foundation, and materials testing
10. Mapping and surveying
11. Chemical

12. Ecological and biological
13. Value engineering
14. Computer aided design and drafting (CADD)
15. Construction cost estimating
16. Construction bidding services

Potential Projects: The following projects are anticipated within the next five (5) years for the categories of Water Treatment Plant (WTP), Wastewater Treatment Plant (WWTP); Field Operations (FO); and, general. An agreement with the City does not guarantee these projects will be accomplished by one of the selected firms nor within the next five years. For example, the City may decide to do some of the work in-house; CEI may be limited; or some of the project timelines may be extended depending on need and budget availability.

- WTP: Arsenic treatment bench-scale analysis (schedule: ASAP);
- WTP: Alum sludge handling analysis (schedule: ASAP), design, permitting, and CEI;
- WTP: Transfer pump system improvements hydraulic analysis (schedule: ASAP), design, permitting, and CEI;
- WTP: Ten-Year Water Supply Facilities Work Plan (schedule FY16/17);
- WTP: Ammonia system upgrades at two (2) booster pump stations design, permitting, and CEI (schedule FY16/17);
- WTP: Save-all-pond expansion design, permitting, and CEI (schedule FY16/17);
- WTP: ASR well permanent facilities design, permitting, and CEI (schedule FY16/17);
- WTP: Powdered Activated Carbon delivery system design, permitting, and CEI (schedule: FY16/17);
- WTP: RO system modifications to handle increasing total dissolved solids (TDS) in wellfield analyses (schedule: FY16/17), design, permitting, and CEI;
- WTP: RO wellfield expansion, hydrogeological assessments, design, permitting, and CEI;
- WTP: Plant-wide process improvements analysis;
- WTP: Review of design plans for new southwest WTP (West Villages);
- WTP: Surface water treatment train filter evaluation and recommendations;
- WWTP: Develop Mechanical Integrity Test plans for each of two (2) Deep Injection Wells (schedule: FY16/17);
- WWTP: Operating Permit renewal (schedule: FY16/17);
- WWTP: process improvements analysis;
- WWTP: Review of design plans for new southwest WWTP (West Villages);
- WWTP: Replace/rebuild grit classifier design, permitting, and CEI;
- WWTP: Process tank coating design and CEI including by-pass systems as applicable (schedule: FY16/17);
- WWTP: Return activated sludge pump Motor Control Center replacement and relocation design, permitting, and CEI;
- WWTP: Generator electrical upgrades/improvements design and CEI;
- FO: Potable water main projects design, permitting, and CEI including, but not limited to, looping projects, pipeline replacements and new pipeline segments including horizontal directional drill installations, and neighborhood expansion projects (schedule: ongoing);
- FO: Reclaim water main projects design, permitting, and CEI including, but not limited to, pipeline extensions, new storage tank and booster pump station (schedule: ongoing);
- FO: Lift station odor control design, permitting, and CEI;
- FO: Drying bed for vac-truck spoils design, permitting, and CEI (schedule: FY16/17);

- FO: Bi-directional meter assembly at interconnect with Charlotte County Utilities design, permitting, and CEI;
- FO: New wastewater master pumping station and forcemain design review/update, permitting, and CEI;
- General: Capacity Analysis Reports;
- General: Coordinate/Provide Subsurface Utilities Engineering (SUE) services in support of utilities design projects;
- General: Update Utilities' Standard Details and Specifications (schedule: ASAP and into FY16/17); and,
- General: Five (5)-year Master Planning updates for all disciplines (i.e. potable, reclaim, wastewater).

Additional miscellaneous work may include, but not be limited to, the following:

- General consultation;
- Staff assistance;
- Project programming, conceptual designs, schedules, and cost estimates;
- Value engineering – analyze, evaluate, review and make recommendation(s) for revisions concerning analyses, reports, agreements, designs, operation and maintenance procedures and proposed construction improvements;
- Assistance with hydraulic modeling (i.e. potable, reclaim, and sewer forcemain) including, but not limited to, assistance with model simulations of existing and proposed improvements, analyzing simulation results, conducting water age analysis, and chlorine residual analysis;
- Assistance in development of needed ordinances and/or Comprehensive Plan amendments;
- Complete Environmental Assessment Services including Threshold and Endangered Species Evaluation and Wetland Delineations in support of utilities design projects;
- Fats, Oils, and Grease (FOG) program evaluation;
- Provide system programming for treatment plants and distribution/collection systems SCADA and PLCs including configuration of software screens, data collection and implementation of control logic; or,
- Provide expert testimony in utilities related hearings or litigation.

Work shall include services that are required for, but not limited to, evaluation, report preparation, design, bidding services, construction cost estimation, and CEI.

The consultant shall serve as NPU's professional engineering representative for each approved Work Assignment, as applicable, and may be required to present reports and recommendations to Commissioners or public as requested and scheduled by the Utilities Director. The firms shall be required to submit any and all presentations or publications relating to City work for review and approval by North Port Utilities prior distribution.

The selected firm(s) shall work in close cooperation and coordinate their work through North Port Utilities staff.

The consultant shall perform all the services specified in accordance with generally accepted professional standards. The consultant shall perform all services as expeditiously as is consistent with professional skill and care and the orderly progress of the work. All work of any kind shall conform to and be in compliance with applicable practices, codes, laws, ordinances, regulations, and restrictions. The consultant services will include the necessary utilities engineering and other professional services that consist of record

services for basis of design reports, design and specifications, bid and construction services, construction permits, preparation of as-built drawings based on value engineering practices.

All deliverables required in the performance of Work Assignments shall be submitted to North Port Utilities in the appropriate electronic media format via CDs, email, or FTP site. Word processing documents shall be in Word format, spreadsheet data in Excel format, presentations shall be in power point, project schedules shall be in Microsoft Project and all maps, plans, and surveys shall be in suitable CAD, ArcGIS and PDF format for utilization by North Port Utilities. All deliverables shall become the property of the City upon delivery.

The City, at its sole discretion, may expand the scope of work to include additional requirements. The City reserves the right to investigate as it deems necessary to determine the ability of any firm to perform the work or services requested. Information the City deems necessary in order to make a determination shall be provided by the firms upon request.

****Other City departments requiring professional engineering services for aspects of projects related to utilities may also use selected firms utilizing the same Letter of Interest and Work Assignment process.**

Minimum Qualifications:

Consultant must be certified to practice engineering in accordance with Florida Statute 471 and have proven professional experience in potable water, wastewater, and reclaimed water systems. Experience must have been demonstrated in systems of similar size and complexity of those in the North Port Utilities Department (NPU). Minimum experience shall be demonstrated in the following:

- The selected firms, and sub-consultants, shall be registered in the State of Florida to perform the professional services requested in this RFQ. The firm shall have State of Florida registered professionals for specified fields. (i.e. Professional Engineer, Professional Geologist, etc.).
- Contract manager shall be licensed in the State of Florida to provide at least one of the service categories/disciplines listed; have a minimum 10 years' experience with municipal professional service contracts shall have served as the contract manager for similar contracts.
- Team members proposed to provide project management or technical expertise services for this contract shall hold current either a State of Florida Professional Engineer license or State of Florida Professional Geologist license.
- Project manager for each work assignment must be licensed in the State of Florida as a Professional Engineer and have a minimum of five (5) years' experience in the applicable professional service category/discipline and have served as a project manager on similar projects on a minimum of three (3) previous occasions.
- Design, permitting, construction and operation of surface water treatment plants in Florida.
- Design, permitting, construction and operation of low and high pressure reverse osmosis systems in Florida.
- Design, permitting, construction and operation of aquifer storage and recovery well systems in Florida.
- Design, permitting, construction and operation of wastewater reclamation facilities.
- Design, permitting, construction and operation of deep injection well systems.
- Design, permitting, construction and operation of wastewater forcemain, master pumping and lift station systems including gravity collection systems.

- Design, permitting, construction and operation of nitrification/denitrification activated sludge (Modified Ludzak-Ettinger) wastewater treatment facilities.
- Systems with flows ranging between 2 MGD and 15 MGD.
- Preliminary engineering and feasibility investigations (Basis of Design Reports) engineering estimates, value engineering cost analyses, and per design reviews.
- Design and construction-phase services including start to finish coordination of the interdisciplinary work of design and construction engineering including: utilities operations input and reviews, complete bid services, contract management services, contract closeout, as-built-drawing certification, State Revolving Fund (SRF) required documentation, final punch lists and follow up throughout warranty period.
- Management for utilities operations of similar size, scope and complexity as North Port Utilities' systems (see Part I).
- Professional ability to represent the City before any and all regulatory agencies and City departments as necessary.
- The selected firms, and their proposed subcontractors, shall each have a minimum of five (5) consecutive years of engineering/design services related directly to the disciplines seeking qualification, preferably for governmental agencies, in particular the professional services contemplated under this RFP.

The City reserves the right to visit and inspect firm facilities and locations where Firm is providing professional consulting services in determining its capacity to perform the services contained in this and future requests for qualifications for work assignments.

NON-EXCLUSIVITY: No guarantee of certain services, volume of work, or quantity of projects is implied. This agreement does not entitle any firm to exclusive rights to City contracts. The City reserves the right to acquire professional services from other firms or perform "in-house" services for any purpose as it deems appropriate. The City may, in its sole discretion, procure the services of any consultant at any time for any project other than those selected for this continuing contract.

Consultant acknowledges and agrees that services under this Agreement are to be requested by City on an as-needed basis only, and no representation or guarantee is made by City to Consultant that City will utilize Consultant's services exclusively or at all.

Letter of Interest:

When the City requires professional services, it is anticipated, that the process will proceed in the following manner:

- i) For each specific project to be completed under a continuing services contract, NPU will send, to all firms with continuing service agreements with NPU, a letter of interest that will include, but not be limited to, the following information along with request for interested firms to submit a qualifications-based proposal for the specific project.
 - a. Project description;
 - b. General scope of work;
 - c. Goals of project;
 - d. Potential unknowns;
 - e. Any special conditions associated with the project;
 - f. Proposed schedule for project;

- g. Proposed budget for project;
 - h. Limited references request;
 - i. Limited page limit on qualifications-based project-specific proposal; and,
 - j. Deadline for submittal of qualifications-based proposal for the project.
- ii) Each firm shall then submit a qualifications-based proposal for the specific project.
- iii) City staff will evaluate the qualifications-based proposals on general criteria including, but not limited to, the following:
- a. Understanding of project and required deliverables;
 - b. Ability and relevant expertise/qualifications of the firm's personnel to be used in performing the service;
 - c. Availability of staff and ability to meet project schedule;
 - d. Evaluations on prior NPU projects;
 - e. Firm's proposed cost saving measures for the project; and,
 - f. Conflict of Interest form.
 - g. Disclosure Form for Consultant/Engineer/Architect

The City reserves the right to be the sole determination of responsiveness and responsibility of any submittals received in response to Requests for Letters of Interest. Consultant ***shall*** disclose any actual, potential, or reasonably perceived conflict of interest, financial or other interests for each project contained in individual Request for Letter of Interest (**Items f and g above**). Consultant understands that should a conflict exist for a particular project, the City reserves the right to exclude Consultant from participating in that project.

Work Assignments:

Work Assignments will be used to administer the agreement. The respondent to a Letter of Interest deemed most qualified will be chosen to submit a scope and fee for the resulting Work Assignment. The City's Administrative agent or designee shall initiate the work assignments. Work assignments will adhere to the monetary restrictions and requirements defined by Florida Statutes. A work assignment number will be assigned and the Consultant will prepare a scope of work, fee, and schedule specific to the project outlined in the Letter of Interest. Once the Consultant and the City have agreed upon a scope and fee, the City will execute the work assignment using the attached standard form (subject to revisions and updates) – Attachment C. Any work assignment over \$100,000.00 will require Commission approval.

Work Assignment size and/or worth may vary. No guarantee is expressed or implied as to the quantity of services, if any, to be procured under Agreement No. 2016-23.

The Consultant shall neither commence any Work, nor enter a City Work premise, until the Consultant has received a ***fully executed Work Assignment*** from the City serving as written Notice to Proceed ("NTP").

The parties agree that the scope of services for any Work Assignment is a description of Consultant's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Consultant impractical, illogical, or unconscionable.

Consultant and City acknowledge that Scope of Services may not delineate every detail and minor work task required to be performed by Consultant to complete the Project. If, during the course of the performance of the services included in the Work Assignment, Consultant determines that work should be performed to complete the Project which is in the Consultant's opinion outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, Consultant shall notify the City in writing in a timely manner before proceeding with the work. If Consultant proceeds with said work without notifying the City, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to the City does not constitute authorization or approval by City to perform the work. Performance of work by Consultant outside the originally anticipated level of effort without prior written City approval is at Consultant's sole risk.

*****Other City departments requiring professional engineering services for aspects of projects related to utilities may also use selected firms utilizing the same Letter of Interest process outlined in this document.***

Invoicing:

Consultants shall invoice the City for each project or assignment, as negotiated. Each invoice shall identify the invoice number; project or assignment; detail the contract price; payments made to date; percentage of completion of the assignment/project/phase and/or employee's names, titles, direct labor rates, and multiplier; payment due this invoice; remaining balance due; attached list of approved reimbursables with appropriate receipts. Invoices shall itemize hours, hourly wage, or other unit agreed upon as measurement of payment during negotiations, if requested. If hourly, invoices shall identify the name and title of personnel who performed the work.

Invoices shall also include a detailed bullet list of work completed within the period of the invoice. Bullet list of work completed shall clearly identify the work associated with the current billing.

No claim for reimbursement for these expenses shall be made to the City.

- A. Travel related expenses and costs including labor.
- B. Four (4) sets of signed and sealed permitting plans.
- C. Computer usage, telephone expenses, fax, copies, printing, and postage.
- D. Subcontractor mark-up.

The City will not allow Prime Consultant markups on any services provided by a Sub-Consultant.

Change Orders:

All requests for changes to the resulting Agreement shall be made in writing and are subject to approval by the appropriate level of City authority.

All change orders, including no-cost change orders, to Work Assignments require several approval levels including the City Manager, at a minimum. Some change orders will require Commission approval.

The consultant shall fully understand the City's Change Order Policy. In the event the consultant begins work on unauthorized changes to scope prior to receiving a signed Change Order by the City's appropriate level of authority, they do so at their own expense and risk not being compensated by the City for performing unauthorized work.

Schedule:

An understanding and agreement, by and between the Consultant and the City, that the completion time will be as specified in approved work assignments and that all work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will ensure full completion thereof as specified in the Scope of Services.

ATTACHMENT B – FEE SCHEDULE
CDM SMITH INC.
BILLING RATE TABLE – AGREEMENT NO. 2016-23

Category	Category Description	Standard Hourly Rate
Principal-in-Charge	Titled Employee grade level 9 and 10	\$275.00
Principal	Titled Employee grade level 7 and 8	\$210.00
SR Project Manager	Senior Project Manager as designated by CDM Smith	\$200.00
Project Manager	Project Manager as designated by CDM Smith	\$165.00
Senior Engineer	Engineer grade level 6 or above	\$190.00
Engineer	Engineer grade level 5 or below	\$130.00
Senior Inspector	Construction inspector grade level 6 or above	\$125.00
Inspector	Construction inspector grade level 5 or below	\$105.00
Senior Planner	Planner grade level 6 or above	\$147.00
Planner	Planner grade level 5 or below	\$118.00
Senior Designer	Designer grade level 6 or above	\$122.00
Designer	Designer grade level 5 or below	\$100.00
SR Environmental Specialist	Environmental Specialist grade level 6 or above	\$142.00
Scientist/Geologist	Scientist or Geologist grade level 5 or below	\$100.00
Senior Scientist/Geologist	Scientist or Geologist grade level 6 or above	\$125.00
Hydrogeologist	Hydrogeologist grade level 5 or below	\$138.00
Senior Hydrogeologist	Hydrogeologist grade level 6 or above	\$180.00
Senior GIS Specialist	GIS specialist grade level 6 or above	\$150.00
GIS Specialist	GIS specialist grade level 5 or below	\$115.00
Clerical	Administrative assistant	\$75.00
Senior Technician	Technician grade level 6 or above	\$93.00
Technician	Technician grade level 5 or below	\$78.00
Surveyor/Mapper	Licensed land surveyor	\$130.00
CADD Technician	CADD Technician all grade level	\$86.00
Survey Crew - 2 man	Survey crew consisting of 2 men	\$130.00
Survey Crew - 3 man	Survey crew consisting of 3 men	\$161.00
Survey Crew - 4 man	Survey crew consisting of 4 men	\$189.00
Senior Architect	Architect grade level 6 or above	\$190.00
Architect	Architect grade level 5 or below	\$154.00

- Direct costs are not reimbursable. Direct costs are defined as, but not limited to, the use of communication equipment, computers, copiers, and all other equipment required to perform services. Mileage and meals are considered direct costs and are not reimbursable.
- Permit Fees: Cost
- Hourly Rates within the Fee Schedule may be adjusted following the initial term of this agreement and prior to extension. Adjustment will be to the Bureau of Labor Statistics, Consumer Price Index for Professional Labor in the North Port market area.

ATTACHMENT C – WORK ASSIGNMENT

CONSULTANT

CONTINUING CONTRACT # &
TITLE

THIS WORK ASSIGNMENT

WORK ASSIGNMENT #

SHORT TITLE

Attach justification and supporting documentation

DATE SUBMITTED

AMOUNT (LUMP SUM)

SCHEDULED COMPLETION

CONTRACT AND BUDGET OVERVIEW

	DEPARTMENT	CITYWIDE (completed by Purchasing)
TOTAL OF PREVIOUS ASSIGNMENTS	\$	\$
THIS WORK ASSIGNMENT	\$	\$
TOTAL WORK ASSIGNMENTS	\$	\$
ACCOUNT NO/PROJECT NO		

All work assignments require City Manager approval. In presenting this work assignment, it is understood that:

1. Unless specified herein, work does not involve watercraft, boat piers and/or other activities requiring additional workers compensation endorsements.
2. Contact or involvement with hazardous materials is not anticipated, should hazardous materials be encountered, the City shall be informed.

SUBMITTED BY:

APPROVED BY:

CONSULTANT

DATE

DEPARTMENT DIRECTOR

DATE

PURCHASING MANAGER

DATE

FINANCE DIRECTOR

DATE

CITY MANAGER

DATE

