

AGREEMENT #2016-32
PROFESSIONAL SURVEYING SERVICES – CONTINUING CONTRACT FOR
CITY OF NORTH PORT PUBLIC WORKS

THIS CONTINUING CONTRACT ("Agreement") is made and entered into this 24th day of January 2017, by and between the CITY OF NORTH PORT, a municipal corporation of the State of Florida, hereinafter referred to as the "CITY" and VAN BUSKIRK/FISH & ASSOCIATES, 12450 S. Tamiami Trail, Unit D, North Port, FL 34287, a Florida 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 AND TERM

- A. The Consultant agrees to diligently and timely perform services for the City relating to Professional Surveying Services as identified in the Request for Proposal No. 2016-32 and Consultant's proposal submitted September 27, 2016 (the "Project"). The overall Scope of Services is described in Attachment A.
- B. This Agreement shall commence upon the execution of this Agreement by both the City and the Consultant and shall remain in effect through October 31, 2019. This Agreement may be renewed for two (2) additional two (2) year terms, subject to Consultant's satisfactory performance, by the Parties' mutual written agreement and within the City's budgetary limitations, 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 Section 287.055(g). Work assignments shall require approval of the City Manager or 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 in Attachment A. The Scope of Services, Fee Schedule, and Work Assignment Form (Attachments A, B, and C respectively) are attached hereto and incorporated as if set forth fully herein.
- 2. 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, which shall initiate disbursements.

3. LIABILITY OF CONSULTANT

The Consultant shall be fully liable for the actions of its directors, officers, members, partners, or subcontractors, and the employees and agents of each of them, and shall fully indemnify, defend and hold harmless the City, its commissioners, employees, agents and assigns from all demands, claims, suits, actions, judgments, damages, fines, fees, taxes, assessments, penalties, losses, expenses, costs of every type and description, and reasonable attorneys' fees (at both trial and appellate levels), of any nature or kind whatsoever caused by, or arising out of or related to the performance or breach of this Agreement by the Consultant, its officers, directors, members, partners, or subcontractors, and employees or agents of any of them; provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the City.

To the extent applicable, the Consultant shall fully indemnify, defend and hold harmless the City, and its commissioners, agents, employees and assigns from any demands, claims, suits, actions, judgments, damages, fines, fees, taxes, assessments, penalties, losses, expenses, costs of every type and description, and reasonable attorneys' fees (at both trial and appellate level), arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to the misuse or modification of the Consultant's products by the City or any of its commissioners, agents, employees, and assigns, or to the operation or use of the Consultant's products by the City or any of its commissioners, agents, employees, and assigns in a manner not contemplated by this 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 or email.

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 this 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 Statutes Section 768.28.

4. CONSULTANT'S INSURANCE

A. INSURANCE

Before performing any work, the Consultant shall procure and maintain, during the life of this Agreement, the insurance listed below, unless otherwise specified. The policies of insurance shall be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida and meet a minimum financial AM Best and Company rating of no less than "Excellent." No changes are to be made to these specifications without prior written specific approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with the 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 \$100,000 each accident; \$100,000 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 \$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 herein is written on a claims-made basis, the Consultant warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage shall be maintained for a period of two (2) years or an extended reporting period (ERP) with tail coverage 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: Aggregate must apply separately to this Agreement. Minimum \$300,000 each occurrence; \$600,000 general aggregate; \$600,000 products and completed operations; and \$100,000 damage to rented premises.
4. Business Automobile Insurance: To include all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$300,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this Agreement.

SPECIAL REQUIREMENTS: Certificates of Insurance evidencing claims made or occurrences form coverage and conditions to this Agreement, as well as this 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. The Certificate of Insurance issued by the underwriting department of the insurance carrier shall certify compliance with the insurance requirements provided herein. ***Certificates of Insurance must be accompanied by a copy of the additional insured endorsement (CG 20101185 or combination CG20100704 and CG20370704 shall be accepted.***

Any and all deductibles to the above-referenced policies are 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, agents, employees, affiliates 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 its 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 for which the Consultant or its agents may be responsible.

C. POLICY FORM

1. All policies required by this Agreement, with the exception of Professional Liability and Workers Compensation, or unless specific approval is given by Risk Management through the City's Purchasing Office, are to be written on an occurrence basis and shall name the City of North Port, its Commissioners, officers, agents, employees and volunteers as additional insureds as their interests 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 on 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. Claims made policies shall 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.

7. 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 Florida Statutes Section 119.0701, Consultant shall comply with all public records laws, and shall specifically:
 - 1. Keep and maintain public records required by the City to perform the service.
 - a. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies. (See <http://dos.dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
 - b. "Public records" means and includes those items specified in Florida Statutes Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Consultant's records under this Agreement include but are not limited to, supplier/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 this Agreement, transfer, at no cost, to the City all public records in Consultant's possession or keep and maintain public records required by the City to perform the service. If 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 Section 119.10.

6. OWNERSHIP AND USE OF WORK PRODUCT

It is understood and agreed that all materials and deliverables created, discovered, invented, developed or prepared for the City as part of performing this Agreement ("Deliverables") 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 irrevocably transfers and assigns to the City all of its right, title and interest in the Deliverables, including, without limitation, all copyrights and other intellectual or proprietary rights in and to the Deliverables (the "Intellectual Property"). The City shall own the Deliverables and the Intellectual Property, and the Consultant disclaims any ownership interests. The Consultant represents and warrants to the City that the Services and Deliverables will not violate or infringe a third party's patent, copyright, trade secret or other intellectual or proprietary right, and that no third party has an ownership interest in the Deliverables.

Specific written authority is required from the City's Administrative Agent for the Consultant to use any of the Deliverables on any non-City project. The City's reuse of the Deliverables on other projects shall be at the City's risk.

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 its 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 shall 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 the 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 Consultant's work 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 the Project, if any, shall be stated in Letters of Interest and work assignments.

- 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 – 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 this Agreement.
- B. FUNDING IN SUBSEQUENT FISCAL YEARS: It is expressly understood by the City and the Consultant that funding for any subsequent fiscal year of this Agreement is contingent upon appropriation of monies by the City Commission, and the continuing receipt of state and/or federal grant funding, if applicable. In the event that funds are not available or appropriated, the City reserves the right to terminate this Agreement. The City shall 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 this 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 the Project throughout the duration of this Agreement and for a period of one (1) year after this Agreement terminates.

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:

Alan K. Fish, P.S.M.
Van Buskirk/Fish & Associates, Inc.
12450 S. Tamiami Trail, Unit D
North Port, FL 34287
TEL: 941.426.0681
FAX: 941.426.6101
EMAIL: landsurveyor@vbfainc.com

CITY’S ADMINISTRATIVE AGENT:

Engineering Division Manager
City of North Port Public Works
1100 North Chamberlain Blvd.
North Port, FL 34286
TEL: 941.240.8544
FAX: 941.240.8063
EMAIL: ccryderman@cityofnorthport.com

A party may change its respective address by providing 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. 2016-32 or the Consultant’s response, which are made a part hereof by reference, this Agreement shall control.

(This space intentionally left blank; signature page to follow)

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

ATTEST:

CITY OF NORTH PORT, FLORIDA

By: Patsy C. Adkins
Patsy C. Adkins, City Clerk, MMC

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

APPROVED AS TO FORM AND CORRECTNESS:

By: Mark Moriarty
Mark Moriarty, City Attorney

WITNESS:

VAN BUSKIRK/FISH & ASSOCIATES, INC.:

By: Dianna Carrasquillo
Dianna Carrasquillo

By: Alan K. Fish
Alan K. Fish, P.S.M., President

ATTACHMENT A – SCOPE OF SERVICES

In accordance with Florida Statutes Section 287.055, “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.”

The Consultant must be certified to practice land surveying and mapping in accordance with Florida Statutes Chapter 472 and shall be responsible for knowledge of and compliance with all federal, state and local laws, rules, practices and regulations. The Consultant shall work in close cooperation with, and coordinate its work through designated City staff.

The scope of work shall consist of, but not be limited to the following professional surveying services:

- a. Line and grade layout for roadway and property drainage.
- b. Boundary and topographic surveys.
- c. Mapping.
- d. Construction staking – horizontal and vertical control surveys.
- e. Location surveys.
- f. Survey data collection, including cross-sections and data reduction.
- g. Preparation and production of necessary survey documents and reports for recording and/or legal purposes.
- h. Other work assignments relating to Professional Surveying Services.

ADDITIONAL SERVICES:

Other City departments may utilize this Agreement for professional surveying services through the same work assignment process. Additional work for the City may include, but is not limited to the following:

- a. Line and Grade for residential/commercial drive culverts
- b. Boundary and location surveys
- c. Legal descriptions for districts
- d. Field surveys for well location, grade elevation measurements/monitoring
- e. Horizontal and vertical control surveys

WORK ASSIGNMENTS:

Work assignments shall be used to administer the contract. The work assignments will adhere to the monetary restrictions and requirements defined by Florida Statutes Section 287.055. Work assignments may come from multiple departments within the City for various projects.

For each proposed work assignment the Consultant shall prepare and submit drafts of scope of services, compensation schedule, time schedule, and list of personnel and sub-consultants necessary for the completion of the proposed tasks. Consultant shall commit that the personnel and/or principals named

in the work assignment shall remain assigned for the duration of the work assignment unless otherwise in a negotiated contract. No diversion or substitution of personnel or principals shall be allowed without submission of a written request with the qualifications and experience of the proposed replacement

In the event any portions of the work assignments are to be subcontracted, the Surveyor of Record shall identify those firms and their qualifications for approval by the City of North Port Public Works. The resume of all major individuals who shall participate in the completion of the work assignment shall also be submitted. No markup in fees shall be allowed for the use of subcontractors.

Scopes of services for surveying shall only be awarded for projects with a construction dollar amount less than \$2,000,000 and the fee for each scope of work shall not exceed \$200,000. Any work assignment over \$100,000 shall require the City Commission's approval. The City may, in its sole discretion, procure the services of any consultant at any time for any project as the City deems appropriate.

The Consultant shall not commence any Work until the Consultant has received a ***fully executed work assignment*** from the City serving as written Notice to Proceed ("NTP").

CHANGE ORDERS:

All change orders, including no-cost change orders, to work assignments shall require approval by City Manager, at a minimum. Some change orders shall require the City Commission's approval.

The Consultant shall be responsible for fully understanding and complying with 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, it does so at its own expense and risk not being compensated by the City for performing unauthorized work.

INVOICING:

The Consultant shall invoice the City for each work assignment, as negotiated. Each invoice shall identify the project or assignment, detail the contract price, payments made to date, percentage of completion of the assignment, project or phase, payment due this invoice, remaining balance due. 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.

Compensation to the Consultant shall include the following: 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. Permits, if any, are to be billed at cost. Hourly rates within the negotiated fee schedule may be adjusted following the initial term of this Agreement; the City must receive any such request prior to expiration of the term. Any adjustment shall be to the Bureau of Labor Statistics, Consumer Price Index for Professional Labor in the North Port market area.

No claim for reimbursement for the following expenses shall be made to the CITY:

- A. All travel and vehicle related expenses including labor;
- B. Signed and sealed permitting plans;
- C. Computer usage, telephone expenses, fax, copies, printing, delivery fees and postage; and
- D. Subcontractor mark-up.

A copy of the invoice for each **City pre-approved** reimbursable expense shall be attached to Consultant's invoice.

DELIVERABLES:

In addition to any required hard copies, all deliverables required in the performance of work assignments shall be submitted to City of North Port Public Works in the appropriate electronic media format via USB, CDs, email, or FTP site. Word processing documents shall be in Word format, spreadsheet data in Excel format, presentations shall be in Microsoft PowerPoint, project schedules shall be in Microsoft Project and all maps, plans, and surveys shall be in suitable CAD, ArcGIS, AutoCAD Light 2008, and PDF format for utilization by City of North Port Public Works. All deliverables shall become the property of the City upon delivery.

SCHEDULE:

The completion time shall be as specified in approved work assignments and all work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as shall ensure full completion thereof as specified in the Scope of Services.

NON-EXCLUSIVITY:

Work assignment size may vary. No guarantee is expressed or implied by the City as to specific services, volume of work, or quantity of projects procured under this Request for Proposals. This Agreement does not entitle any firm to exclusive rights to City of North Port 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. Further, the City, at its sole discretion, may expand the scope of work to include additional requirements.

END OF ATTACHMENT A

ATTACHMENT B – FEE SCHEDULE
VAN BUSKIRK/FISH & ASSOCIATES, INC.

Project Position or Classification (Function to be Performed)	Hourly Rate to be Charged (*unless otherwise noted)
Professional Land Surveyor	\$90.00
Cadd/Technician	\$60.00
2-person survey crew	\$90.00
3-person survey crew	\$110.00
Survey GPS crew	\$110.00
Typist/Clerical	\$30.00
Expert witness testimony	\$175.00
Boat for hydrographic surveys	\$80.00 per day*
Record plat reviews (Lump Sum)	\$300.00 LS*
Review sketch & descriptions for easement relocations (Lump Sum)	\$90.00 LS*
P.C.P.'S (Permanent Control Points): Field surveys for location verification and re-establishment of adjusted control points after paving.	\$90.00 each*
Line and grade surveys for driveway culverts (EACH)	
Sets	\$100.00 each*
Final inspections	\$50.00 each*
Re-inspections	\$50.00 each*
Re-sets where pavement markings have been destroyed	\$60.00 each*

NOTE: The above hourly rates include direct expenses for copies, reproductions, travel, shipping, communications, and computer charges. No separate charge shall be made for these items. Costs for Professional Associates (whose expertise is required to complete the project) shall be charged at actual costs.

Hourly rates within the negotiated Fee Schedule may be adjusted following the initial term of this Agreement; the City must receive any such request prior to expiration of the term. Any adjustment shall be to the Bureau of Labor Statistics, Consumer Price Index for Professional Labor in the North Port market area.

END OF ATTACHMENT B

ATTACHMENT C – WORK ASSIGNMENT

CONSULTANT

CONTINUING CONTRACT # &
TITLE

Reaching the Ship

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

END OF ATTACHMENT C