

Section IV. Agreement for Professional Engineering Services for the Wastewater Treatment Plant (WWTP) Reuse System

This Agreement for Professional Engineering Services is made by and between Immokalee Water and Sewer District, an independent special District (the "District"), and _____ ("Consultant"), a corporation in the State of _____ authorized to do business in the State of Florida.

Background

- A.** The District desires to retain Consultant to execute and complete the project known as the WWTP Reuse System as described in **Exhibit A**, Scope of Services ("Project").
- B.** The District has selected Consultant in accordance with the Request for Qualifications dated _____ ("RFQ") and applicable Laws.
- C.** Consultant desires to provide the professional services required by the District as described in this Agreement.

Terms and Conditions

- 1. Background, Exhibits, and Documents.** The background provided above and the following exhibits which are attached, are part of this Agreement. The RFQ and Consultant's submittals provided in response to it are also part of this Agreement as well as any related Work Orders executed by the parties.

- Exhibit A – Scope of Services and compensation
- Exhibit B – Consultant's response to the RFQ
- Exhibit C – Consultant's Insurance Requirements
- Exhibit D – Consultant's Certificate of Insurance
- Exhibit E – District Resolution 2015-04 adopting Travel Policy

- 2. Definitions.** The following terms used in this Agreement have the following meanings:

- 1.1.** Agreement – This written document, as it may be amended from time to time and all incorporated documents.
- 1.2.** Law – All laws, statutes, rules, regulations, ordinances, codes and/or orders applicable to the Services.
- 1.3.** Services – The services described in **Exhibit A**, as well as all obligations, duties and responsibilities required of Consultant under this Agreement. The term "Services" also includes all Additional Services which are subsequently authorized in writing by the District.

- 1.4.** Additional Services – Subject to paragraph 10 of this Agreement, any services that are authorized by the District in a written amendment after this Agreement is executed.
- 1.5.** Subconsultant – All contractors, subcontractors, consultants, subconsultants, suppliers, experts and other entities retained by Consultant to perform or provide any portion of the Services required hereunder.
- 2. Effective Date and Term.** This Agreement will become effective on the last date all the parties have executed it, as demonstrated by the date under the signatures on the signature page and will remain effective until the Services are completed unless it is sooner terminated in accordance with the procedures set forth in this Agreement.
- 3. Compensation.** For the timely and proper performance of the Services, the District will pay Consultant the compensation set forth in **Exhibit A**. The District will reimburse Consultant for expenses (other than expenses which are included in lump sum payment items) consistent with Section 112.061, Florida Statutes, provided Consultant submits appropriate documentation substantiating the expense and certifies that such claimed expense is true and correct as to every material matter. Consultant will honor a claim for refund by the District if the reimbursement is more than the limits imposed in Section 112.061, Florida Statutes.
- 4. Consultant's Representations and Warranties.** Consultant represents and warrants to the District as follows:

 - 4.1. Conducting Business in Florida.** Consultant is duly authorized to conduct business in the State of Florida.
 - 4.2. District.** Consultant has the full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided for herein, all of which have been duly authorized by all proper and necessary actions of the governing entity of Consultant.
 - 4.3. Accuracy of Response.** All information provided by Consultant in response to the RFQ was true and accurate when Consultant submitted it to the District and has not materially changed as of the Effective Date of this Agreement.
 - 4.4. Understanding of Agreement.** Consultant has familiarized itself with and understands this Agreement, the Project, the Services, the Law, the site, and all local conditions that may affect Consultant's performance of this Agreement, including Consultant's compensation and the performance or furnishing of the Services.
 - 4.5. Discrepancies.** Consultant has reviewed all available information and data shown or indicated in this Agreement and has given the District written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered and the District's written resolution thereof, if any, is acceptable to Consultant.
 - 4.6. Expertise.** Consultant has special expertise in the type of professional services to be

provided under this Agreement and Consultant acknowledges that such representations were a material inducement to the District to enter into this Agreement with Consultant.

- 4.7. Valid Agreement.** This Agreement is a valid, binding, and enforceable obligation of Consultant, and does not violate any law, rule, regulation, contract, or agreement otherwise enforceable by or against Consultant except as it may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the rights of creditors generally.
- 4.8. Scrutinized Companies.** Consultant certifies that it is in compliance with Section 287.135, Florida Statutes, is not on this list of Scrutinized Companies that Boycott Israel and is not engaged in a boycott of Israel. For contracts for goods or services of \$1 million or more, Consultant certifies that (1) it is not on any of the following lists: Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in Iran Terrorism Sectors, or Scrutinized Companies that Boycott Israel, and (2) it is not engaged in business operations in Cuba or Syria. The District may terminate this Agreement if Consultant is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. The District may terminate this Agreement if Consultant is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes or has been placed on a list created pursuant to section 215.473, Florida Statutes relating to scrutinized active business operations in Iran. Consultant acknowledges the remedies provided in subsection 287.135(5), Florida Statutes against anyone found to have submitted a false certification including civil penalties.
- 4.9. Public Entity Crimes.** Consultant understands the requirements of sections 287.132 and 287.133, Florida Statutes and is not on the convicted vendor list for public entity crimes maintained by the Florida Department of Management Services. Consultant is in full compliance with sections 287.132 and 287.133, Florida Statutes, will remain in compliance with them throughout the term of this Agreement, and will notify the District if it becomes non-compliant.
- 4.10. E-Verify.** Consultant is in compliance with section 448.095, Florida Statutes. As required by subsection 448.095(5)(a), Florida Statutes, Consultant has registered with and uses the E-Verify System to verify the work authorization status of all newly hired employees. As required by subsection 448.095(5)(b), F.S. Consultant must require any subcontractors to provide the Consultant with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Consultant shall maintain a copy of such affidavit for the duration of this Agreement.
- 4.11. Truth-in Negotiation.** Consultant's execution of this Agreement constitutes a truth-in-negotiation certificate certifying that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting as required by subsection 287.055(5)(a), Florida Statutes. Consultant will continuously comply with subsection 287.055(5)(a), Florida Statutes and will adjust the original contract price and any additions thereto to exclude any significant sums by which the District determines the contract price was increased due to inaccurate,

incomplete, or noncurrent wage rates and other factual unit costs. The District will make all such contract adjustments within 1 year after the end of the Agreement.

4.12. No Contingent Fees. As required by subsection 287.055(6), Florida Statutes, Consultant has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If Consultant breaches or violates this provision, the District has the right to terminate this Agreement without liability and, at its discretion, to deduct from Consultant's compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

5. Consultant's Responsibilities.

5.1. Performance of Services. Consultant shall perform the Services upon the terms and conditions set forth in this Agreement and upon any terms required under any government funding agreement. The Project may be completed through a series of Work Orders, all developed in accordance with this Agreement. If applicable, Consultant shall develop each Work Order, which will include the intended purpose, objectives, services needed in a task-level breakdown, schedule, deliverables, and estimated costs.

5.2. Standard of Performance. Consultant shall perform the Services in a timely and professional manner in accordance with applicable professional standards consistent with that level of care and skill ordinarily exercised by other competent professionals with expertise in the type of services required in this Agreement practicing under similar conditions at the same time and locality of the Project. Consultant has represented to the District that Consultant has expertise and experience in the type of services to be rendered hereunder and that such representation was a material inducement to the District to enter into this Agreement with Consultant.

5.3. Changes. Consultant shall immediately notify the District if anything changes regarding Consultant's representations and warranties contained in this Agreement.

5.4. Resources. Consultant shall secure and maintain an adequate and competent staff of professionals and all facilities and equipment required to perform the Services.

5.5. Key Personnel. Consultant must not remove any key personnel or Subconsultants assigned to the Project without the prior written approval of the District. All key personnel will be available for the Project on a full-time basis, except as otherwise expressly approved in writing by the District. Such key personnel are as follows:

- 5.6. Objectionable Employees.** If at any time during the term of this Agreement the District notifies Consultant in writing that any of Consultant's employees or the employees of any Subconsultant are objectionable to the District, Consultant shall remove or have the Subconsultant remove the objectionable employee from the Project and not reemploy the objectionable employee on any portion of the Services.
- 5.7. Consultant's Representative.** Consultant will designate in writing a single representative with the authority to transmit instructions, receive information, interpret, and deliver Consultant's policy and decisions related to the Services and bind Consultant with respect to any matter arising out of or relating to this Agreement.
- 5.8. Information Related to the Services.** Consultant shall obtain and review all information and data which relates to the Services or which Consultant may reasonably anticipate may affect cost, scheduling, progress, performance or furnishing of the Services, including, but not limited to, information and data related to the Project work of others under separate contracts, to the extent that such work may interface with the Services hereunder.
- 5.9. Status Reports and Inspections.** Consultant shall routinely and continuously advise the District of the status of the Project, and the Services of Consultant. The District and its authorized representatives have the right to visit the site and Consultant's office at any reasonable time to inspect the Services or any of the drawings or documents of Consultant. Consultant shall maintain documents obtained or generated under this Agreement and make them available upon request by the District during the term of this Agreement and for three years after its termination. In addition to the documents and reports contemplated in **Exhibit A**, Consultant shall, at no cost to the District, deliver to the District copies of all other Project documents and or reports under Consultant's possession or control that the District may request from time to time.
- 5.10. Coordination with Others.** Consultant shall cooperate with other engineers, consultants, construction contractors and suppliers retained by the District and assist the District with the coordination of those various projects, work, and engineering and consulting services. Consultant shall review all information and attend all meetings as will be reasonably necessary to accomplish the coordination of those various projects, work, and engineering and consulting services, and eliminate any problems where the projects, work or services interface with the Project or Services.
- 5.11. Laws.** Consultant shall secure all licenses or permits required by Law for the performance of the Services and shall comply with all Laws in effect at the time of the execution of this Agreement and the time of performance of the Services.
- 5.12. No Discrimination.** Consultant shall comply with Title VII of the Civil Rights Act of 1964, as amended, and the Florida Civil Rights Act of 1992. Consultant will not discriminate in any form or manner against its employees or applicants for employment on the basis of race, color, national origin, religion, sex, age, handicap, or marital status. Further, Consultant shall comply with all applicable rules, regulations or

executive orders promulgated to give effect to the Civil Rights Act of 1964, as amended.

5.13. Notice of Claims. Consultant shall immediately notify the District if it becomes aware of any circumstances which may reasonably give rise to any claim against the District for Services performed under or related to the Services performed under this Agreement.

5.14. No Conflicts of Interest. Consultant is not under contract and will not contract for or accept employment for the performance of any work or services with an individual, business, corporation, or government unit that would create a conflict of interest in the performance of its obligations under this Agreement.

5.15. Travel Policy. Consultant shall comply with the District Resolution 2015-04 adopting its Travel Policy which is provided in **Exhibit E**.

6. District's Responsibilities.

6.1. Applications for Payment. The District will review and consider, in a reasonably prompt and thorough fashion, all applications for payments, reports, schedules, estimates, drawings, proposals or other documents presented to the District by Consultant and will inform Consultant of the District's decisions or otherwise take appropriate action within a reasonable time to not unreasonably delay the Services of Consultant.

6.2. District's Representative. The District will designate in writing a single representative with authority to transmit instructions, receive information and interpret and deliver the District's policy and decisions pertinent to the Services.

6.3. Existing information. Upon Consultant's specific request, the District will cooperate in providing to Consultant, all existing and available studies, reports, surveys, and other information and data regarding the Project to the extent such items are in the District's possession and the District has actual knowledge of their existence and location. Despite any other provision of this Agreement, the District does not represent or warrant the accuracy or completeness of any such items, unless it is expressly noted in writing on such item.

7. Change of Plan.

7.1. District's Right. The District has the absolute right to terminate, suspend, or amend the Services or the Project at any time and for any reason, and such action on its part will not be deemed a default or breach of this Agreement. Any such termination, suspension, or amendment will be in writing.

7.2. Remedies. If the Services or Project is entirely or partly suspended for one or more periods of time Consultant will have no claim for compensation for the suspended period(s). Upon resumption of the Services or Project, Consultant shall resume the Services until the Services are completed in accordance with this Agreement, and the

time for completion of the Services which were suspended will be extended for the period of the suspension. If the cumulative total of such suspensions, excluding periods of suspension during the design phase, is 270 days or less, the extension of time will be Consultant's sole remedy. If the cumulative total of such suspensions is more than 270 days, Consultant's sole remedy will be to terminate this Agreement according to the provisions of paragraph 8.

8. Termination of Agreement.

8.1. District Termination for Convenience. The District has the right to terminate this Agreement, in whole or in part without cause upon written notice to Consultant. In such event, Consultant's sole and exclusive recovery against the District will be limited to that portion of Consultant's compensation earned to the date of termination, together with any costs reasonably incurred by Consultant that are directly attributable to the termination. The Consultant will not be entitled to any further recovery against the District, including, but not limited to, anticipated fees or profits on Services not required to be performed. The District in its sole discretion will determine that portion of the compensation earned for any incomplete Services based upon the ratio of such part of the Services completed relative to the entire Services. Termination without cause will be effective upon delivery of written notice to Consultant.

8.2. District Termination for Cause. The District will consider Consultant in material default of this Agreement and the District may terminate this Agreement, in whole or in part, for any of the following reasons: (a) failure to begin Services within the time specified in a Work Order, or (b) failure to timely and properly perform the Services required hereunder or as directed by the District, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by Consultant or by any of Consultant's principals, partners, officers or directors, or (d) failure to obey any Law, or (e) failure or refusal to allow public access to all public record documents or other materials made or received by Consultant in conjunction with this Agreement, unless exempt under Florida law, or (f) any other material breach of this Agreement. In any such event, the District may terminate this Agreement, in whole or in part, by giving Consultant written notice. In the event of any such termination for cause, the District is not obligated to make any further payments to Consultant hereunder until such time as the District has determined all costs, expenses, losses and damages which the District may have incurred as a result of such default by Consultant, whereupon the District will be entitled to set off all costs, expenses, losses and damages so incurred by the District against any amounts due Consultant hereunder. Termination for cause will be effective upon 14 days written notice to Consultant.

8.3. Termination by Consultant. If the District violates any provision of this Agreement, and if the violation continues for 60 days after Consultant has delivered written notice of the violation, then Consultant may, without prejudice to any other right or remedy, terminate or cancel this Agreement by giving the District 14 days written notice of termination. In the event of any such termination by Consultant, Consultant's sole and exclusive remedies against the District will be limited to those set forth in paragraph 8.1 above.

8.4. Notice and Cure. Despite the provisions of paragraphs 8.2 and 8.3, this Agreement will not terminate for cause if the party receiving the notice begins, within seven days of receipt, to correct its failure and proceeds diligently to cure such failure within thirty 30 days of receipt of the notice; provided, however, that if and to the extent such cause for termination cannot reasonably be cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues to diligently cure the same, then the cure period may be further extended by the party that provided the notice.

8.5. Remedies if no Default. If, after termination of this Agreement as provided for in paragraph 8.2 above, it is determined for any reason that Consultant was not in default, or that its default was excusable or that the District otherwise was not entitled to the remedy against Consultant provided for in paragraph 8.2, then such termination for cause will be deemed to be a termination for convenience as described in paragraph 8.1 and Consultant's sole and exclusive rights and remedies against the District will be the same as and limited to those afforded Consultant under paragraph 8.1 above.

8.6. Delivery of material after termination. Within 10 days after any termination of this Agreement, Consultant shall deliver to the District all papers, drawings, models, and other material prepared by and for Consultant with respect to the Project and Services.

9. Waiver.

9.1. Acceptance of Final Payment. Consultant's acceptance of final payment constitutes a full waiver of all claims by Consultant against the District arising out of and relating to this Agreement or otherwise related to the Project, except those previously made in writing and identified by Consultant as unsettled at the time it submits its invoice for final payment. Neither the acceptance of the Services nor any payment by the District will be deemed to be an acceptance of defective or incomplete Services or waiver of any of the District's rights against Consultant.

9.2. Non-enforcement. Non-enforcement of any provision of this Agreement by either party will not constitute a waiver of that provision nor will it affect the enforceability of that provision or the remainder of this Agreement.

10. Additional Services.

10.1. Notice to District. If Consultant is of the opinion that any services the District directs it to perform are beyond the Scope of the Services under this Agreement, Consultant shall, within seven business days of such direction, notify the District in writing of its opinion. The District shall, within 10 business days after receipt of such notification, determine whether such service is beyond the scope of this Agreement and constitutes Additional Services. If the District determines that such service does constitute Additional Services, it will provide extra compensation to Consultant based upon the rates and terms provided in **Exhibit A**.

10.2. Project Schedule. If, in the opinion of the District, the progress of the Services

during any period is substantially less than the amount which is necessary to meet the Project schedule, the District may require Consultant to take whatever action is necessary, in the opinion of the District, to put the Services back on schedule. Such action will not constitute Additional Services unless the delays were caused by circumstances beyond the control and fault of Consultant or its agents, employees and Subconsultants.

10.3. Claims against the District. In the event of claims by others against the District in connection with the Project or the Services, Consultant shall provide the District such technical assistance that the District may request. Such assistance shall constitute Additional Services, unless such claims are caused by the failure of Consultant, its agents, employees or Subconsultants to comply with the terms and conditions of this Agreement or otherwise perform their duties under this Agreement.

10.4. Delays more than and less than 30 days. Subject to the provisions of paragraph 10.2 above, Consultant will not make any charges or claims for damages for any delays or hindrances of less than 30 days from any cause whatsoever during the progress of any portion of the Services. The District may compensate such delays or hindrances of less than 30 days by an extension of time as the District may decide. However, any such extension will not operate as a waiver of any other rights of the District. The District will consider delays or hindrances that exceed 30 days and will determine whether any additional services are needed from Consultant unless such delays or hindrances were caused in whole or in part by Consultant, its employees, agents, or Subconsultants or because of a suspension of the Project or Services entirely or partly by the District. This paragraph does not apply to suspensions of the Project or Services by the District, which suspensions will be governed by paragraph 7.

10.5. Audit. If the District requires Consultant to provide it with an audit of its Project costs, such audit will not be considered Additional Services.

11. Assignment and Subconsultants. Consultant must not sublet, assign, or transfer this Agreement or any Services without the prior written consent of the District, which consent may be withheld in the District's sole discretion. Consultant will be solely responsible for the employment, direction, supervision, compensation, and control of any and all Subconsultants. Consultant shall cause all Subconsultants to abide by the terms and conditions of this Agreement and all Laws. All agreements between Consultant and Subconsultants will be in writing, with a copy of such agreements to be provided to the District upon its request for same.

12. Indemnification. Consultant shall indemnify and hold harmless the agency, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of this Agreement. This provision is consistent with Section 725.08, Florida Statutes.

13. Consultant's Insurance Requirements. Consultant must maintain during the entire

term of this Agreement, insurance in the kinds and amounts provided in **Exhibit C** with a company or companies authorized to do business in the State of Florida. Consultant must not commence work under this Agreement until the District has received acceptable certificates of insurance showing evidence of such coverage. The amounts and types of insurance must be appropriate for the services being performed by the Consultant and its employees and agents and must conform to the minimum requirements of this paragraph. Consultant's Certificates of Insurance are attached as **Exhibit D**.

14. Project Documents and Data.

- 14.1.** One (1) copy of all technical data and working papers regarding the Services, whether existing in the office of the District or in the office of Consultant, will be made available to the other party to this Agreement without expense to such other party. Additional copies will be made available at the expense of the requesting party.
- 14.2.** All Project documents, tracings, plans, specifications, maps, evaluations, reports, technical data, and computer application code, other than working papers prepared or obtained under this Agreement, are the property of the District without restriction or limitation of use, and must be made available, upon request, to the District at any reasonable time. Consultant, at its own expense, may retain copies thereof for its files and internal use. Any use by the District of such materials obtained under this Agreement for any other Project or use of incomplete materials obtained from Consultant by the District will be made at the risk of the District. However, this does not constitute a disclaimer of the professional liability of Consultant with respect to the original Services as used for the Project.
- 14.3.** All final plans and documents that are required by Florida Law to be endorsed and are prepared by Consultant in connection with the Services must bear the endorsement of a person in the full employment of Consultant or duly retained by Consultant and duly licensed in the appropriate professional category.
- 14.4.** Consultant shall make any patentable product or result of the Services and all information, design, specifications, know-how, data, and findings available to the District without cost to the District. No material prepared in connection with this Project will be subject to copyright by Consultant, all such copyrights being the property of the District. the District will have the right to publish, distribute, disclose, and otherwise use any material prepared by or for Consultant with respect to the Project. Any use of material or patents obtained by the District under this Agreement for any purpose not associated with this Project will be at the risk of the District. In the District's discretion, whenever any renderings, photographs of renderings, photographs of models or photographs of the Project are released by the District for publicity, proper credit may be given to Consultant, provided the giving of such credit is without cost to the District.

- 14.5.** Consultant must not make any statements, press releases or public releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or any other information obtained or furnished in compliance with this Agreement, except at meetings where representatives of the District are present, without the District's prior written consent. Consultant will not publish, copyright, or patent any of the data furnished or developed with respect to the Project without first obtaining the District's written consent, as all such rights are the property of the District.
- 15. Audit Rights.** Consultant shall keep all books, records, files, plans, drawings, and other documentation, including all electronically stored items, which concern or relate to the Services hereunder (collectively referred to herein as "Records") for a minimum of three (3) years from the date of expiration or termination of this Agreement or as otherwise required by Law, whichever date is later. The District, or any duly authorized agents or representatives of the District, will have the right to audit, inspect and copy all or such Records as often as they deem necessary during any such period of time. This right to audit, inspect and copy the Records shall include all Records of Subconsultants.
- 16. Public Records.**
- 16.1. Duty to Maintain and Provide Records.** Consultant shall keep and maintain all public records required to perform services under this Contract as required by Chapter 119, Florida Statutes. All analyses, data, documents, models, modeling, reports, and tests performed or utilized by Consultant will be made available to the District upon request and are considered public records in accordance with Chapter 119, Florida Statutes, unless they are exempt under the Law.
- 16.2. IF 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 AGENCY'S CUSTODIAN OF PUBLIC RECORDS OFELIA GONZALEZ AT: 239-658-3630, EMAIL: OFELIAGONZALEZ@IMMOKALEEWATERSEWER.COM OR MAILING ADDRESS: 1020 SANITATION ROAD, IMMOKALEE, FL 34142.**
- 16.3. Post Contract Responsibilities.** Upon completion of this contract, Consultant shall keep and maintain, at no cost, to the District, all public records produced under this Agreement in the possession of the Consultant or shall transfer them to the District. If the Consultant transfers all public records to the District, Consultant shall destroy any duplicate public records. If Consultant keeps and maintains public records after completion of the contract, the Consultant shall meet all legal requirements for retaining public records including the rules and retention schedules adopted by the Division of Library and Information Services of the Department of State under Section 119.021(2)(a), Florida Statutes. All records stored electronically must be provided to the District upon request from the District in a format that is compatible with the information technology systems of the District.

16.4. Exempt Records. Consultant shall ensure public records that are exempt from public records disclosure are not disclosed except as authorized by law during the term of this Agreement and following its completion if the Consultant does not transfer the records to the District.

17. Miscellaneous Provisions.

17.1. Entire Agreement. This written document constitutes the entire agreement between the parties hereto and the Agreement may not be amended or modified except in writing duly executed by the party against whom such an amendment or modification is sought to be enforced. This Agreement shall govern the relationship between the District and Consultant on the Project.

17.2. Successors. the District and Consultant each hereby binds itself, its successors, assigns, and legal representatives to the other.

17.3. No Third-Party Beneficiaries. The rights and obligations in this Agreement inure solely to the parties hereto (their successors, assigns and legal representatives) and no other party will have any rights or obligations under or by virtue of this Agreement.

17.4. Applicable Law and Venue. This Agreement will be governed by and construed under the laws of the State of Florida. Venue for any action under state law arising under this Agreement will be in the Twentieth Judicial Circuit in and for Collier County Florida. Claims justiciable in federal court will be in the Middle District of Florida.

17.5. Notices. All notices or other communications permitted or required under this Agreement must be in writing and must be sent to the party at that party's address set forth below or at whatever other address the party specifies in writing. Notices must be personally delivered, sent by certified or registered mail, sent by overnight courier, postage prepaid, or sent to all email addresses listed below for each party.

If to the District:

_____/_____
Name Title
Immokalee Water and Sewer District
1020 Sanitation Road
Immokalee, Florida 34142
Email #1 _____
Email #2 _____
Email #3 _____

If to Consultant:

Email #1 _____
Email #2 _____
Email #3 _____

- 17.6. No Construction Against Drafting Party.** Each party acknowledges that it has carefully reviewed and understands this Agreement and has had an opportunity to review it with counsel of its choosing. This Agreement will not be construed more strongly against any party, regardless of who drafted or prepared it.
- 17.7. Communications.** The Consultant's communications with the District will be limited to the District's Executive Director and designated staff. Communications with the District's Board Members are prohibited, except with the prior permission of the District's Executive Director or at a duly noticed public board meeting. Any such prohibitive communications will be deemed to be a material breach of this Agreement by Consultant. This provision does not prohibit or limit contacts by or on behalf of the District Board Members with Consultant.
- 17.8. Interpretation.** All words used herein in the singular extend to and include the plural, and the use of any gender extends to and include all genders. Unless the context requires otherwise: The term "include" contemplates "including but not limited to." The terms "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 17.9. Headings.** The captions and headings herein are for convenience of reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions. Unless otherwise indicated, references to paragraphs include all subparts.
- 17.10. Time is of the Essence.** Time is of the essence of this Agreement and each of its provisions.
- 17.11. Contest of District Decisions.** The District will decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the Services called for hereunder, or the character, quality, amount, or value thereof. The decision of the District upon all such claims, questions or disputes will be final and binding if not contested by Consultant in a written notice delivered to the District within seven days after Consultant's receipt of written notice from the District concerning such decision. Consultant will not delay or postpone providing Services during the pendency of any dispute.

17.12. Survival. All express representations, indemnifications, or limitations made or given in this Agreement shall survive its completion or termination for any reason.

17.13. Severability. If any term of this Agreement is for any reason invalid or unenforceable, the rest of the Agreement remains fully valid and enforceable.

17.14. Independent Contractor. Consultant is retained by the District only for the purposes and to the extent set forth in this Agreement, and its relationship with the District during the term of this Agreement will be that of an independent contractor. Consultant will have the discretion, subject to the requirement that it perform the services required hereunder competently and professionally in accordance with the applicable professional standards and otherwise comply with the terms of this Agreement, to select the means and methods of performing such services. In this regard, Consultant will be fully responsible for the employment, direction, supervision, compensation, and control of all persons employed or retained by Consultant. Neither Consultant nor its Subconsultants will be considered as being an employee or agent of the District. Consultant is responsible for paying all income and employment taxes, and the District will not be responsible for collecting or paying withholding any state or federal taxes.

17.15. Waiver of Jury Trial. To the extent permitted by applicable law, Consultant and the District irrevocably waive any right to trial by jury in any legal proceeding arising out of or relating to this Agreement or any of the transactions contemplated by it. Neither the District nor Consultant or any successor thereof will seek a trial by jury in any action or proceeding (whether at law or in equity, whether direct or collateral, whether in contract or in tort) arising out of or related to this Agreement or the relationship created by it. Neither the District nor Consultant shall seek to consolidate any action or proceeding in which trial by jury has been waived with any other action or proceeding in which a jury trial cannot be or has not been waived.

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The parties have caused their duly qualified representatives to execute this Agreement on the dates set forth below.

Witnesses:

Signature

Print name

Print title

Date

Signature

Print name

Print title

Date

Attest:

Signature

Print name

Print title

Date

Approved as to legal sufficiency:

General Counsel

Consultant:

Firm Name

Signature

Print name

Print title

Date

Immokalee Water and Sewer District:

Signature

Print name

Print title

Date

Exhibit A
Scope of Services and Compensation

Exhibit B
Consultant's response to RFQ

Exhibit C
Consultant's Insurance Requirements

1. Workers Compensation. Coverage must be provided for all employees and subcontractors with statutory limits in compliance with the applicable state and federal laws. In addition, the policy must include the following Employer's Liability with a minimum limit per accident in accordance with statutory requirements.
 - a. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide District with thirty (30) days written notice of cancellation and/or restriction.
 - b. Consultant must be in compliance with all applicable state and federal workers' compensation laws.

2. Commercial or Comprehensive General Liability. Coverage must include:
 - a. \$1,000,000.00 combined limit per occurrence for bodily injury, personal injury and property damage.
 - b. Contractual coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement, broad form property damage, explosion, collapse, and underground hazard coverage and independent contractor's coverage.
 - c. Additional Insured. District must be specifically included as an additional insured.
 - d. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide District with thirty (30) days written notice of cancellation and/or restriction.

3. Comprehensive Automobile Liability. Coverage must be afforded on a form no more restricted than the latest edition of the Comprehensive Automobile Liability Policy filed by the Insurance Services Office and must include:
 - a. \$1,000,000.00 combined single limit per accident for bodily injury and property damage.
 - b. Owned Vehicle.
 - c. Hired and Non-Owned Vehicles.
 - d. Employee Non-Ownership.
 - e. Additional Insured. District is to be specifically included as additional insured.
 - f. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide District with thirty (30) days written notice of cancellation and/or restriction.

4. Watercraft/Aircraft Liability. If Consultant's provision of services involves utilization of watercraft or aircraft, watercraft and/or aircraft liability coverage must be provided to include bodily injury and property damage arising out of ownership, maintenance or use of any watercraft or aircraft, including owned, non-owned and hired.

5. Professional Liability. Coverage must include:
 - a. Minimum limit of \$1,000,000.00 per occurrence or claim of malpractice, negligence, error and omissions.
 - b. Minimum limit of \$1,000,000.00 in the aggregate for claims of malpractice, negligence, error and omissions.
 - c. If a claims made form of coverage is provided, the retroactive date of coverage

shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts.

- d. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide District with thirty (30) days written notice of cancellation and/or restriction.
- e. Professional liability insurance shall continue in force until the end of the fifth calendar year following the calendar year in which the Agreement is terminated. The current professional liability insurance policy, if not renewed, shall provide for an extended reporting period on the existing policy through said fifth calendar year.

6. Additional Requirements.

- a. The required Certificates of Insurance not only shall name types of policies provided but also shall refer specifically to the Agreement.
- b. Insurance coverage shall be placed with insurers or self-insurance funds, satisfactory to the District, licensed to do business in the State of Florida and with a resident agent designated for the service of process. Consultant shall provide the District with financial information concerning any self-insurance fund insuring Consultant. At the District's option, self-insurance fund financial information may be waived.
- c. All the policies of insurance so required of Consultant, except workers compensation and professional liability, shall be endorsed to include as additional insureds: the District, its directors, officers, employees and agents. Such insurance policies shall include or be endorsed to include a cross liability clause so the additional insureds will be treated as if a separate policy were in existence and issued to them. If the additional insureds have other insurance, which might be applicable to any loss, the insurance required of Consultant shall be considered primary, and all other insurance shall be considered excess. The cross liability clause does not increase the limits of liability or aggregate limits of the policy.
- d. Deductible and self-insured retention amounts shall be subject to approval by the District, which approval shall not be unreasonably withheld. Consultant is responsible for the amount of any deductibles or self-insured retentions.
- e. Approval of the insurance by the District shall not relieve or decrease the liability of Consultant hereunder. Consultant acknowledges and agrees the District does not in any way represent the insurance (or the limits of insurance) specified in this Section 14 is sufficient or adequate to protect Consultant's interests or liabilities, but are merely minimums.
- f. All of the policies of insurance required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed, or renewal refused, until at least thirty (30) days prior written notice has been given to the District and Consultant by certified mail. Consultant shall give notice to the District within twenty-four (24) hours of any oral or written notice of adverse change, non-renewal or cancellation. If the initial insurance expires prior to completion of the work, renewal Certificates of Insurance shall be

furnished thirty (30) days prior to the date of their expiration.

- g. All insurance required hereunder shall remain in full force and effect until final payment and at all times thereafter when Consultant may be observing the correction, removal or replacement of defective work.
- h. Professional liability insurance shall continue in force until the end of the fifth calendar year following the calendar year in which the Agreement is terminated. The current professional liability insurance policy, if not renewed, shall provide for an extended reporting period on the existing policy through said fifth calendar year.
- i. Consultant shall, upon request by the District, deliver to the District a copy of each insurance policy purchased by Consultant.
- j. All policies, except for workers' compensation and professional liability, shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of subrogation against the District, its consultants, directors, officers, employees, representatives or agents. Nothing contained in these insurance requirements is to be construed as limiting the liability of Consultant or Consultant's insurance carriers.
- k. The commercial (occurrence form) or comprehensive general liability (occurrence form) insurance shall include contractual liability insurance applicable to all of the Consultant's obligations under the Agreement, including any indemnity or hold harmless provision.
- l. Consultant shall ensure that all Subconsultants procure and maintain, until the completion of that party's Services, insurance of the types and in the coverage amounts required to be carried by Consultant in this Agreement unless the District agrees in writing, in advance of Consultant's employment of any such Subconsultant, to other types of coverage and/or lower coverage amounts. Provided however, that professional liability insurance shall not be required under this Agreement for Subconsultants, unless such party is a licensed professional. The preceding sentence does not preclude Consultant from requiring such insurance. Consultant is responsible for ensuring that all Subconsultants comply with all the insurance requirements contained herein relative to each such party.

Exhibit D
Certificate of Insurance

Exhibit E
District Resolution 2015-04 adopting Travel Policy

RESOLUTION 15-04

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE
IMMOKALEE WATER AND SEWER DISTRICT ADOPTING A TRAVEL
POLICY FOR EMPLOYEES AND BOARD OF COMMISSIONERS; AND
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Board of Commissioners of the IMMOKALEE WATER AND SEWER DISTRICT (hereinafter referred to as the "Board") is empowered to construct, operate and maintain a Water and Sewer System (the "System") as described in Florida Statute Chapter 78-494, Laws of Florida, which was amended by chapters 93-366, 94-489, and 95-492, Laws of Florida, was codified, reenacted, amended, and repealed as Chapter No. 98-495, and was amended as Chapter 2005-298.

WHEREAS, the Board is authorized and empowered to make rules and regulations for its own government and proceedings; and

WHEREAS, the Board wishes to adopt a Travel Policy, in order to set forth duties, responsibilities and procedures;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE IMMOKALEE WATER AND SEWER DISTRICT, in public meeting assembled that the following Travel Policy be implemented.

IMMOKALEE WATER & SEWER DISTRICT TRAVEL AND TRAINING EXPENSE POLICY

PURPOSE

The purpose of this policy is to set forth the policy and procedures for travel and training advances and expense reconciliation for the Board of Commissioners and all District staff.

POLICY

This policy establishes guidelines for allowable expenses and the procedure for accurate and timely reconciliation of travel and training expenses.

PROCEDURES

General guidelines for travel and training expenses:

Classes of Travel:

- (a) Class A travel—Continuous travel of 24 hours or more away from official headquarters.
- (b) Class B travel—Continuous travel of less than 24 hours which involves overnight absence from official headquarters.
- (c) Class C travel—Travel for short or day trips where the traveler is not away from his or her official headquarters overnight.
- (d) A traveler shall not be reimbursed on a per diem basis for Class C travel, but shall receive subsistence as provided in this section, which allowance for meals shall be based on the following schedule:
 - 1. Breakfast—When travel begins before 6 a.m. and extends beyond 8 a.m. - \$6
 - 2. Lunch—When travel begins before 12 noon and extends beyond 2 p.m. - \$11
 - 3. Dinner—When travel begins before 6 p.m. and extends beyond 8 p.m., or when travel occurs during nighttime hours due to special assignment. -\$19

The travel day for Class A travel shall be a calendar day (midnight to midnight). The travel day for Class B travel shall begin at the same time as the travel period. Class A and Class B travel shall include any assignment on official business outside of regular office hours and away from regular places of employment when it is considered reasonable and necessary to stay overnight and for which travel expenses are approved. The traveler will be eligible for eighty (\$80) dollars per diem; or if actual expenses exceed \$80, the amounts permitted in paragraph (d) for subsistence, plus actual expenses for lodging at a single-occupancy rate to be substantiated by paid invoices.

1. Travel and training expenses shall reflect correct and complete estimated expenditures (registration fees, lodging, transportation, etc.) that are expected to be incurred by the requesting party and shall be reported to the Accounts Payable Clerk using the “School/Training Registration Form ,” with documentation attached. The travel form will need to be updated when there is a difference between the advance and actual expenses.
2. No advance shall be allowed where those costs are incurred and accounted by another person (*i.e.*, two persons traveling in one vehicle cannot claim duplicate mileage/travel costs).
3. Subsistence shall be reduced for any meals or lodging included in the conference, seminar or meeting registration.
4. No advance shall be allowed for the spouse or any other traveling companion of a Supervisor or District employee.
5. All travel expenses incurred by a Commissioner must be approved in advance by the Board of Commissioners. The Executive Director’s travel expenses must be approved by the Chairman of the Board of Commissioners.
6. No allowance shall be made for meals when travel is confined to the city or town of the official headquarters or immediate vicinity. The conference or seminar must be at least fifty (50) miles from the District headquarters in order to qualify for hotel expenses, unless previously approved by the Executive Director.

PREPARATION OF “SCHOOL/TRAINING REGISTRATION FORM”

1. All columns of the “School/Training Registration Form” must be completed. If an advance was received, a copy of the check request and back up must be attached and agreed to the amounts reflected as prepaid.

Note: Vendor name must be included on the “School/ Advance/Expense Reconciliation Form” for registration fees, lodging and commercial fare transportation.
2. Original receipts must be attached to the “School/Training Registration Form.”
3. A photocopy of the program or agenda of the conference, seminar or meeting itemizing meals, lodging or fees must be attached to the “School/Training Registration Form” when available.
4. The traveler must submit an expense reconciliation within a reasonable time of return, generally seven (7) working days. If a refund is due to the District, a check should be attached to the “School/Training Registration Form.” This will be processed through the current billing program as a miscellaneous payment. The travel form will need to be revised and completed with necessary signatures.

5. The Accounts Payable Clerk will verify receipts and expenses to District guidelines and will file the form with the original travel request in the Accounts Payable files.
6. The Board allocates a specific amount in the Fiscal Year Budget for each employee for travel and training. If an employee goes over the amount budgeted for that year, they can use money from another employee in their Department, if that employee agrees, and if they have money available. It requires approval from both employees, the Department Supervisor on the Purchase Order, and the Executive Director on the travel form.

TRAVEL ADVANCE CHECK

1. A check request must be submitted at least 3-4 weeks prior to the date required. Support for estimated expenses must be provided to substantiate the request.
2. A separate request must be used for each traveler, even though the traveler may be joined by one or more District personnel. A Purchase Order may include more than one traveler.
3. The Accounts Payable Clerk shall issue a check to the traveler and retain a copy of the check request and supporting documentation in order to compare to actual expenditures. If a change is made, for example, a traveler doesn't go, or goes for less days than originally scheduled, they will need to reconcile with the Accounts Payable Clerk, and issue a check for the difference.

GUIDELINES FOR REASONABLE EXPENSES

1. When possible, the District should be billed directly for travel expenses (i.e., lodging, registration). A copy of the "Certificate of Tax Exemption" should be submitted with the reservation, thus entitling the District to sales tax exemption.
Actual hotel invoices must be submitted (not credit card slips). Advances for payments made directly by a Commissioner or employee disallow the sales tax exemption.
Department Supervisors should process requests for payment early enough to obtain available discounts, generally 3-4 weeks before the seminar.

Note: The District's "Certificate of Tax Exemption" is only applicable in the State of Florida.
2. No entertainment or alcoholic beverage expenses shall be reimbursed.
3. The traveler will be eligible for the map mileage determined by the provided google or yahoo maps, as well as vicinity mileage of 5 miles per day for lunch and/or dinner, in the event that they are not staying at the hotel where the conference or seminar is held.

TRANSPORTATION

1. **Mileage** - The rate of advance for the use of a personal car will be that allowed by Florida Statute 112.061 for the most current year. (Currently 44.5 cents per mile.)
2. **District Vehicle** - Receipts for gasoline purchases must be provided and attached to the Purchase Order.
3. **Rental Car** - A copy of the lease agreement must be provided and attached to the Purchase Order.
4. **Tolls/Parking Facilities** - Receipts must be provided for attachment to the Purchase Order.

This resolution shall become effective on May 20, 2015.

PASSED AND DULY ADOPTED by the Board of Commissioners of the IMMOKALEE WATER AND SEWER DISTRICT, this 20th day of May 2015.

BOARD OF COMMISSIONERS
IMMOKALEE WATER AND SEWER DISTRICT

BY: _____
Anne Goodnight
Chairman

BY: _____
Bonnie Keen
Secretary