

## Agreement for Engineering Services

This Agreement for Professional Engineering Services is made by and between **South Walton Fire District**, (“District” or “Owner”) an independent special district operating under the authority of Chapters 189 and 191, Florida Statutes, and \_\_\_\_\_ (“Consultant”), a \_\_\_\_\_ corporation in the State of \_\_\_\_\_ and authorized to do business in the State of Florida.

### **Background**

- A. The District desires to retain Consultant to provide the services described in the Scope of Services in **Exhibit A**.
- B. The District has selected Consultant in accordance with a competitive procurement process as described in Section 287.055, Florida Statutes and applicable Law.
- C. Consultant desires to provide the professional services required by the District as hereinafter defined.

### **Terms and Conditions**

1. **Background and Exhibits.** The background provided above and the following exhibits which are attached, are part of this Agreement. The Request for Proposals No. 2024-001 (the RFP) and the Consultant’s response to it on file with the District are also part of this Agreement.

- Exhibit A – Scope of Services
- Exhibit B – Compensation (including rates for professionals)
- Exhibit C – E-Verify Affidavit
- Exhibit D – Human Trafficking Affidavit
- Exhibit E – Evidence of Required Insurance

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

- 2.1. Agreement – This written document, as it may be amended from time to time.
- 2.2. Law – All laws, statutes, rules, regulations, ordinances, codes, and/or orders applicable to the Services.
- 2.3. Project – The project described in the **Exhibit A**.

- 2.4. 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.
- 2.5. Additional Services – As described in paragraph 11 of this Agreement, any services that are authorized by the District in a written amendment after this Agreement is executed.
- 2.6. 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.

**3. 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 for three years unless it is sooner terminated in accordance with the procedures set forth herein. The parties may extend this Agreement for two additional one-year terms by executing a written amendment for each extension.

**4. Compensation.**

**4.1. Compensation for Services and Expenses.** For the timely and proper performance of the Services, the District shall pay Consultant the compensation set forth in **Exhibit B**. The District shall 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 shall honor a claim for refund by the District if the reimbursement is more than the limits imposed in Section 112.061, Florida Statutes.

**4.2. Accuracy of Rates and Unit Costs.** Consultant hereby certifies that the wage rates and other unit costs supporting the compensation are accurate, complete, and current upon the Effective Date of this Agreement. The District will adjust any compensation to be paid under this Agreement, both as set forth in **Exhibit B** or for any Additional Services authorized in writing by the District, to exclude any significant sums the District determines were increased due to inaccurate, incomplete, or noncurrent wage rates or other unit costs. The District may make any such adjustment to compensation within one year of the expiration or termination of this Agreement.

**5. Consultant’s Representations and Warranties.** Consultant represents and warrants to the District as follows:

**5.1. Conducting Business in Florida.** Consultant is duly authorized to conduct business in the State of Florida.

**5.2. Authority.** 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.

- 5.3. Accuracy of Response.** All the information provided by Consultant in response to the RFP was true and accurate when Consultant submitted it to the District and has not materially changed as of the Effective Date of this Agreement.
- 5.4. 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.
- 5.5. 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.
- 5.6. 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.
- 5.7. 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.
- 5.8. Scrutinized Companies.** Consultant certifies that it is in compliance with section 287.135, Florida Statutes, and agrees that the District may terminate this contract if Consultant is found to be out of compliance with it. Consultant certifies that it 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 also 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 created pursuant to section 215.473, Florida Statutes and (2) it is not engaged in business operations in Cuba or Syria. Consultant acknowledges the remedies provided in subsection 287.135(5), Florida Statutes, against anyone found to have submitted a false certification including civil penalties.
- 5.9. Public Entity Crimes.** Consultant understands the requirements of sections 287.132 and 287.133, Florida Statutes. Neither Consultant nor any of its affiliates are currently on the convicted vendor list for public entity crimes maintained by the Florida Department of Management Services and neither of them has been on the convicted vendor list within the past 36 months. 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.

**5.10. 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 shall 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 the contract. Consultant has provided an E-Verify affidavit attached as **Exhibit C**.

**5.11. Affidavit concerning Human Trafficking.** Consultant has complied with section 787.06, Florida Statutes and has provided an affidavit attached as **Exhibit D**.

**5.12. 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. All such contract adjustments must be made within 1 year following the end of the contract.

**5.13. No Contingent Fees.** As required by subsection 287.055(6), Florida Statutes, Consultant represents and warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the engineer (or registered surveyor and mapper, or professional architect, 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 engineer (or registered surveyor and mapper or professional architect, 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 Owner 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.

## **6. Consultant's Responsibilities.**

**6.1. Performance of Services.** Consultant shall perform the Services upon the terms and conditions set forth in this Agreement.

**6.2. Changes.** Consultant shall immediately notify the District if anything changes

regarding Consultant's representations and warranties contained in this Agreement.

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

**6.4. 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 shall be available to the Project on a full-time basis, except as otherwise expressly approved in writing by the District. Such key personnel are as follows:

\_\_\_\_\_  
\_\_\_\_\_

**6.5. 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.

**6.6. Consultant's Representative.** Consultant shall 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.

**6.7. 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.

**6.8. Status Reports and Inspections.** Consultant shall routinely and continuously advise the District of the status of the Project, and the Services 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.

**6.9. Coordination with Others.** Consultant shall cooperate with other architects, engineers, consultants, construction contractors, and suppliers retained by the District and assist the District with the coordination of those various projects, work, and services. Consultant shall review all information and attend all meetings as shall be reasonably necessary to accomplish the coordination of those various projects, work,

and services, and eliminate any problems where the projects, work or services interface with the Project or Services.

- 6.10. 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.
- 6.11. 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 shall 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.
- 6.12. 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.
- 6.13. No Conflicts of Interest.** Consultant 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.

## **7. District's Responsibilities.**

- 7.1. Applications for Payment.** The District shall 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 shall inform Consultant of the District's decisions or otherwise take appropriate action within a reasonable time to not unreasonably delay the Services of Consultant.
- 7.2. District's Representative.** The District shall 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.
- 7.3. Existing information.** Upon Consultant's specific request, the District shall 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 otherwise in writing on such item.

## **8. Change of Plan.**

**8.1. 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 shall not be deemed a default or breach of this Agreement. Any such termination, suspension, or amendment shall be in writing.

**8.2. 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 shall be extended for the period of the suspension.

## **9. Termination of Agreement.**

**9.1. 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 shall 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 shall 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 shall be effective upon delivery of written notice to Consultant.

**9.2. Termination for Cause.** Consultant shall be considered 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 the Work Order Agreement, 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 shall 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.

**9.3. Violation by District.** 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 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 remedy against the District will be limited to payment for services rendered before the effective date of Consultant's termination.

**9.4. Notice and Cure.** Despite the provisions of paragraphs 9.2 and 9.3, 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.

**9.5. Remedies if no Default.** If, after termination of this Agreement as provided for in paragraph 9.2 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 9.2, then such termination for cause shall be deemed to be a termination for convenience as described in paragraph 9.1 and Consultant's sole and exclusive rights and remedies against the District shall be the same as and limited to those afforded Consultant under paragraph 9.1 above.

**9.6. 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.

## **10. Waiver.**

**10.1. 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 shall be deemed to be an acceptance of defective or incomplete Services or waiver of any of the District's rights against Consultant.

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

## **11. Additional Services.**

**11.1. 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 B**.

- 11.2. 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 shall not constitute Additional Services unless the delays were caused by circumstances beyond the control and fault of Consultant or its agents, employees and Subconsultants.
- 11.3. 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 to 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.
- 11.4. Audit.** If the District requires Consultant to provide it with an audit of its Project costs, such audit will not be considered Additional Services.
- 12. Assignment and Subconsultants.** Consultant shall 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 shall 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 shall be in writing, with a copy of such agreements to be provided to the District upon its request for same.
- 13. 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.
- 14. Prompt Payment Act.** The District and Consultant will be governed by the Local Government Prompt Payment Act set forth in Part VII of Chapter 218, Florida Statutes.
- 15. Non-appropriation.** The District's obligation to pay under this contract is contingent upon

an annual budget appropriation by its board. The District's Board of Fire Commissioners may terminate or cancel this contract either in whole or in part at the end of each fiscal year period, without penalty, if it does not budget the required funds. This provision is consistent with section 287.0582, Florida Statutes.

**16. Consultant's Insurance Requirements and Minimum Limits.**

**16.1. Insurance Required.** Consultant shall purchase and maintain the following specific coverages and minimum limits. All limits shall be per occurrence and in the aggregate combined single limit for all liability, except professional liability coverage which shall be on a claims made basis, with following forms excess or umbrella insurance making up the difference between the policy limits of underlying policies and the total amount of coverage required. **Exhibit E** contains evidence that Consultant has the insurance required under this Agreement.

**16.2. Liability Insurance**

**16.2.1. General Liability**

- a) Consultant shall purchase and maintain such commercial (occurrence form) or comprehensive general liability, automobile policies and other appropriate insurance for the services being performed and furnished hereunder which shall provide protection from claims set forth below which may arise out of, or result from Consultant's performance and furnishing of the services and Consultant's other obligations under the Agreement and Assignments issued hereunder.
- b) Minimum limits of \$1,000,000 per occurrence for all liability must be provided, with excess or umbrella insurance making up the difference, if any, between the policy limits of underlying policies (including employers liability required in the Worker's Compensation coverage section) and \$2,000,000 per occurrence of the total amount of coverage required. Limits of coverage shall not be less than the following for Bodily Injury, Property Damage and Personal Injury, Combined Single Limits:

General Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Personal Injury/Advertising Injury	\$1,000,000
Products Comp/Operations Aggregate	\$1,000,000

- c) Consultant liability insurance shall include contractual liability coverage sufficient to cover Consultant indemnification obligations under this Agreement. Consultant agrees to pay on behalf of the District, and to provide and pay for a defense for all claims covered by Consultant obligations under the

indemnification provisions.

**16.2.2.** Excess or Umbrella Liability. Umbrella liability insurance is preferred, but an Excess Liability equivalent may be allowed. Whichever type of coverage is provided, it shall not be more restrictive than the underlying insurance policy coverages.

**16.2.3.** Automobile Vehicle Liability.

- a) Coverage shall be maintained as to the business use of all its owned, non- owned, leased or hired vehicles with limits of not less than: Bodily Injury & Property Damage Liability \$500,000, Combined Single Limit Each Accident.
- b) If Consultant has no owned, non-owned, leased or hired vehicles, a letter from Consultant so stating must be included with the Certificate of Insurance.

**16.2.4.** 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.

**16.3. Workers Compensation Coverage.** Consultant shall purchase and maintain workers' compensation insurance for all workers' compensation obligations imposed by state law and employers' liability limits of at least \$100,000 each accident and \$100,000 each employee, \$500,000 policy limit for disease.

- a) Consultant and its Subconsultants shall purchase workers' compensation insurance for all its employees regardless of the number of employees they have and regardless of any other exemptions. Florida law permits employers who may be exempt from purchase of coverage to waive their exemptions and purchase the coverage voluntarily. The District requires Consultant and all the Subconsultants to voluntarily purchase this coverage.
- b) Consultant and the Subconsultants shall also purchase any other coverages required by law for the benefit of employees.

**16.4. Professional Liability/Malpractice/Errors Or Omissions Insurance.**

**16.4.1.** Consultant shall purchase and maintain professional liability or malpractice or errors or omissions insurance with minimum limits of \$1,000,000 per occurrence.

**16.4.2.** 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.

**16.4.3.** To the extent commercially available, coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

**16.5. Additional Requirements.**

**16.5.1.** Consultant shall not commence or continue to perform any Services unless Consultant has in full force and effect all required insurance, and until Consultant has delivered to the District all insurance certificates required hereunder evidencing the specific insurance coverage required, nor shall any payment for Services performed become due and payable until Consultant has delivered all such certificates to the District. Consultant shall not permit any Subconsultant to perform any portion of the Services unless such Subconsultant has complied with the insurance requirements, including the workers' compensation and general liability insurance requirements, contained herein.

**16.5.2.** 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. All insurers shall have an "A" policyholder's rating and a financial rating of at least Class IX in accordance with the most current Best's rating. Consultant shall provide the District with financial information concerning any self-insurance fund insuring Consultant. At the District's option, a Best's rating or Self-Insurance Fund financial information may be waived.

**16.5.3.** As evidence of the insurance coverages required by this Agreement, Consultant shall provide the District certificates of insurance evidencing the specific policies issued, the limits of coverage afforded, and the specific endorsement provided, all in accordance with the form attached hereto as Schedule "E" and made a part hereof. An ACORD form meeting these requirements and as shown in Schedule "E" may be substituted with the consent of the District.

**16.5.4.** All the policies of insurance so required of Consultant, except professional liability and workers' compensation insurance, shall be endorsed to include as additional insureds: the District, its directors,

officers, employees, representatives, agents, and volunteers. 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. 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. The cross-liability clause does not increase the limits of liability or aggregate limits of the policy.

- 16.5.5.** 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.
- 16.5.6.** Approval of the insurance by the District shall not relieve or decrease the liability of Consultant hereunder. Further, Consultant acknowledges that any such acceptance by the District shall not be deemed to be an acknowledgement that Consultant has satisfied its insurance obligations hereunder. Consultant acknowledges and agrees that the District does not in any way represent that the insurance (or the limits of insurance) specified in this paragraph is sufficient or adequate to protect Consultant's interests or liabilities, but are merely minimums.
- 16.5.7.** Should any coverage approach expiration during the period in which it is to remain in full force and effect, it shall be renewed by Consultant prior to its expiration, and a certificate of insurance again filed with the District at least fourteen (14) days prior to coverage renewal.
- 16.5.8.** 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 canceled, 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 (24) hours of any oral or written notice of adverse change, non-renewal, or cancellation.
- 16.5.9.** Except as provided below in paragraph 16.5.10 for professional liability insurance, all insurance required hereunder shall remain in full force and effect throughout the entire term of this Agreement.
- 16.5.10.** Professional liability insurance shall continue in force until the end of one calendar year following the calendar year in which the completion of the Project is estimated to occur under the Project Schedule. The professional liability insurance policy shall be endorsed to provide for renewals through one (1) calendar year, or if the current policy is not renewed, to provide for an extended reporting period on the existing

policy through one calendar year.

**16.5.11.** Consultant shall, upon request by the District, deliver to the District a copy of each insurance policy purchased by Consultant as required in this Agreement.

**16.5.12.** 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, representative or agents. Nothing contained in these insurance requirements is to be construed as limiting the liability of Consultant or Consultant's insurance carriers. Further, Consultant hereby waives its right of recovery against the District with respect to any matter covered by any insurance maintained by Consultant.

**17. Insurance – General Requirements.**

**17.1. Protection from Claims.** Consultant shall purchase and maintain such commercial (occurrence form) or comprehensive general liability (occurrence form), professional liability, and other appropriate insurance, with respect to the Services required hereunder, that will provide protection from the types of claims set forth below which may arise out of or result from Consultant's performance and furnishing of the Services, whether it is to be performed by Consultant or the Subconsultants:

**17.1.1.** Claims under workers' compensation, disability benefits and other similar employee benefit acts;

**17.1.2.** Claims for employer's liability, including those arising under Title VII of the Civil Rights Act of 1964 and the Florida Civil Rights Act;

**17.1.3.** Claims for damages because of bodily injury, sickness or disease, or death to any person other than Consultant's employee;

**17.1.4.** Claims for damages insured by personal injury liability coverage which are sustained by any person as a result of a negligent or wrongful act or omission of Consultant, or any person employed by or subcontracted to Consultant;

**17.1.5.** Claims for damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;

**17.1.6.** Claims for damages because of bodily injury or death of any person, or property damage arising out of the Consultant ownership, maintenance, operation, use or loading and unloading of any owned, hired, or non-

owned motor vehicle used in connection with the Services, including employee non-Consultant ownership use; and

**17.1.7.** Claims for damages because of bodily injury or death of any person or property damage arising out of the Consultant ownership, maintenance, operation, use or loading and unloading of any owned, hired, or non-owned aircraft and watercraft used in connection with the Services, including employee non-Consultant ownership use.

**17.2. Coverage.** The insurance required herein shall include the specific coverage and be written for the limits of liability and coverage provided herein or required by Law, whichever is greater. Where appropriate for the Services being performed, the commercial (occurrence form) or comprehensive general liability (occurrence form) insurance shall also include broad form property damage, explosion, collapse, and underground hazard coverage and independent contractor's coverage.

**17.3. Contractual Liability Insurance.** The commercial (occurrence form) or comprehensive general liability (occurrence form) insurance shall include contractual liability insurance applicable to all of Consultant's obligations under this Agreement that are covered by such insurance.

**17.4. Subconsultants.** 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 shall be responsible for ensuring that all Subconsultants comply with all the insurance requirements contained herein relative to each such party.

**18. Standard of Performance.** Consultant shall perform and complete the Services in a timely manner and in accordance with the standard of care, skill, and diligence customarily provided by professionals with expertise and experience in the type of Services to be provided hereunder, and in accordance with sound professional principles and practices. Consultant acknowledges that it 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. Consultant shall promote the best interest of the District and assume towards the District a relationship of the highest trust, confidence, and fair dealing.

**19. Project Documents and Data.**

**19.1.** 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, shall be made available to the other party to this Agreement without expense to such other party. Additional copies shall be made available at the expense of the requesting party.

- 19.2.** 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 shall 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 shall 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.
- 19.3.** All final plans and documents that are required by Florida Law to be endorsed and are prepared by Consultant in connection with the Services shall 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.
- 19.4.** 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 shall 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 shall 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.
- 19.5.** 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 shall 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.
- 20. 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, shall 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.

## **21. Public Records.**

**21.1. 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 shall 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.

**21.2. 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 DISTRICT’S PUBLIC RECORDS CUSTODIAN, AT [RECORDS@SWFD.ORG](mailto:RECORDS@SWFD.ORG), OR BY MAIL AT THE FIRE DISTRICT’S ADMINISTRATIVE OFFICES LOCATED AT 911 N. COUNTY HIGHWAY 393 SANTA ROSA BEACH, FL 32459 OR BY PHONE AT 850-267-1298.**

**21.3. 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.

**21.4. Exempt Records.** Consultant shall ensure that 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.

## **22. Miscellaneous Provisions.**

- 22.1. Entire Agreement.** This written document shall constitute the entire agreement between the parties hereto and the Agreement shall 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.
- 22.2. Successors.** the District and Consultant each hereby binds itself, its successors, assigns, and legal representatives to the other.
- 22.3. No Third-Party Beneficiaries.** The rights and obligations in this Agreement shall inure solely to the parties hereto (their successors, assigns and legal representatives) and no other party shall have any rights or obligations under or by virtue of this Agreement.
- 22.4. 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 First Judicial Circuit in and for Walton County Florida. Venue for any action under federal law will be in the United States District Court for the Northern District of Florida.
- 22.5. Notice.** 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.

**As to the District:**

South Walton Fire District  
 911 North County Highway 393  
 Santa Rosa Beach, FL 32459

Attention: Name: Daniel LaTour Title: Assistant Chief

Email #1: DLATOUR@SWFD.ORG  
 Email #2: RCRAWFORD@SWFD.ORG  
 Email #3: RECORDS@SWFD.ORG

**As to the Consultant:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Attention: Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email #1: \_\_\_\_\_

Email #2: \_\_\_\_\_  
Email #3: \_\_\_\_\_

- 22.6. 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 shall not be construed more strongly against any party, regardless of who drafted or prepared it.
- 22.7. Communications.** The Consultant's communications with the District must be limited to the District's Fire Chief and staff designated by the Fire Chief. Communications with the District's Board Members are prohibited, except with the prior permission of the District's Fire Chief or at a duly noticed public board meeting. Any such prohibitive communications shall 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.
- 22.8. Interpretation.** All words used herein in the singular shall extend to and include the plural, and the use of any gender shall extend 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.
- 22.9. 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.
- 22.10. Time is of the Essence.** Time is of the essence of this Agreement and each of its provisions.
- 22.11. No Waiver.** Unless expressly stated in writing, no action taken by a party to this Agreement shall be considered a waiver by such party of compliance with any representations, warranty, duty, or responsibility under this Agreement.
- 22.12. Contest of District Decisions.** The District shall 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 shall 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.
- 22.13. Survival.** All express representations, indemnifications, or limitations made or given in this Agreement shall survive its completion or termination for any

reason.

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

**22.15. 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 shall, during the term of this Agreement, be that of an independent contractor. Consultant shall 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 shall be fully responsible for the employment, direction, supervision, compensation, and control of all persons employed or retained by Consultant. Neither Consultant nor Consultant's contractors, subcontractors, consultants, subconsultants, suppliers, experts or other persons or organizations retained or utilized by Consultant for the services required hereunder ("Subconsultants") shall be considered by reason of the provisions of this Agreement or otherwise as being an employee or agent of the District. Consultant shall comply with all workers' compensation, employers' liability and other Federal, State and county and municipal laws, ordinances and regulations required of an employer performing services as herein contemplated. Provided, however, in no event shall the District be obligated to pay Consultant any overtime or other premium pay compensation unless such overtime or premium compensation was expressly approved in writing and in advance by the District. Furthermore, Consultant is responsible for paying all income and employment taxes, and the District shall not be responsible for collecting or paying withholding, FUTA, FICA or any other state or federal taxes.

**22.16. 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.

The parties have caused their duly qualified representatives to execute this Agreement on the

*– Signature page follows –*



dates set forth below.

**Consultant:**

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print title

\_\_\_\_\_  
Date

**South Walton Fire District:**

**Attest:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print title

\_\_\_\_\_  
Date

**Approved as to Form:**

\_\_\_\_\_  
General Counsel

**Exhibit A**  
**Scope of Services**

**Exhibit B**  
**Compensation**

**1.0 Compensation For Services**

District shall pay Consultant and Consultant agrees to accept as full compensation for the Services the compensation as provided in **Table B-1**, which is attached hereto and made a part hereof.

**2.0 Contract Limit**

Payment under this Agreement shall not exceed the amount shown in **Table B-1** without approval from the District in the form of a written amendment to this Agreement.

**3.0 Compensation for Additional Services**

Compensation for performance of Additional Services under this Agreement, as well as the specific services to be performed and time of completion, must be described in a written amendment to this Agreement in advance of performance of the Additional Services. Failure to execute an amendment as provided above may result in non-payment for the work.

**4.0 Invoices**

Consultant shall submit invoices to the District monthly for all Services accomplished during the previous calendar month. Monthly invoices shall include separately listed charges for all portions of the Services for which compensation applies, including fees for Subconsultants and reimbursable expenses and costs.



**Exhibit C**

**E-Verify Affidavit**

I hereby certify that \_\_\_\_\_ (Contractor) does not employ, contract with, or subcontract with any unauthorized aliens, and is otherwise in full compliance with Section 448.095, Florida Statutes.

As required by subsection 448.095(5)(a), Florida Statutes, Contractor 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), Florida Statutes, Contractor will require any subcontractors to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor will maintain a copy of such affidavit for the duration of the contract.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title, Company name

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ (date) by \_\_\_\_\_ (name of officer or Contractor, title of officer or Contractor) of \_\_\_\_\_ (name of Contractor company acknowledging), a \_\_\_\_\_ (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Name typed, printed or stamped

My Commission Expires: \_\_\_\_\_

**Exhibit D**

**HUMAN TRAFFICKING AFFIDAVIT  
SECTION 787.06, FLORIDA STATUTES**

Before me, the undersigned authority, personally appeared \_\_\_\_\_  
\_\_\_\_\_, whom after being duly sworn, deposes and states:

(Affiant)

1. My name is \_\_\_\_\_ and I am over eighteen years of age.  
The following information is given from my own personal knowledge.

2. I am an officer or representative with \_\_\_\_\_, a  
non-governmental entity. I am authorized to provide this affidavit on behalf of \_\_\_\_\_  
\_\_\_\_\_.

3. The non-governmental entity, \_\_\_\_\_  
\_\_\_\_\_, does not use coercion for labor or services as defined in Section 787.06,  
Florida Statutes.

FURTHER AFFIANT SAYETH NOT.

\_\_\_\_\_, 20\_\_ \_\_\_\_\_  
(Affiant)

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me by means of  physical presence or  online notarization,  
this \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ on  
behalf of \_\_\_\_\_  
\_\_\_\_\_, who is personally known to me or has produced \_\_\_\_\_  
as identification.

\_\_\_\_\_  
Notary Public  
Name (Printed) \_\_\_\_\_

My commission expires \_\_\_\_\_.  
(Printed typed or stamped Commissioned name of Notary Public)