

## OWNER'S REPRESENTATIVE AGREEMENT

THIS OWNER'S REPRESENTATIVE AGREEMENT ("Agreement") is entered into on this 20<sup>th</sup> day of November, 2020, (the "Effective Date") by and between CITY OF DELRAY BEACH ("Owner"), a Florida municipal corporation with an address of 100 N.W. 1st Avenue, Delray Beach, FL 33444, and CDM SMITH INC., a Massachusetts corporation authorized to do business in Florida ("Owner's Representative").

### BACKGROUND

- A. The Owner intends to develop the project described in **Exhibit A** (the "Project").
- B. The Owner desires the services of the Owner's Representative, which has special expertise and experience in development involving areas relevant to the Project.
- C. The Owner desires to retain the Owner's Representative to provide services in the organization, coordination, management, and administration required for the development of the Project as listed herein and set forth in **Exhibit C**.

In consideration of the foregoing and the mutual covenants contained in this Agreement, the Owner and the Owner's Representative agree as follows:

### AGREEMENT

1. **Term of Agreement.** This Agreement is effective on the Effective Date and shall remain in effect until all obligations set forth in this Agreement have been satisfactorily fulfilled (the "Term"). Owner's Representative shall have a continuing obligation, after the Term, to comply with any provision of this Agreement that is intended to survive the completion, expiration or termination of this Agreement and/or the Project, including but not limited to turnover, closeout, commissioning and State audit compliance. OWNER'S REPRESENTATIVE UNDERSTANDS THAT NO WORK SHOULD BEGIN UNDER THIS AGREEMENT UNTIL ALL REQUIRED SIGNATURES ON THIS AGREEMENT HAVE BEEN OBTAINED. ANY WORK PERFORMED BY OWNER'S REPRESENTATIVE PRIOR TO SUCH TIME SHALL BE CONSIDERED AS HAVING BEEN PERFORMED AT OWNER'S REPRESENTATIVE'S OWN RISK AND AS A VOLUNTEER.

2. **Scope of Services.**

- 2.1 Pursuant to the terms and conditions of this Agreement, Owner hereby retains Owner's Representative to perform, and Owner's Representative shall perform and provide sufficient organization, personnel and management to perform, the services specified in this Agreement (the "Work") as set forth in **Exhibit C** attached hereto consistent with: (i) this Agreement; (ii) the instructions, guidance and directions provided by the Owner to

Owner's Representative; (iii) the care and skill ordinarily used by members of Owner's Representative engineering profession practicing under similar conditions at the same time and in the same locality; (iv) sound owner's representative practices; and (v) any applicable laws, rules, regulations, ordinances, codes, orders and permits of all federal, state and local government bodies, agencies, authorities and courts having jurisdiction over the Project that are in effect as of the effective date of this Agreement, and as is consistent with said standard of professional skill and care and the orderly progress of the Project. The Owner's Representative shall furnish all labor, services, supplies, materials, and equipment required to complete the Work using Owner's Representative's commercially reasonable efforts, skill, judgment, and abilities in accordance with this Agreement. The Owner's Representative shall at all times advance the orderly progress of the Project and cooperate with the Project Team (as defined in section 2.4 hereof). Owner's requirements as set forth in its request for proposals shall be deemed incorporated herein by reference, provided, in the event of a conflict between this Agreement, the request for proposals and/or the request for qualifications, this Agreement shall control to the extent of such conflict.

All references in this Agreement to the knowledge of the Owner's Representative shall include the actual knowledge, reasonable inference, reliance, awareness, determination, belief, observation and/or recognition of Owner's Representative, and such knowledge shall include the knowledge that Owner's Representative has obtained upon the exercise of Owner's Representative 'aforementioned standard of care as set forth in this Section 2.1. The Owner's Representative shall exercise the aforementioned standard of care set forth in this Section 1 without conflict of interest, and in furthering the interests of Owner and in performing all aspects of its Services hereunder.

- 2.2 Owner's Representative shall provide a project team at all times that shall have sufficient capacity, qualifications, skill and experience necessary to perform the Work ("Owner's Representative's Team"). Upon written notice, Owner shall have the right to approve and reject all personnel on the Owner's Representative's Team and have any such personnel removed from the Project that Owner reasonably considers unsatisfactory, regardless of whether such personnel has already commenced performing services on the Project. Owner's Representative may not, without the written consent of Owner, reassign or replace any member of the Owner's Representative Team. If a member of Owner's Representative's Team resigns, any replacement shall be subject to Owner's approval. The initial Owner's Representative Team identified in **Exhibit B** is approved by Owner, subject to the terms of this Agreement.
- 2.3 Owner's Representative shall perform the Work in compliance with all applicable federal, state and local laws, regulations, and codes, and Owner's other applicable standards as provided by Owner that are in effect as of the effective date of this Agreement.

Owner's Representative shall maintain and shall require that its subcontractors, if any, maintain any and all required governmental licenses, certificates, approvals, and permits

in good standing at all times during the term hereof that are required of the Owner's Representative for the performance of the Work. The Owner's Representative agrees to maintain in full force and effect such required licenses, certificates, approvals, and permits throughout the Term. Owner's Representative shall notify the Owner promptly following the occurrence of any event impacting the good standing status of, and/or the revocation, impairment, suspension, rescission of, any such permit, license, certificate and/or approval. Owner's Representative has or will perform the Work set forth in **Exhibit C** in cooperation with the Owner and the "Design/Build Team". The Design/Build Team includes the "Architect" and its consultants and/or subcontractors as may be appropriate, if any, who will perform those design and all other architectural services generally required of an Architect, Standard Form of Agreement between Owner and Architect, as amended, including Design Build Team's administration of the contract between Owner and its Design Build Team; the "Design Build Team", which means the construction manager to construct the Project and the construction manager's trade contractors, subcontractors, suppliers, and materialmen pursuant to the Agreement between Owner and Construction Manager as Constructor where the basis of payment is a Guaranteed Maximum Price; and "Consultants", which means such other consultants and professionals that perform consulting services for the Project, including without limitation, testing laboratories and surveyors. Nothing contained in this Agreement shall create any obligation or contractual relationship between the Owner's Representative and any third party, including without limitation any other member of the Project Team. Owner reserves the right, at any time, to amend the agreements with Design /Build Team with prior notice to Owner's Representative for its consent or approval, but only if such amendment may impact the performance of this Agreement and Owner's Representative's scope of services.

- 2.3 Owner may modify the Work without invalidating this Agreement. If the Owner's Representative believes it is entitled to a change in its schedule or compensation for the change in Work, the Owner's Representative shall promptly notify the Owner in writing, along with supporting calculations and pricing. Pricing shall be in accordance with the pricing structure set forth in this Agreement. Any change in Owner's Representative's scope, schedule or compensation, if any, shall be made by a written agreement signed by both parties prior to such change being performed.

Notwithstanding the above, Owner may direct Owner's Representative in writing to perform the change prior to reaching an agreement between Owner and Owner's Representative on any price and schedule adjustments. If so directed, Owner's Representative shall not suspend performance of the Agreement during the review and negotiation of such change as long as the change is reasonably foreseeable alteration of the services originally contemplated herein. In the event Owner and Owner's Representative are unable to reach agreement regarding changes in scope, price and/or schedule associated with a change order, the matter shall be submitted to the dispute resolution process provided in Section 5.2 hereof.



3. **Owner's Responsibilities.**

- 3.1 The Owner shall provide the design and construction requirements for the Project to the Owner's Representative upon execution of this Agreement, in a timely fashion.
- 3.2 The Owner shall designate an individual in writing who shall have the authority to render decisions on Owner's behalf ("Owner's Contact"). The Owner may change Owner's Contact from time to time by written notice to the Owner's Representative. The initial Owner's Contact shall be Kevin Matthews, Project Manager II.

4. **Compensation and Terms of Payment.**

- 4.1 Fees - General. As compensation for the services rendered and to be rendered by Owner's Representative under this Agreement, Owner shall pay Owner's Representative the Owner's Representative Fee, all in accordance with and subject to the terms and provisions of Sections 4.1 and 4.2 hereof.
- 4.2 Owner's Representative Fee. Owner shall pay Owner's Representative, as the Owner's Representative Fee for the Project (in addition to and not in lieu of any amounts due under Section 4.3), and the expected payment schedule is set forth on **EXHIBIT D – OWNER'S REPRESENTATIVE FEE**, attached hereto and incorporated herein with the amount of each payment rounded to the nearest dollar and the total shown thereon representing the final total of payments with respect to the Owner's Representative Fee.
- 4.3 Subcontractor's Payment. If Owner's Representative engages any subcontractors to perform any of the Work, Owner's Representative shall not markup work performed by its subcontractors. Owner's Representative shall pay any such subcontractor within ten (10) days (or such shorter period as required by applicable law) of the Owner's Representative's receipt of payment from the Owner for undisputed services provided by the subcontractor.
- 4.4 Reimbursable Expenses.
  - 4.4.1 Reimbursable expenses may include the following ordinary, necessary, and reasonable expenses incurred by the Owner's Representative and its subcontractors related to the Work: printing, reproductions, postage, and couriers.
  - 4.4.2 All reimbursement expenses shall be at the actual expense incurred by the Owner's Representative and its subcontractors without markup.
  - 4.4.3 If expenses are reimbursable, each request for reimbursement must be itemized and accompanied by receipts, subject to approval by Owner.
- 4.5 Frequency of Invoicing and Terms of Payment. Owner's Representative shall submit

invoices monthly, describing in reasonable detail the services (and goods, if any) provided in the preceding month. Along with each invoice, Owner's Representative shall also include: (a) a statement identifying all subcontractors who have performed all or a portion of the Work in connection with the invoice then submitted, and a certification that all subcontractors identified as having provided work or materials within all prior invoices have been paid by Owner's Representative or that payments have been withheld that are in dispute; and (b) data, assurances or other documentation as may be reasonably required by Owner establishing performance, payment or satisfaction of Owner's Representative's obligations arising out of this Agreement due as of the then applicable invoice, such as receipts or releases and waivers of liens and/or claims, if any. Payment shall be made by Owner in accordance with Section 218.74 of the Florida Statutes, otherwise known as the Florida Prompt Payment Act. Final Payment. Final payment shall not be due to Owner's Representative until Owner's Representative submits to Owner the following in such form as may be required by Owner: (a) a statement identifying all of Owner's Representative's subcontractors who have performed all or a portion of the Work certifying the subcontractors have been paid for their services or materials, as applicable; and (b) data, assurances or other documentation as shall be reasonably required by Owner establishing performance, payment or satisfaction of Owner's Representative's obligations arising out of this Agreement, such as receipts or releases and waivers of liens, claims, security interests or encumbrances, if any, arising from Owner Representative's performance of its service. Owner's Representative warrants that upon submittal of an invoice, to the best of Owner's Representative's knowledge, information and belief, all work included in the Owner's Representative Work shall be free and clear of liens, claims, security interests or encumbrances in favor of the Owner's Representative, subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Owner's Representative's acceptance of such final payment shall constitute a full release of any and all Claims Owner's Representative has against Owner, if any, occurring prior to such payment.

## **5. General Terms and Conditions.**

### **5.1. Termination, Suspension.**

- 5.1.1 Termination for Convenience by Owner. Owner, at its sole discretion, reserves the right to terminate any contract entered into pursuant to this Request for Qualifications (RFQ) with or without cause immediately upon providing written notice to the Owner's Representative. Upon receipt of such notice, the Owner's Representative shall not incur any additional costs under the contract. The City shall be liable only for reasonable costs incurred by the Owner's Representative prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."
- 5.1.2 Termination for Cause. The City reserves the right to terminate this contract, in part or in whole, or place the vendor on probation in the event the Owner's Representative substantially fails to perform in accordance with the terms and conditions stated herein by

providing written notice of such failure or default and by specifying a reasonable time period within which the Owner's Representative must cure any such failure to perform or default. If the Owner's Representative fails to cure the default within the time specified, the City may then terminate the subject contract by providing written notice to the Owner's Representative. The City further reserves the right to suspend or debar the Owner's Representative in accordance with the appropriate City ordinances, resolutions, and/or policies. The Owner's Representative will be notified by letter of the City's intent to terminate. In the event of termination for default, the City may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement costs shall be borne by the incumbent Bidder.

## 5.2. **Disputes.**

- 5.2.1 Owner and Owner's Representative shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the time period specified by applicable law. Owner and Owner's Representative shall endeavor to resolve claims, disputes, and other matters in question ("Dispute") between them by negotiation in good faith.

- 5.3 **Choice of Law, Forum Selection, Entire Agreement, and Amendment.** This Agreement shall be construed under Florida law (without regard for choice of law considerations). This Agreement constitutes the entire agreement and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Owner and Owners' Representative shall not be bound by any amendment to this Agreement unless such amendment has been signed by both the Owner and Owner's Representative.

## 5.4 **Insurance.**

- 5.4.1 Owner's Representative shall, at its sole cost and expense, procure and maintain in force at all times during the Term the following minimum coverages and limits placed with company(ies) licensed by the State of Florida that have at least an "A-" VIII policyholders rating according to Best Publication's latest edition Key Rating Guide.

		(Minimum Limits)
General Liability*	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
	Products/Completed Operations Aggregate	\$2,000,000
Auto Liability*	Combined Single Limit Each Accident	\$1,000,000
Professional Liability	Each Claim or Each Occurrence	\$1,000,000

Aggregate

\$1,000,000

\* “The City of Delray Beach” shall be named as “Additional Insured”. Coverage is to be provided on a primary, noncontributory basis.

If any policy is written on a “Claims Made” basis, the policy must be continually renewed for a minimum of two (2) years from the completion date of the Agreement. If the policy is replaced and/or the retroactive date is changed, then the expiring policy must be endorsed to extend the reporting period for claims for the policy in effect during the contract for two (2) years from the completion date.

#### Workers’ Compensation and WC Statutory Limits

Employers’ Liability	EL Each Accident	\$100,000
	EL Disease Each Employee	\$100,000
	EL Disease Policy Limit	\$500,000

Original, completed Certificates of Insurance must be presented to the Owner prior to execution of this Agreement. Owner’s Representative agrees to use commercially reasonable efforts to provide replacement/renewal certificates prior to the expiration of any policy. Should any of the above described policies be cancelled before the expiration date, written notice must be given to the Owner thirty (30) days prior to cancellation. Owner’s Representative’s policy required herein shall waive all rights of subrogation against Owner. No provision of this paragraph shall be construed or deemed to limit Owner’s Representative’s obligations under this Agreement to pay damages or other costs or expenses. All of the insurance requirements set forth in this paragraph shall apply to any subcontractors hired by respondent to perform any of its obligations hereunder unless specifically requested by the Owner’s Representative and approved by the Owner in a lesser amount. Owner reserves the right to require any additional insurance coverage for any specific work to be performed by Owner’s Representative, and Owner shall reimburse Owner’s Representative for all related costs and fees.

5.4.2 Owner shall cause the Design/Build Team to maintain insurance as required. To the extent feasible, if Owner is named as an Additional Insured on any such member(s) of the Design/Build Team’s liability insurance policy, Owner’s Representative shall also be named as an Additional Insured.

#### 5.5 Indemnification.

5.5.1 The Owner’s Representative shall indemnify and hold harmless the Owner and its officers and employees in accordance with Florida Statutes Chapter 725.08, from any and all liability, losses or damages, including reasonable attorney’s fees and costs of defense, which the Owner or its officers or employees incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature to the extent caused by the

negligence, recklessness, or intentionally wrong conduct of the design professional (Owner's Representative) and other persons employed or utilized by the design professional (Owner's Representative) in the performance of the Agreement. The Owner's Representative shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which are incurred thereon. The Owner's Representative expressly understands and agrees that any insurance protection required by this contract agreement or otherwise provided by the Owner's Representative shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the Owner or its officers, and employees as herein provided.

- 5.5.2 Each agreement between Owner's Representative and its subcontractors shall include provisions requiring Owner's Representative's subcontractors, to indemnify and hold harmless Owner from and against all Claims as defined in section 5.5.1.
- 5.5.3 Prior to entering into any subcontract agreement(s) for the Work, in whole or in part, described in this Agreement, the Owner's Representative shall provide the Owner with written notice of the identity (full legal name, street address, mailing address (if different from street address), and telephone number) of each proposed subcontractor. The Owner shall have the right to object to any proposed subcontractor by providing the Owner's Representative with written notice thereof within seven (7) business days of receipt of all required information about the proposed subcontractor. If the Owner objects to a proposed subcontractor, the Owner's Representative shall not use that subcontractor for any portion of the work described in the contract.

All permitted subcontracting shall be subject to the same terms and conditions as are applicable to the Owner's Representative. The Owner's Representative shall remain fully and solely liable and responsible to the Owner for performance of the work described in this Agreement. The Owner's Representative also agrees to promptly pay each of its subcontractors within thirty (30) days of receipt of payment from the Owner or otherwise in accordance with law or this Agreement.

- 5.5.4 Cumulative Rights and Remedies. Either party may restrain any breach or threatened breach of any covenant, agreement, term, provision or condition herein contained, but the mention herein of any particular remedy shall not preclude the moving party from any other remedy it might have, either at law or in equity. The failure of either party to insist upon the strict performance of any one of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any right, remedy or election herein contained or permitted by law, shall not constitute or be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy that either party may have at law, in equity or otherwise upon breach of any covenant, agreement, term, provision or condition in this Agreement contained upon the part of the



defaulting party to be performed, shall be distinct, separate and cumulative and no right or remedy, whether exercised by the moving party or not, shall be deemed to be in exclusive of any other. No covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been waived by either party unless such waiver shall be in writing, signed by either party or either party's agent duly authorized in writing. Consent of either party to any act or matter must be in writing and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve the defaulting party from the obligation wherever required under this Agreement to obtain the consent of moving party to any other act of matter. This Agreement may not be changed orally, but only by an agreement in writing signed by both parties.

#### **5.6 Audit and Retention of Books and Records.**

- 5.6.1 Owner's Representative shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement both during and after the Project in accordance with Section 5.6.3, provide information or documentation pertaining to same to Owner at no cost and expense to Owner upon Owner's request; the accounting and control systems shall meet generally accepted accounting practices.
- 5.6.2 Owner, its accountants, and auditors shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce ("Audit") all of the Owner's Representative's information, materials, records or data relating to this Project, including but not limited to, accounting records, written policies and procedures, and subcontract files (including subcontracts, bids of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating Work sheets, correspondence, change order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, drawings, receipts, purchase orders, vouchers, memoranda, subscriptions, recordings, computerized information, drawings, agreements, and other information, materials, records or data relating to this Project ("Records"). Such Records shall also include information, materials, records, or data necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where the Owner's Representative's Records have been generated from computerized data, Owner's Representative agrees to provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats. Copies shall be provided to Owner at no cost and expense to Owner upon Owner's request.
- 5.6.3 Owner's Representative shall preserve the Records for a period of three years after termination or final payment, whichever is earlier, or for such longer period as required by law, provided, however, that if a Dispute is asserted during said three year period, the Owner's Representative shall retain all such Records until the Dispute has been resolved.
- 5.6.4 Owner's Representative shall require its subcontractors to comply with the provisions of

this Article by insertion of the requirements hereof in a written agreement between the Owner's Representative and its subcontractor.

- 5.6.5 If an Audit discloses overpricing or overcharges (of any nature) by the Owner's Representative to the Owner in excess of 5% of the total contract billings, in addition to repayment or credit for overcharges, the reasonable, actual cost of the Audit shall be reimbursed to the Owner by the Owner's Representative. Any mutually agreed adjustments and/or payments that the parties agree must be made as a result of any Audit shall be made within a reasonable time not to exceed 90 days from presentation of the Owner's findings to the Owner's Representative.

## **5.7 Confidential Information.**

- 5.7.1 Owner's Representative acknowledges and agrees that any Confidential Information, as defined by Chapter 119 of the Florida Statutes, disclosed to it by Owner pursuant to this Agreement shall be used only for the purposes contemplated in this Agreement, shall be kept confidential and in conformance with all applicable Florida and federal laws relating to data privacy, and shall remain the Owner's property. The term "Confidential Information" means all Owner knowledge, information, data, materials and trade secrets disclosed to Owner's Representative by Owner with respect to the Project, as defined by Chapter 119 of the Florida Statutes. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, or (2) that Owner's Representative can show (by contemporaneous written records or otherwise) that Owner's Representative had it in its possession before beginning the Project and before disclosure by Owner. Owner's Representative agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section. Owner's Representative agrees that the Owner may seek an injunction to prevent or enjoin any breach of the obligations of this Section. Owner's Representative and its employees shall not make or otherwise disseminate any Confidential Information with respect to the Project without the Owner's prior written approval.

- 5.7.2 Within thirty (30) days of Owner's written request, or upon earlier request of Owner, Owner's Representative shall return all Confidential Information provided by Owner to Owner's Representative, or Owner's Representative's employees in connection with this Agreement. Additionally, Owner's Representative, upon the request of Owner, shall destroy all copies of such Owner provided Confidential Information in Owner's Representative's possession or control, and provide Owner with proof of such destruction.

## **5.8 Ownership of Works, Intellectual Property Rights.**

- 5.8.1 The term "Works" includes creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, business methods, inventions, improvements, and

discoveries, and works of any similar nature (whether or not eligible for copyright, trademark, patent or other proprietary rights), which are first prepared for Owner and delivered under this Agreement. Ownership of the Works and all copyrights, trademarks, patents and other proprietary rights in the Works shall be owned exclusively by Owner. Owner's Representative agrees that all copyrightable Works shall be considered a "work made for hire" and that Owner is the author of and owns all rights in and to the Works, and agrees that if the Works may not be considered a work made for hire under 17 U.S.C., Sections 101 and 201(b), Owner's Representative shall without further compensation, unconditionally assign all rights Owner's Representative may have in the Works to Owner. Owner's Representative waives any and all statutory moral rights in the Works which Owner's Representative may have arising under 17 U.S.C. 1006(a), as well as any rights arising under any other federal, state, or foreign law that conveys any other type of moral right. Owner's Representative shall, without further compensation, disclose information to Owner and execute such documents as may be reasonably necessary to assist Owner in securing and enforcing rights in the Works and related proprietary rights. Notwithstanding any provision herein, Owner agrees that Owner's Representative shall preserve all rights in its pre-existing Intellectual Property, confidential and proprietary information.

- 5.8.2 Owner shall be the owner of and have all common law, statutory, and other reserved rights in all representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design/Build Team and the Design/Build Team's consultants under their respective professional services agreements, including, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials (the "Instruments of Service"). Owner's Representative shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights. Owner's Representative is authorized to use and reproduce the Instruments of Service provided to it solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, displayed on the Instruments of Service. Owner's Representative may not use the Instruments of Service on other projects without the specific written consent of the Owner, which the Owner may withhold in its sole discretion. Notwithstanding anything in this Agreement to the contrary, Owner's Representative shall not use, publish, distribute, sell or divulge any Confidential Information disclosed by Owner through this Agreement for Owner's Representative's own purpose or for the benefit of any person, firm, corporation or other entity without the prior, written consent of Owner.

Any reports or other work product prepared by Owner's Representative while performing services under this Agreement shall be owned solely and exclusively by Owner and if applicable, any lender or funding source of Owner, and cannot be used by Owner's Representative for any purpose beyond the scope of this Agreement without the prior consent of Owner.

- 5.9 **Warranty.** Owner's Representative expressly represents, warrants and guarantees that it (i) shall comply with all applicable Laws; and (ii) is not currently debarred or suspended by any federal agency from doing business with the federal government and/or within the State of Florida, and Owner's Representative shall notify Owner if it becomes debarred or suspended during the Term; (iii) comply with all applicable Laws; (iv) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties is breached, Owner's Representative agrees to correct all defects and nonconformities at Owner's Representative's sole expense.
- 5.10 **Conflict of Interest.** Owner's Representative affirms that, to the best of its knowledge, no actual or potential conflict exists between Owner's Representative business or financial interests and its services under this Agreement, and that it shall raise with Owner any questions regarding possible conflict of interest that may arise. Owner's Representative further affirms that it shall not hire any officer or employee of Owner to perform any service covered by this Agreement.
- 5.11 **Taxes.**
- 5.11.1 Owner is exempt from paying Florida sales and use taxes on certain purchases as provided in the Florida Statutes. Owner's Representative shall not charge Owner for such sales and use taxes.
- 5.11.2 Upon execution of this Agreement, Owner's Representative will provide to Owner a signed W-9.
- 5.12 **Use of Owner Name or Logo.** Owner's Representative agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by Owner or the name of Owner in any sales promotion work or advertising, or any form of publicity, without Owner's written permission in each instance.
- 5.13 **Independent Contractor.** Owner's Representative shall perform its duties hereunder as an independent contractor and not as an employee of owner. Neither owner's representative nor any agent or employee of owner's representative shall be or shall be deemed to be an agent or employee of owner. Owner's representative shall pay when due all required employment taxes and income tax withholding, including all federal and State income tax on any monies paid pursuant to this agreement. Owner's representative acknowledges that owner's representative and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Owner's representative shall have no authorization, express or implied, to bind owner to any agreements, liability, or understanding except as expressly set forth herein. Owner's representative shall be solely responsible for the acts of owner's representative, its employees, and agents.
- 5.14 **Anti-Kickback Enforcement Act of 1986.** This Agreement is subject to the provision of



the Anti-Kickback Enforcement Act of 1986, Public Law 99-634 (41 U.S.C. 51-58). Owner's Representative certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation of said Act or like and/or similar provision of the Florida Statutes. Owner's Representative agrees that its participation with any employee of the Owner in acts that violate said Act or like or similar provision of the Florida Statutes constitutes a material default under this Agreement entitling the Owner to terminate for cause.

- 5.15 **Notices.** Any notice provided for in or permitted under this Agreement shall be made in writing, and may be given or served by (i) delivering the same in person or by facsimile transmission to the party to be notified, or (ii) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, or (iii) by depositing same with a reputable overnight courier service. If notice is deposited in the United States mail pursuant to clause (ii) of this Section, it will be effective from and after the day it is received by the addressee or receipt thereof is refused by the addressee, unless such day is not a business day, and then it shall be deemed received on the next business day. For the purpose of notice, the address of the party shall be, until changed as hereinafter provided for, as follows:

If to the Owner:

Attn: Jennifer Alvarez, Interim City  
Manager  
City of Delray Beach  
100 N.W. 1st  
Avenue Delray  
Beach, FL 33444

If to the Owner's Representative:

Suzanne E. Mechler,  
PE, BCEE CDM Smith  
Inc.  
621 N.W. 53rd Street,  
Ste. 265 Boca Raton,  
FL 33487

or to such other address as the Owner may specify in a written notice to the Owner's Representative or the Owner's Representative may specify in a written notice to the Owner in accordance with this Section. Each party shall have the right from time to time and at any time to change its respective address and each shall have the right to specify as its address any other address by at least fifteen

(15) days' written notice to the other party.

- 5.16 **Non-Waiver.** No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.
- 5.17 **Assignment.** Owner's Representative shall not assign, transfer, hypothecate, or otherwise dispose of this Agreement, including any rights, title, or interest therein, or its power to execute such contract to any person, company, or corporation without the prior written consent of the Owner, which shall not be unreasonably withheld or delayed. Assignment without the prior consent of the Owner may result in termination of the contract for default.
- 5.18 **Severability.** If any provision of this Agreement shall be invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to the party to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Agreement shall be valid and be enforceable to the fullest extent permitted by law.
- 5.19 **Survivability.** The terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by any of the parties hereunder, shall so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.
- 5.20 **Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. A facsimile signature will constitute an original and binding signature of a party.
- 5.21 **Conflicts with Project Team.** Owner's Representative shall familiarize itself with the requirements of Owner's agreements with its Design/Build Team. In the event such review reveals any conflict between, or a conflict arises during the Project relating to, the duties of Owner's Representative and Design/Build Team and/or Owner's Representative and Design/Build Team, Owner's Representative shall bring such conflict to the attention of the Owner as soon as practicable after the conflict is discovered, and if Owner determines that such conflict does in fact exist, Owner's decision to resolve such conflict shall be binding on the Owner's Representative and Design Build Team, without adjustment to compensation or schedule.
- 5.22 **Public Records. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC**

**RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.**

- a. Contractor shall comply with public records laws, specifically to:
  - i. Keep and maintain public records required by the City to perform the service.
  - ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
  - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
  - iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
  - v. If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

- 5.23 **Inspector General.** Owner's Representative is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this

Agreement justifying its termination.

- 5.24 **Fiscal Funding.** The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 5.25 **E-Verify Requirements.** By entering into this Agreement Contractor acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Contractor affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Contractor, the Contractor may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Contractor.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the Owner and Owner's Representative executed this Agreement as of the day and year first above written.

ATTEST:

By: Katerri Johnson  
Katerri Johnson, City Clerk

CITY OF DELRAY BEACH, FLORIDA

By: Shelly Petrolia  
Shelly Petrolia, Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: Lynn Gelin  
Lynn Gelin, City Attorney

CDM SMITH INC.

By: Suzanne Mechter  
Printed Name: Suzanne Mechter  
Title: Associate

STATE OF FLORIDA

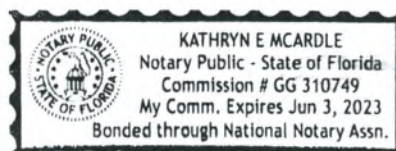
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this day 27 of OCTOBER, 2020, by SUZANNE E. MECHLER (name of person), as Associate (type of authority) for CDM SMITH INC. (name of party on behalf of whom instrument was executed).

Personally known ☒ OR Produced Identification ☐

Type of Identification Produced \_\_\_\_\_

Kathryn E McCardle  
Notary Public - State of FLORIDA



**EXHIBIT A**  
**PROJECT DESCRIPTION**

The City of Delray Beach currently operates Fire Station 113 (FS 113), located at 651 Linton Boulevard, Delray Beach, Florida. The primary use of this facility is a continuously occupied fire station and living facilities. The City wishes to construct a new fire facility on the existing site, which will continue to provide appropriate Fire Rescue & Emergency Service response times to the community.

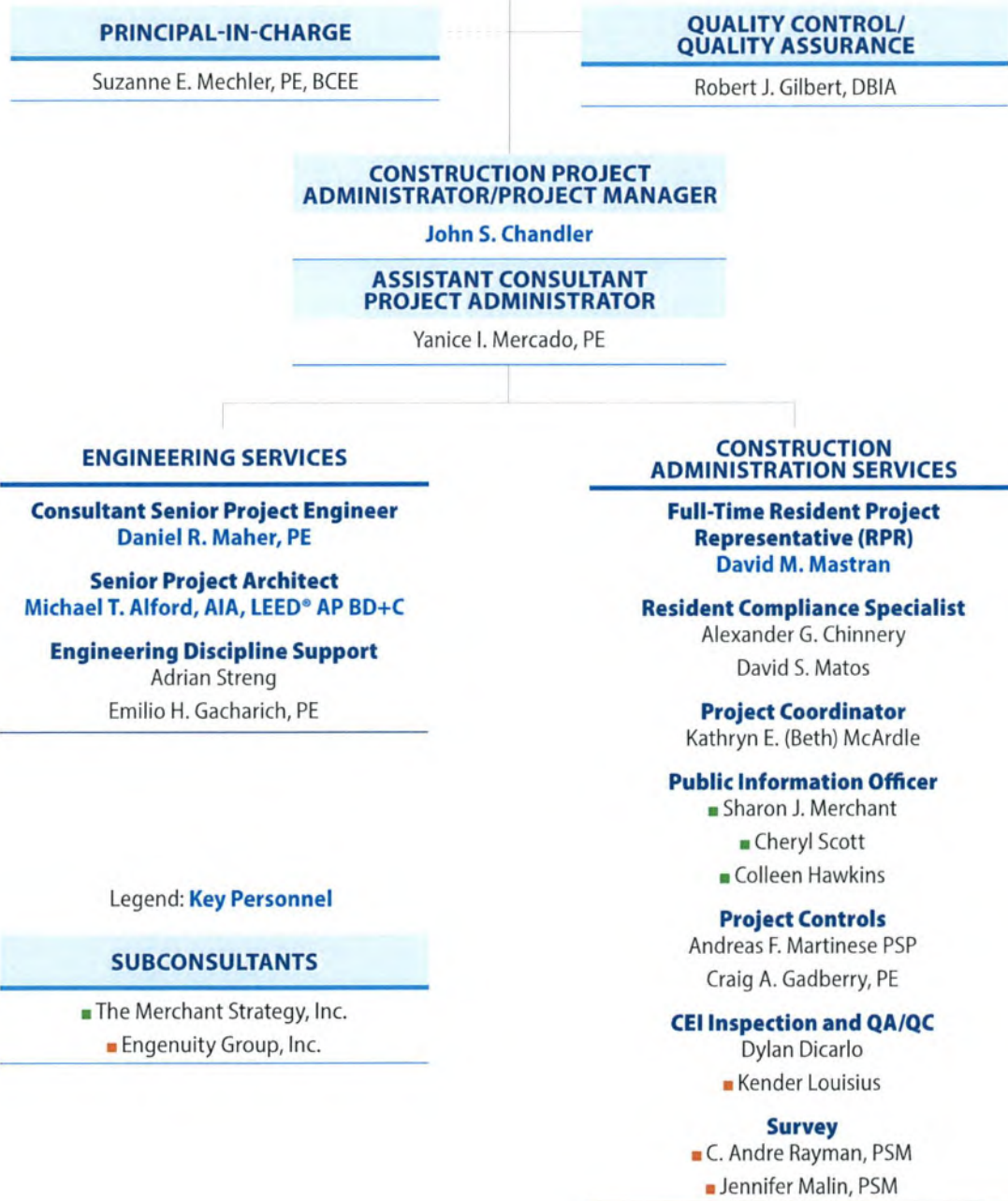
The Fire Station is a Design/Build of a new Fire Facility meeting today's Building Codes and requirements. It is the City's desire to construct a facility with LEED and sustainability components.

The current facility is approximately 6,000 square feet. It is anticipated that the new facility will be approximately 13,000 square feet with 2 floors (maximum). The City is contracting with a single Engineering/Architectural/Construction Team which will provide all Design/Build Design/Engineering/Construction Management necessary to accomplish the new construction of a Design/Build Contract.

# CITY of DELRAY BEACH

F L O R I D A

## EXHIBIT B



## EXHIBIT C SCOPE OF SERVICES

### Professional Services Owner's Representative Services During Design and Construction

This Authorization, when executed, shall be incorporated in and become part of the Owners Representative Agreement for professional services between the City of Delray Beach (OWNER) and CDM Smith Inc. (CONSULTANT), dated \_\_\_\_\_, 2020 hereafter referred to as the Agreement.

#### I. PROJECT BACKGROUND/OBJECTIVE

Owner's Representative (referred to herein as Consultant) Professional Services shall be implemented and coordinated directly with the OWNER's Project Manager including submittal of all documents, scheduling of meetings, and other related project tasks. The project contained within this Service Order is associated with the Design-Build of the City of Delray Beach Fire-Rescue Station No. 113 facility, namely:

- Project: City of Delray Beach Fire-Rescue Station No. 113

The OWNER will utilize a design-build project delivery method for the construction of Fire Station No. 113. CONSULTANT will provide Owner's Representative Professional Services during the procurement, design and construction of the Project.

The CONSULTANT will exercise independent professional judgment in performing obligations and responsibilities under this Agreement as long as decisions affecting the Project have received the OWNER's written permission to do so. The authority of the CONSULTANT's lead person, such as the Construction Project Administrator/Project Manager and Senior Project Engineer shall be for the purposes of obtaining, reporting, and executing instructions and directives from the OWNER.

Services provided by the CONSULTANT will comply with this Agreement unless otherwise directed in writing by the OWNER.

#### II. DEFINITIONS

Agreement: The Professional Services Agreement between the OWNER and the CONSULTANT setting forth the obligations of the parties thereto, including but not limited to the performance of the work, furnishing of services, and the basis of payment.

Contractor or Design-Builder: The individual, firm, or company contracting with the OWNER for delivering the Design-Build Project, sometimes referred to as the Design-Builder.

Construction or Design-Build Contract: The written agreement between the OWNER and the Design-Builder setting forth the obligations of the parties thereto, including but not limited to the performance of the work, furnishing of labor and materials, and the basis of payment.

Owner's Project Manager: The City of Delray Beach employee assigned to manage the Construction Project Owner's Representative Agreement and represent the City of Delray Beach during the performance of the services covered under this Agreement.

Consultant: The Consulting firm under contract to the OWNER as Owner's Representative for the Design-Build of the Project, including providing on-site Resident Project Representative Services.

Consultant Project Administrator/Project Manager (PM): The employee assigned by the CONSULTANT in charge of providing Design-Build Contract administration services for one or more construction projects.

Consultant Senior Project Engineer: The Engineer assigned by the CONSULTANT in charge of providing Design-Build Contract administration for the Project. This person may supervise other CONSULTANT employees and act as the lead Engineer for the CONSULTANT.

Engineer (or Architect) of Record: The Engineer (or Architect) noted on the construction plans as the responsible person for the Design-Build project and directing the preparation of the drawings



**Resident Project Representative:** The employee assigned by the CONSULTANT at the Project site to assist the PM in carrying out full-time contract administration responsibilities for the OWNER at the site.

### III. SCOPE OF SERVICES

Under the scope of work (SOW) for this Project, the CONSULTANT will provide the following Owner's Representative professional services during procurement, design, and construction over the expected 23-month Design-Builder's project duration to Completion of the new Fire Station:

- Assistance with development of the comprehensive Design-Build Contract agreement for completion of the design and construction of the Design-Build Project:
  - Prepare a draft Design-Build Contract for Owner review and acceptance;
  - Attend a negotiations meeting for the Design-Build Contract;
- Conduct Project Kickoff meeting
- Conduct periodic meetings during design and construction
- Attend Commission Meetings
- Services during design of the Design-Build Project:
  - Coordinate with Stakeholders
  - Coordinate the Design-Build Contract administration activities of all parties involved in completing the Project.
  - Evaluate Design-Build schematic architectural/engineering solutions in conformance with design criteria
  - Review Design Package documents for adherence with the intent of the DCP and accepted alternates and provide comments
  - Review and respond to request for deviation (RFD) from the DCP
  - Backcheck, follow-up, and close-out of OWNER comments provided in a Comment Matrix
- Services during construction of the Design-Build Project:
  - Attend Project Pre-construction meeting
  - Review and process Design-Builder shop drawing submittals for compliance with Design Criteria Package (DCP) specifications.
  - Review and respond to requests for information (RFIs)
  - Review and respond to requests for clarification of intent (RCI);
  - Review and process contractor shop drawing submittals
  - Develop a submittal registry
  - Develop and maintain a document control system
  - Review and respond to requests for change orders
  - Conduct independent sampling and testing, when required and after prior consultation with Owner
  - Conduct incidental surveys, when required and after prior consultation with Owner
  - Conduct periodic construction engineering inspections (CEI);
  - Oversee the Design-Build Contract process with monitoring and administration, including the services of a full-time resident project representative (RPR)
  - Review and verify record drawings prepared by the Design-Builder
  - Assemble Warranty books and prepare punch list
  - Prepare and submit certificate of completion as part of Closeout

The specific content of deliverables and extent of assistance is provided in subsequent task description.

#### TASK 1 – PROJECT MANAGEMENT

Activities performed under this task include general functions required to maintain the project on schedule, within budget, and that the quality of the work products defined within this scope is consistent with the CONSULTANT's standards and the OWNER's requirements. CONSULTANT's project management responsibilities consist of:

- Management of the overall effort for which CONSULTANT has responsibility,
- Invoicing for project costs incurred by CONSULTANT,
- Deliverables associated with management of CONSULTANT's contracted services,
- Development and maintenance of Project documents,
- QA Plan and monitoring, and
- Project Meetings

Task 1 Project Management will be provided for a total of 3-months during the design and construction phase duration for the Design-Build (DB) plus 1 additional months used in the initiation and negotiation of the Design-Build Contract and Closeout of the construction phase and 1 month following closeout. Project Management services will be provided for a total of 25 months.

### Subtask 1.1 - Management

Project management includes activities related to initiating, planning, executing, controlling, and closing the project. CONSULTANT will be responsible for overall coordination and management of this project task through its assigned Construction Project Administrator/Manager (PM). The PM's efforts will be focused on completion of tasks and submittal of deliverables according to the project schedule and budget, staffing, internal kickoff meeting, facilitating QA/QC reviews of project efforts and identifying and communicating to the OWNER issues that arise, which may impact project progress. This task includes the assistance of other technical and administrative staff for coordinating, assembling and formatting of deliverables and other internal project management meetings and activities. During this task, the CONSULTANT will perform the following activities or milestones:

The PM will manage the agreed budget and scheduling aspects of the various work activities identified herein for the period indicated in the Project Schedule.

- Monthly Reporting and Invoicing:** CONSULTANT will prepare monthly progress reports in support of invoices to describe the work completed during the previous reporting period, anticipated work for the following period, current budget and schedule status, and any project issues requiring discussion or resolution. The format and content of the invoice shall be in accordance with direction provided by the OWNER. It is anticipated that deliverables will be submitted to the OWNER's Project Manager. With each monthly invoice submittal, the CONSULTANT will provide a Status Report for the Agreement.
- Amendment Request (AR):** When the CONSULTANT identifies a condition that will require an amendment to the Agreement, the CONSULTANT will communicate this need to the OWNER's Project Manager for acceptance. Upon acceptance, CONSULTANT will prepare and submit an Amendment Request (AR), and all accompanying documentation to the OWNER's Project Manager for approval and further processing. The content and format of the AR and accompanying documentation shall be in accordance with the instructions and format to be provided by the OWNER. The CONSULTANT will be responsible for performing follow-up activities to determine the status of each AR request submitted to the OWNER.
- Design-Build (DB) Contract Assistance:** CONSULTANT will assist the OWNER with development of the comprehensive Design-Build Contract agreement for completion of the design and construction of the Design-Build Project during the Project initiation.

#### Deliverables (issued via electronic delivery in pdf format):

- Monthly Progress Reports
- Monthly Invoices

### Task 1.2 - Document Control Management System

CONSULTANT will develop and implement an electronic document control management system (DCS) for the CONSULTANT, OWNER and Design-Builder to utilize for transfer information, and track review of Project documentation. The DCS will be setup at the start of the project with DSC data provided to the OWNER at the end of the Project. The DCS will include building an e-builder platform for the OWNER that can be transferred to the OWNER at any time during the Project. The CONSULTANT will engage the OWNER in the design of the platform and will be trained in the platform by CONSULTANT. The OWNER will be responsible to obtain the required licenses and account activation directly from e-builder (separate from this Contract) if the OWNER elects to establish a City e-Builder environment.

Initial e-Builder setup will be limited to configuration of four modules (e.g. Documents, Processes, Forms and Reports) and basic dashboard, including four business processes (e.g. Daily Reports, RFIs, Submittals and Change Orders) and four forms (e.g. Correspondence, Meeting Minutes, Work Change Directives, Non-Conformance) from CONSULTANT's best practice library with minor configuration.

**Deliverables:**

- Document Control System (DCS) access
- Monthly updates of the Document Control System (DCS) database content submitted electronically to the OWNER

**TASK 2 – MEETINGS DURING DESIGN AND CONSTRUCTION**

The CONSULTANT will attend the following meetings during the Project.

**Subtask 2.1 – Meetings During Project Initiation and Design**

1. **Kickoff / Project Quality Meeting** – CONSULTANT will facilitate a project kickoff / quality meeting to confirm OWNER's goals and objectives, identify roles, responsibilities and communication protocols for project team members; discuss the scope of work, deliverables, schedule, quality aspects, critical success factors and action plans to achieve OWNER's goals and objectives. CONSULTANT assumes that OWNER's Project Manager and key Team members will attend this meeting. This meeting may occur on the same day as the Kickoff Meeting. CONSULTANT will be responsible for scheduling, developing the agenda and presentation, facilitating the meeting, and recording and distributing meeting notes.
2. **Design-Build Contract Negotiation Meeting** – CONSULTANT's will attend a Design-Build Contract negotiation meeting scheduled by the OWNER. CONSULTANT will provide support to the OWNER during the Design-Build Contract negotiations and provide recommendation regarding the Standard Contract terms. CONSULTANT assumes that Administrator/Project Manager and key Team members will attend this meeting. The CONSULTANT will be responsible for facilitating the meeting and recording and distributing meeting notes.
3. **Monthly Design Progress Meetings** – CONSULTANT will attend Monthly Progress Meetings with the OWNER and Design-Builder to discuss project progress, project issues and coordination (up to the 100% Construction Document Submittal). Key team members may attend from time to time by phone or in person. CONSULTANT will be responsible for scheduling, developing the agenda, and facilitating the meeting. Minutes will be distributed by CONSULTANT one (1) week after the meeting date. For budgeting purposes, nine (9) Design Progress Meetings have been assumed. CONSULTANT shall consult/coordinate with OWNER's project manager prior to key team members attending meetings.
4. **Specialty Meetings:** CONSULTANT will attend Specialty Meetings (or tele-conference calls) to answer questions and resolve design issues with the Design-Builder and the OWNER in evaluating impacts these issues may have on the design, schedule, or other projects. Key team members may attend by phone or in person. CONSULTANT will be responsible for scheduling, developing the agenda, and facilitating the meetings. Minutes will be distributed by CONSULTANT one (1) week after the meeting date. For budgeting purposes, three (3) Engineering Specialty Meetings have been assumed to support activities associated with the execution of the Design-Build of the Facility. CONSULTANT shall consult/coordinate with OWNER's project manager prior to key team members attending meetings.
5. **Final Guaranteed Maximum Price (GMP) Informational Meeting:** CONSULTANT will schedule and attend a Final GMP informational meeting with the Design-Builder and the OWNER. CONSULTANT assumes that Administrator/Project Manager and key Team members will attend this meeting by phone or in person. The CONSULTANT will be responsible for facilitating the meeting and recording and distributing meeting notes. Minutes will be distributed by the Design-Builder one (1) week after the meeting date.

**Deliverables (issued via electronic delivery in pdf format):**

- Meeting agenda for each meeting (Kickoff, Project Quality, Negotiation)
- Meeting summary (Kickoff, Project Quality, Negotiation)

- Meeting comments (Progress)

### Subtask 2.2 – Meetings During Construction

CONSULTANT will attend the following meetings during construction:

1. **Pre-Construction Meeting:** CONSULTANT will attend a Pre-construction meeting to support construction initiation of the Design-Build Facility. CONSULTANT will be responsible for scheduling, developing the agenda and presentation, facilitating the meeting, and recording and distributing meeting notes. The Design-Builder will review and comment on the agenda, presentation and meeting notes as developed by CONSULTANT. The CONSULTANT will be available for coordination calls prior to the Pre-construction meeting.

The pre-construction meeting agenda may include, but it is not limited to:

- 1) Organization and team member roles
  - 2) Project communications
  - 3) Prepare agenda
  - 4) Prepare minutes of pre-construction meeting
  - 5) Procedures for shop drawing submittals during construction
  - 6) Discussion of project safety
  - 7) Pollution prevention
  - 8) Phasing and Sequencing Plan
  - 9) Work Schedules
  - 10) Communications/coordination protocols with the City and stakeholders
  - 11) Maintenance of Traffic (MOT)
  - 12) Scheduling progress meetings
  - 13) Shop drawings / submittals review and approval process
  - 14) Change order process management
  - 15) Progress payments and progress reporting
  - 16) Inspections and testing
  - 17) Utilities locating requirements
  - 18) Record drawings
  - 19) Warranties
  - 20) Substantial Completion
  - 21) Project Closeout
  - 22) Additional items proposed by attendees
2. **Bi-Weekly Construction Progress Meetings –** CONSULTANT will attend Bi-Weekly Construction Progress Meetings with the OWNER and Design-Builder to discuss construction progress, project issues through the Substantial Completion milestone. Key team members may attend from time to time by phone or in person. Progress meetings will be scheduled by CONSULTANT. CONSULTANT will be responsible for scheduling, developing the agenda, and facilitating the meeting. Minutes will be distributed by CONSULTANT one (1) week after the meeting date. For budgeting purposes, twenty-six (26) Construction Progress Meetings have been assumed.
  3. **Substantial Completion:** One substantial completion meeting and corresponding follow up meeting, attended by various Design-Builder Engineers of Record (EOR), which will include a walkthrough to develop punch list items. CONSULTANT shall be responsible for developing the Punch List, scheduling, developing the agenda and presentation, and facilitating the meeting.

#### Deliverables (issued via electronic delivery in pdf format):

- Meeting agenda (Substantial Completion)
- Meeting agenda comments (Pre-construction, Progress)
- Meeting summary (Substantial Completion)

### Subtask 2.3 – Public Information Commission Meetings

CONSULTANT will attend the following Commission meetings during the Project:



1. **City Commission and One-on-One Meetings:** CONSULTANT will prepare and make presentations for one (1) City Commission meeting in connection with the project covered by this Agreement (if requested). CONSULTANT's PM and key team members may attend. CONSULTANT will be responsible for scheduling, developing the agenda and presentation and distributing meeting notes. In addition, CONSULTANT will prepare and attend five (5) one-on-one meetings with the City Commission.

**Deliverables (issued via electronic delivery in pdf format):**

- Meeting Presentations (Commission)

**TASK 3 – ENGINEERING SERVICES DURING DESIGN AND CONSTRUCTION**

The CONSULTANT will provide engineering services during the design and construction phase of the Project.

**Task 3.1 - Design Documents Review**

CONSULTANT will review and comment on the Design-Builder design submittals in anticipation of the Design Review Meetings as required in the Design Criteria Package (DCP). The CONSULTANT will review these documents for compliance and adherence with the intent of the Design Criteria for the Project. It is assumed, as per the Design-Builder's proposal, that up to four (4) design packages will be submitted corresponding to the 30% Construction Document Submittal, 60% Construction Document Submittal, 90% Construction Document Submittal and 100% Issued for Construction (IFC) Document Submittal. The CONSULTANT will review each package and provide comments in a Comment Matrix spreadsheet, noting issues and deviations from the approved DCP. The CONSULTANT will complete the review process by reviewing the Design-Builder's disposition and response to each comment, provide either an additional comment and/or acceptance of the Design-Builder's response, and backcheck verify each item has been incorporated into the next subsequent design package deliverable noting items not completed in the Comment Matrix.

Design packages will be provided to the CONSULTANT prior to the Design Review Meeting. It is anticipated that the Design-Builder will separate the design in up to four (4) design packages, therefore this task assumes each design package will require a separate design review and corresponding design meeting, and coordination with the OWNER for project background information. Attendance to design meetings will include key team members of the CONSULTANT based on the content. The Design-Builder will provide electronic drawings, specifications, and 3D rendering for reviews.

All comments will be provided to the Design-Builder and OWNER within a maximum of fourteen (14) calendar days from receipt of the design packages. The CONSULTANT will be available to clarify any comments, either by phone, in person, and/or in writing, which are unclear or not understood by the OWNER and/or Design-Builder. Any conference call and/or meeting with the Design-Builder and/or OWNER to discuss the technical merit of the comments provided in the Comment Matrix spreadsheet or to provide project background information will be considered as an Engineering Specialty Meeting under Task 2.

The Comment Matrix spreadsheet will be utilized. Responses provided by the Design-Builder will be returned to the CONSULTANT to review for compliance and adherence with the intent of the DCP. It will be the CONSULTANT's responsibility to backcheck the next level of design documents or final issued documents for confirmation of Design-Builder's responses.

**Deliverables (issued via electronic delivery in pdf format):**

- Design Package Document Comment Matrix (each Package)
- Design-Builder Application for Payment Review (Monthly During Design)

**Task 3.2 - Request for Clarifications of Intent (RCI) and Request for Deviation (RFD)**

CONSULTANT will review and respond to technical RCIs and RFDs during design. The OWNER shall address RCIs related to the Design-Build Contract, administration, and other items where the CONSULTANT's input is not considered required. Responses will be provided within a maximum of seven (7) calendar days from the CONSULTANT's receipt of RCIs or RFDs. The CONSULTANT will maintain a log of RCIs/RFDs received for internal tracking purposes, which will be made available to the OWNER for informational purposes on a monthly basis. Should meetings to discuss RCIs/RFDs responses be requested by the OWNER, these will be part of the Specialty Meetings under Task 2. All responses will be coordinated through the OWNER and submitted via e-mail correspondence.

CONSULTANT will review and respond to requests for technical deviation of approved submittal as requested by the Design-Builder and provided by the OWNER. Request for deviation (RFD) shall be defined as a request for replacement/modification of the equipment, layout and systems as provided by the Design-Builder during the 30% Construction Documents Submittal stage and accepted by OWNER. The CONSULTANT will evaluate the request and any supporting information which may include calculations, supplemental engineering design and other technical data issued by the Design-Builder in support of their request and provide an opinion as to: does the requested deviation meet the intent of the design, does the requested deviation provide similar quality as the approved proposal. The Design-Builder will be responsible for providing the necessary information on the RFD to confirm that the evaluation requirements mentioned above are met. This task does not include preparation of calculations or engineering design by the CONSULTANT as part of the evaluation of the RFD. For budgeting purposes, a maximum of 4 RFDs have been assumed. Responses will be provided within a maximum of fourteen (14) calendar days from the CONSULTANT's receipt of RFD. The CONSULTANT will maintain a log of RFDs received for internal tracking purposes, which will be made available to the OWNER for informational purposes on a monthly basis. Should meetings to discuss RFD responses be requested by the OWNER, this will be part of the Specialty Meetings under Task 2. All responses will be coordinated through the OWNER and submitted via e-mail correspondence.

**Deliverables (issued via electronic delivery in pdf format):**

- RCIs Responses and Registry
- RFD Responses and Registry

**TASK 4 - ADMINISTRATION OF CONSTRUCTION CONTRACT**

The CONSULTANT will perform Construction Administration Services in connection with the Project identified in the Agreement. The CONSULTANT's Project Manager (PM) will be the primary point of contact for and during the Design-Build Contract during construction and will have the responsibility for all communications with the OWNER's Project Manager and Design-Builder.

Services shall include maintaining the required level of observation of Design-Builder activities, interpreting special provisions for the Design-Build Contract, maintaining records of activities and events relating to the Project and properly documenting Project changes.

**Subtask 4.1 – Full-Time Resident Project Representative (RPR)**

The CONSULTANT will assign a Full-Time Resident Project Representative (RPR) to assist the CONSULTANT PM in carrying out contract administration responsibilities for the OWNER at the site during construction. CONSULTANT will maintain records of the Design-Builder's daily operations and of significant events that affect the work. The RPR will be the PM's agent at the Site and will act as directed by and under the supervision of the PM and will confer with the PM regarding RPR actions.

CONSULTANT's RPR will observe the Design-Builder's work to determine the progress and quality of work. CONSULTANT will identify discrepancies, report significant discrepancies to the OWNER, and direct the Design-Builder to correct such observed discrepancies.

CONSULTANT will prepare digital photo and video documentation of project activities, with heavy emphasis on potential claim items/issues and on areas of real/potential public controversy. These photographs and video will be filed and maintained by the CONSULTANT using the DCS.

The PM will have additional inspection personnel visit the site periodically at times in conjunction with the RPR and the PM. All staff dealing in matters pertaining to the on-site work shall in general be with knowledge of the PM and the Design-Builder keeping the OWNER's Project Manager advised as necessary. The PM team's dealing with the Design-Builder's subcontractors shall be only through or with the full knowledge and approval of the Design-Builder. The RPR shall generally communicate with the OWNER with the knowledge of and under the direction of the PM.

The CONSULTANT's RPR will inform the OWNER's Project Manager of any significant omissions, substitutions, defects, and deficiencies noted in the work of the Design-Builder and the corrective action that has been directed to be performed by the Design-Builder.

CONSULTANT's RPR will verify that the Design-Builder is conducting inspections, preparing reports and monitoring storm water pollution prevention measures associated with the Project.

CONSULTANT's RPR will facilitate coordination and communication between Utility Agency's representatives, OWNER's staff and Design-Builder's executing the work. The CONSULTANT will identify potential utility conflicts and assist in the resolution of utility issues including City and Local Government owned facilities.

**Deliverables (issued via electronic delivery in pdf format):**

- RPR Daily Reports (Submitted Weekly)

**Subtask 4.2 – Construction Engineering Inspection**

The CONSULTANT will conduct periodic site inspections by various discipline leads to monitor the Design-Builder's on-site construction activities and inspect materials entering into the work in accordance with the plans, specifications, and special provisions for the Design-Build Contract to determine that the Project is constructed in reasonable conformity with such documents. Engineering site inspections will be documented and made available as part of the progress reports. It can be anticipated that discipline site visits will be performed in accordance with the progress of construction. The CONSULTANT will adhere to health and safety requirements for the Project site. This activity duration is assumed through Substantial Completion. The CONSULTANT will also monitor off-site activities and construction unless otherwise stipulated by the Agreement.

CONSULTANT will monitor and inspect Design-Builder's Work Zone Traffic Control and National Pollutant Discharge Elimination System (NPDES) Plan and review modifications to the Work Zone Traffic Control and NPDES Plan, including Alternate Work Zone Traffic Control Plan. The CONSULTANT's employees performing such services shall be qualified in accordance with the OWNER's standard procedures.

CONSULTANT will monitor, inspect, and document utility construction for conformance with Utility Agency's Standards and the Utility Agency's Approved Materials List and DCP.

CONSULTANT will verify that the Design-Builder is conducting inspections, preparing reports, and monitoring storm water pollution prevention measures associated with the Project.

**Deliverables:**

- Site Inspection Report(s)

**Task 4.3 - Review and Respond to Submittals**

CONSULTANT will review Design-Builder prepared shop drawings and other submittals related to conformance and compliance with the Design Criteria Package (DCP) and Design-Builder Contract. The CONSULTANT's standard Design-Builder submittal and review forms will be utilized. Review of shop drawings and submittals will be provided within a maximum of fourteen (14) calendar days from receipt of submittals.

The CONSULTANT will analyze the Design-Builder's progress schedule(s) (i.e. baseline(s), revised baseline(s), updates and as-built) for compliance with the Design-Build Contract. Elements including, completeness, logic, durations, activity, flow, milestone dates, concurrency, resource allotment, and delays will be reviewed. The CONSULTANT will verify the schedule conforms with the construction phasing and Maintenance of Traffic (MOT) sequences, including contract modifications. Provide a written review of the schedule identifying significant omissions, improbable or unreasonable activity durations, errors in logic, and other concerns when identified.

The CONSULTANT will identify, review, and track progress of any other Joint Project Agreements, and/or other Owner and utility agreements. Address work progress, track reimbursement activities, and address betterment and salvage determination. Prepare all necessary documentation to support reimbursement activities and betterment and salvage determination.

The CONSULTANT will review the required documents submitted by the Design-Builder. The document review will include miscellaneous submittals, such as; schedule of values, Quality Assurance Plan, MOT Plan, Safety Plan, Pollution Prevention Plan, Phasing Plan, Design-Builder's list of sub-contractors and suppliers, as well as compliance submittals, such as; shop drawings, inspections and testing reports.

The CONSULTANT will review the Design-Builder's update to the Design-Build progress schedule. The CONSULTANT will review the Design-Builder's monthly updates to the proposed project schedule to confirm or determine if the construction of the Project is on schedule or advise the OWNER's Project Manager of any variance from the originally approved project schedule.

The CONSULTANT will review Design-Builder's Applications for Payment. The CONSULTANT will review and verify the completed pay requests submitted monthly by the Design-Builder based on observed and documented work completed and materials stored on-site during the pay period as well as supporting documentation submitted by the Design-Builder as an attachment to the pay request. The CONSULTANT will produce reports, verify quantity calculations and field measure for payment purposes as needed to prevent delays in Design-Builder operations and to facilitate prompt processing of such information for the OWNER to make timely payments to the Design-Builder.

The CONSULTANT will maintain a log of Submittals requiring the CONSULTANT's review as received from the Design-Builder (i.e., Submittal Registry) which will be made available to the OWNER for information purposes on a monthly basis.

**Deliverables (issued via electronic delivery in pdf format):**

- Submittals list review
- Submittal reviews (for items requiring the CONSULTANT's review)
- Submittal Registry
- Construction Progress Schedule Review (Monthly)
- Design-Builder Application for Payment Review (Monthly during Construction)

**Subtask 4.4 – Request for Change Proposals**

The CONSULTANT will review request for change proposals (RFPs) submitted by the Design-Builder during construction. The CONSULTANT will evaluate the request and any supporting information which may include calculations, supplemental engineering design and other technical data issued by the Design-Builder in support of their request and provide an opinion as to: does the requested change meet the intent of the design, does the requested deviation provide similar quality as the approved Contract Documents. The Design-Builder will be responsible for providing the necessary information on the RFP to confirm that the evaluation requirements mentioned above are met. This task does not include preparation of calculations or engineering design by the CONSULTANT as part of the evaluation of the RFP. For budgeting purposes, a maximum of 4 RFPs have been assumed. Responses will be provided within a maximum of fourteen (14) calendar days from the CONSULTANT's receipt of RFP. The CONSULTANT will maintain a log of RFPs received for internal tracking purposes, which will be made available to the OWNER for informational purposes on a monthly basis. Should meetings to discuss RFP responses be requested by the OWNER, this will be part of the Specialty Meetings under Task 2. All responses will be coordinated through the OWNER and submitted via e-mail correspondence.

The CONSULTANT will seek input from the OWNER's Project Manager relating to all Supplemental Agreement (amendments) requests. Supplemental Agreements must be determined to be in accordance with the OWNER prior to approval by the CONSULTANT. For any Supplemental Agreement which exceeds the thresholds, prepare the Supplemental Agreement as a recommendation to the OWNER, which the OWNER may accept, modify or reject upon review with the OWNER's Project Manager. The CONSULTANT will direct all issues, which exceed delegated authority to the OWNER's Project Manager for OWNER actions or direction.

**Deliverables:**

- RFP Review Summary

**Subtask 4.5 - Certification of Final Estimate, As-Built Plans and Closeout**

Design-Builder will prepare and certify Record Drawings updating the AutoCAD drawings based on Design-Builder-provided, RPR-reviewed redlined "As-Built" CAD drawings. CONSULTANT will review redlined "As-Built" drawings based on markup drawing edits as prepared by the Design-Builder monthly during progress of construction and provide comments to the OWNER if required. CONSULTANT will monitor the Design-Builder's performance in maintaining up-to-date set of "As Built" drawings.

CONSULTANT will prepare documentation and records in compliance with the Agreement and submit the Final Estimate(s) and reviewed and approved set of final "as-built plans", furnished by the Design-Builder, documenting the Design-Builder's work in accordance with Documentation, Plans and Specifications. Revisions to the Certified Final Estimate will be made at no additional cost to the OWNER.

CONSULTANT will provide a notarized certification on a form pursuant to OWNER's procedures.

CONSULTANT will prepare the Offer of Final Payment package as outlined per plans and specifications. The package shall accompany the Certified Final Estimates Package submitted to the OWNER for review. The CONSULTANT shall be responsible for forwarding the Offer of Final Payment Package to the Design-Builder.



CONSULTANT will assemble and prepare Warranty documentation and records obtained from the Design-Builder in compliance with the Design-Build Contract.

**Deliverables:**

- Provide review comments to the final set of redline "As Built" drawings as prepared by the Design-Builder.
- Request/Obtain ten (10) half size and four (4) full size hard copy signed and sealed sets and two (2) electronic (one-half size and one full size) signed and sealed sets of the Record Drawings from Design-Builder.
- Request/Obtain two USB drives containing all originating electronic drawing files for the final Record Drawings, in both PDF and AutoCAD dwg file format from Design-Builder.
- Notarized Final Estimate
- Offer of Final Payment Package
- Warranty Books

**TASK 5 – ADDITIONAL ENGINEERING SERVICES (OPTIONAL)**

Subtasks under Task 5 are Additional Engineering Services that could be required to mitigate unforeseen issues that might arise during the execution of this Authorization. The CONSULTANT must first receive approval from the OWNER before performing work under these subtasks. To access the Optional Services, written formal request will be sent by CONSULTANT to the OWNER'S Project Manager to request access and be able to withdraw funds out of the Optional Services. CONSULTANT shall submit a scope of services of cost proposal to the OWNER'S Project Manager for approval preceding utilizing the allowance portion of the task authorization. Upon acceptance, the item for the allowance will be clearly defined and identified by the CONSULTANT in each progress report and billing submittal.

**Subtask 5.1 – Land Survey**

CONSULTANT will perform land survey at the facility Site (Fire Station site) and public rights of way for the proposed work areas.

1. **Incidental Engineering Surveys:** CONSULTANT will perform incidental engineering surveys, as necessary, for payment verification, dispute resolution and easement confirmation. For budget purposes, up to six (6) Incidental Engineering Surveys are assumed.

Survey work will be performed by or under the direct supervision of a Professional Land Surveyor registered in the State of Florida. The survey will be prepared using the North American Vertical Datum of 1988 (NAVD88) and will be referenced to the State Plane Coordinate System (Florida East Zone), North American Datum 1983 (NAD 83).

**Deliverables:**

- Incidental Survey(s) (via electronic delivery in pdf format and one hard copy signed and sealed by a Florida Licensed Land Surveyor). Standard sheet size will be electronic 22 x 34; hard copy 11 x 17 unless otherwise specified.
- Civil 3D (Version 2019) geo-referenced CAD file of the Survey(s). Drawing Files and Land XML. This drawing will include topographic features with spot elevations, baselines and ROW lines.

**Subtask 5.2 – Sampling and Testing**

CONSULTANT will perform periodic independent sampling and testing, when required, of component materials and completed work for its own purposes, and in accordance with the Design-Build Contract Documents. The CONSULTANT's independent testing will not relieve the Design-Builder of responsibility for observation, testing, and inspection. In complying with the guide, CONSULTANT will provide daily surveillance of the Design-Builder's Quality Control activities and perform the independent sampling and testing of materials and completed work items for verification and acceptance.

CONSULTANT will determine the acceptability of all materials and completed work items based on either test results or verification of a certification provided by the Design-Builder. The CONSULTANT will determine when independent sampling and testing is required.

The OWNER will monitor the effectiveness of the CONSULTANT's testing procedures through observation and independent assurance testing. The OWNER may request the CONSULTANT to perform independent testing of any materials and completed work item. Sampling, testing, and laboratory methods will be as required by the OWNER's Standard Specifications, Supplemental Specifications or as modified by the Special Provisions of the Design-Build Contract.

Documentation reports on independent sampling and testing performed by the CONSULTANT shall be submitted during the same week that the construction work is done, or as results are made available by the laboratory or facility. Transport samples to be tested to the appropriate laboratory or appropriate local facility.

CONSULTANT will input verification testing information and data into the OWNERs database using written instructions provided by the OWNER.

**Deliverables:**

- Test Summary Report(s)

#### **IV. PERFORMANCE OF THE CONSULTANT**

During the term of this Agreement and all Supplemental Amendments thereof, the OWNER will review various phases of CONSULTANT operations, such as construction inspection, independent materials sampling and testing, and administrative activities, to determine compliance with this Agreement. CONSULTANT will cooperate and assist OWNER in conducting the reviews. If deficiencies are indicated, remedial action shall be implemented immediately. OWNER recommendations and CONSULTANT responses/actions are to be properly documented by the CONSULTANT. No additional compensation shall be allowed for remedial action taken by the CONSULTANT to correct deficiencies. Remedial actions and required response times may include but are not necessarily limited to the following:

1. Further subdivide assigned inspection responsibilities, reassign inspection personnel, or assign additional inspection personnel, within one week of notification.
2. Immediately replace personnel whose performance has been determined by the CONSULTANT and/or the OWNER to be inadequate.
3. Immediately increase the frequency of monitoring and inspection activities in phases of work that are the CONSULTANT's responsibility.
4. Increase the scope and frequency of training of the CONSULTANT personnel.

#### **V. DATA OR COORDINATION ASSISTANCE TO BE PROVIDED BY THE OWNER**

1. Assign a Project Manager to represent the OWNER.
2. The OWNER, on an as needed basis, will furnish the following Design-Build Contract documents for the Project. Design-Builder will be responsible for formal submittal of documents for review. These documents will be provided through the document management system established by the CONSULTANT.
  - a. Construction Plans
  - b. Specification Package
  - c. Copy of the Executed Design-Build Contract
  - d. Utility Agency's Approved Material List (if applicable)
  - e. Permits
  - f. Environmental Reports
  - g. Geotechnical Reports and Testing Results
  - h. OWNER documents, directives, procedures, and standard forms

#### **VI. ASSUMPTIONS**

1. This task excludes third party litigation services or expert witness services if required for any third-party request.
2. Design phase has a maximum duration of 9 months. Construction phase has a maximum duration of 14 months. RPR services are estimated at 17 months full-time.
3. Project Management task duration is of 25 months from NTP corresponding to the design and construction phase of the Design-Build.

4. CONSULTANT will receive only four (4) design packages for review for the facility (i.e., 30%, 60%, 90% and 100% Issued for Construction (IFC)).
5. The CONSULTANT's design criteria professional review of design submittals will be for compliance and adherence with the intent of the DCP.
6. Review and acceptance by the CONSULTANT of submittal documentation provided by the Design-Builder does not relieve the Design-Builder of their responsibilities as the Engineer of Record (EOR) on the Project.
7. CONSULTANT will have a single point of contact from the OWNER to provide direction under this Scope of Work.
8. The CONSULTANT will review each design deliverable for compliance with the Design Criteria Package and approved Design-Builder 30% design package.
9. CONSULTANT will be using e-builder management construction services.
10. The CONSULTANT will not be responsible for permitting activities required by the Design-Builder, however, CONSULTANT will confirm the appropriate permits are obtained by Design-Builder and logged in the DCS.
11. The CONSULTANT will not be responsible for any delays or damages caused by rejection of Request for Information (RFI), Request for Clarification of Intent (RCI), Request for Deviation (RFD), review of design documents and/or submittal that do not meet the intent of the design criteria package (DCP) or as approved by the OWNER.
12. Review and approval of the Design-Builder's submittals is not an assumption of liability. CONSULTANT is not responsible for Design-Builder's construction means and methods, on-site safety, sequencing and phasing, quality assurance, maintenance of traffic or pollution prevention code compliance. The purpose of any review is to confirm that the Design-Builder's plans are in accordance with contract documents.
13. Services for the review of construction submittals as part of this Agreement include the initial review and the review of one required re-submittal. The Design-Builder shall reimburse the CONSULTANT's cost to review more than one re-submittal.
14. CONSULTANT will provide all software and hardware necessary to efficiently and effectively carry out the responsibilities under this Agreement.
15. CONSULTANT will provide a Laptop computer running Microsoft Project or Primavera P6 application through a mobile broadband connection at the jobsite or whatever technology is necessary. All computer coding shall be input by CONSULTANT personnel using equipment furnished by the CONSULTANT.
16. CONSULTANT will not include a schedule and cost module under task 1.2 and will not include full City-wide e-Builder setup for multiple OWNER projects.
17. Ownership and possession of computer equipment and related software, which is provided by the CONSULTANT, shall always remain with the CONSULTANT. The CONSULTANT shall retain responsibility for risk of loss or damage to said equipment during performance of the Agreement. Field office equipment will be maintained and operational. At the end of the project, all e-Builder data will be delivered to the OWNER.
18. CONSULTANT's Field Office will be included in an office within the Design-Builder's Construction Trailer. The field office will be furnished and will meet the requirements of the Agreement. All Field Office direct expenses will be included as part of the CONSULTANT's compensation.
19. CONSULTANT will supply inspection and testing equipment essential to perform services under the Agreement; such equipment includes non-consumable and non-expendable items.
20. Hard hats will have the name of the CONSULTANT firm visibly displayed.
21. Equipment described herein and expendable materials under this Agreement will remain the property of the CONSULTANT and shall be removed at completion of the work.
22. The OWNER will not provide a connection to the OWNER's enterprise network. The CONSULTANT will implement an electronic document management system for the OWNER and Design-Builder to utilize for transfer of information.
23. For the duration of the Agreement, CONSULTANT will keep the OWNER's Project Manager informed of significant activities, decisions, correspondence, reports, and other communications related to its responsibilities under this Agreement.

## **VII. SCHEDULE**

CONSULTANT will endeavor to complete the work activities described herein within 25 months of receipt of an official Notice to Proceed (NTP) by the OWNER to start the services. Individual times of performance will be established for each assignment as applicable. The schedule assumes the Design-Builder will complete the 100% Issued for Construction (IFC) documents will be completed within 9 months from Design-Builder's NTP, and Final Completion for

the Facility within 23 months from the Design Builder's NTP. The CONSULTANT anticipates completing the Closeout activities of the Project within 45 calendar days after Final Completion.

## **VIII. COMPENSATION**

The CONSULTANT will provide services listed herein as needed for a not-to-exceed (NTE) fee of dollars Eight-hundred sixty-one thousand and one hundred twenty-five dollars (**\$861,125**). A breakdown of the fee by task is detailed on the compensation breakdown sheet, **Attachment 1**. The OWNER will be invoiced on a monthly basis for the CONSULTANT's actual labor hours at contractual billing rates plus allowable reimbursables and subcontractor fees in accordance with the terms of the Agreement. Written monthly status reports will be provided with each monthly invoice.



ATTACHMENT 1

City of Delray Beach  
Owner's Representative Services  
Service Authorization No. 1 - Fire Station No. 113  
Compensation Documentation  
1/6/2020 (Revised 1/9/2020, 1/20/2020, 01/23/2020, 08/21/20 and 09/21/20)

Task Description	Labor Classification									CDM Smith Total Labor Hours	CDM Smith Total Labor Dollars and Direct Costs
	Principal-in-Charge/ Officer/ Quality Control	Project Administrator/ Associate	Senior Engineer/ Architect	Construction Senior Professional	Project Controls Specialist	Construction Field (RPR)/ Compliance Specialist	Professional II	Project Coordinator/ Document Control	Professional I		
<b>TASK 1 - PROJECT MANAGEMENT</b>	<b>4</b>	<b>4</b>	<b>79</b>	<b>0</b>	<b>30</b>	<b>134</b>	<b>280</b>	<b>282</b>	<b>8</b>	<b>821</b>	<b>\$114,540.00</b>
Task 1.1 Management	4	4	79	0	30	0	0	70	0	187	\$29,900.00
Task 1.2 Document Control System	0	0	0	0	0	134	280	212	8	634	\$84,640.00
System Set-up and Training	0	0	0	0	0	0	0	96	4	100	\$11,520.00
System Maintenance and Data Management	0	0	0	0	0	134	280	116	4	534	\$73,120.00
<b>TASK 2 - MEETINGS DURING DESIGN AND CONSTRUCTION</b>	<b>18</b>	<b>73</b>	<b>154</b>	<b>0</b>	<b>0</b>	<b>106</b>	<b>124</b>	<b>14</b>	<b>0</b>	<b>489</b>	<b>\$83,235.00</b>
Task 2.1 Meetings During Project Initiation and Design	12	33	84	0	0	51	34	14	0	228	\$39,505.00
Kickoff Meeting/ Project Quality Meeting	4	8	12	0	0	8	4	2	0	38	\$6,830.00
Design-Build Contract Negotiation Meeting	8	8	16	0	0	8	0	4	0	44	\$8,180.00
Monthly Progress Design Meetings (9)	0	9	36	0	0	27	18	4	0	94	\$15,715.00
Speciality Meetings (3)	0	4	16	0	0	4	8	2	0	34	\$5,810.00
Final Guaranteed Maximum Price (GMP) Informational Meeting	0	4	4	0	0	4	4	2	0	18	\$2,970.00
Task 2.2 Meetings During Construction	0	36	64	0	0	55	78	0	0	233	\$38,710.00
Pre-Construction Meeting (1)	0	8	8	0	0	8	8	0	0	32	\$5,480.00
Bi-weekly Construction Progress Meetings (26)	0	26	52	0	0	39	62	0	0	179	\$29,740.00
Substantial Completion	0	2	4	0	0	8	8	0	0	22	\$3,490.00
Task 2.3 Public Information Commission Meetings	6	4	6	0	0	0	12	0	0	28	\$5,020.00
City Commission and Board Meetings (6)	6	4	6	0	0	0	12	0	0	28	\$5,020.00
<b>TASK 3 - ENGINEERING SERVICES DURING DESIGN AND CONSTRUCTION</b>	<b>12</b>	<b>44</b>	<b>216</b>	<b>74</b>	<b>155</b>	<b>62</b>	<b>174</b>	<b>18</b>	<b>8</b>	<b>763</b>	<b>\$129,550.00</b>
Task 3.1 Design Documents Review	12	38	212	64	55	52	106	8	8	555	\$96,540.00
30-Percent Design Phase Reviews and GMP Review	4	8	48	16	0	16	26	2	2	122	\$21,150.00
60-Percent Design Phase Technical and Cost Development Review and Negotiations	4	12	50	24	0	16	32	2	2	142	\$24,670.00
90-Percent Design Phase Reviews and GMP Validation Review	4	10	58	16	0	12	26	2	2	130	\$22,860.00
100-Percent Design Phase Reviews and GMP Validation Review	0	8	56	8	0	8	22	2	2	106	\$18,510.00
Progress Schedule and Sequencing Review	0	0	0	0	55	0	0	0	0	55	\$9,350.00
Task 3.2 Request for Clarifications of Intent (RCI) and Request for Deviation (RFD)	0	6	4	10	100	10	68	10	0	208	\$33,010.00
<b>TASK 4 - ADMINISTRATION OF CONSTRUCTION CONTRACT</b>	<b>0</b>	<b>62</b>	<b>216</b>	<b>22</b>	<b>136</b>	<b>2,464</b>	<b>269</b>	<b>0</b>	<b>0</b>	<b>3,169</b>	<b>\$488,200.00</b>
Task 4.1 Full-Time Resident Project Representative (RPR)	0	0	0	0	0	2,176	0	0	0	2,176	\$326,400.00
Task 4.2 Construction Engineering Inspection	0	0	24	0	0	20	16	0	0	60	\$9,800.00
Task 4.3 Review and Respond to Submittals	0	22	160	0	120	210	149	0	0	661	\$107,670.00
Submittal Reviews, Sampling and Testing, Schedule Reviews	0	22	156	0	0	210	131	0	0	519	\$83,990.00
Progress Schedule and Sequencing Review	0	0	4	0	120	0	18	0	0	142	\$23,680.00
Task 4.4 Request for Change Proposals (4)	0	24	32	22	16	22	56	0	0	172	\$28,930.00
Task 4.5 Certification of Final Estimate, As-Built Plans and Closeout	0	16	0	0	0	36	48	0	0	100	\$15,400.00
Total Labor Hours	34	183	665	96	321	2,766	847	314	16	5,242	
<b>Subtotal Consultant Cost</b>	<b>\$7,820</b>	<b>\$37,515</b>	<b>\$126,350</b>	<b>\$17,760</b>	<b>\$54,570</b>	<b>\$414,900</b>	<b>\$118,580</b>	<b>\$36,110</b>	<b>\$1,920</b>		<b>\$815,525</b>
<b>Subconsultant and Direct Expenses</b>											
Task 5.1 Survey (Optional)											\$5,000
Task 5.2 Sampling and Testing (Optional)											\$30,000
Direct Expenses (Reimbursables)											\$10,600
<b>Subtotal Subconsultant and Direct Expenses Cost</b>											<b>\$45,600.00</b>
<b>TOTAL DOLLARS (NTE)</b>											<b>\$861,125</b>
Agreement Billing Rates 2020 (Proposed)	\$230.00	\$205.00	\$190.00	\$185.00	\$170.00	\$150.00	\$140.00	\$115.00	\$120.00		

## CITY ATTORNEY OFFICE - LEGAL REVIEW CHECKLIST

Name of Agreement: Owner's Representative Agreement between City of Delray Beach and CDM Smith Inc. for FS113

Department: Fire

Contact person: Ilyse Triestman

City Manager approval ☐

City Commission approval ☒

Agenda item #:

Agenda meeting date:

Resolution #:

Agreement Action:

New ☒

Renewal ☐

Amendment ☐

\*Renewal: Only change is the agreement term

\*Amendment: For changes other than/in addition to term

Does the Contractor require the City to sign first?: No

For City Attorney Use only:

**Agreement Terms:**

**Comments/Specific Provision in Agreement**

Term (Duration of Agreement)	1- effective date to completion
Termination Clause	5.1, 5.1.1- for convenience, 5.1.2- for cause
Renewal Clause	n/a
Insurance	Other
Indemnification	City standard
Assignment	5.17- not without written consent
Fiscal Funding Requirement	5.24
FL. Public Records Provision (2016)	5.22
Inspector General Provision	5.23
Governing Law	Florida
Venue	Palm Beach County
Attorney's fees	n/a

**Business Principles:**

**Comments**

Fees: Total Value	Not to Exceed \$861,125.00
Fees: Per Fiscal Year	

**Other Issues:**

**Comments**

Non-Negotiable Issues/ Miscellaneous Issues/ Special Considerations	Previously approved, exhibits amended to adjust scope
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Consistent with applicable policies including, but not limited to, Procurement policies. Yes ☒

Attorney: Kelly Brandon, Esq.

Reviewed and approved as to form and legal sufficiency only

RESOLUTION NO. 42-20

A RESOLUTION OF THE CITY OF DELRAY BEACH, FLORIDA, APPROVING THE AWARD OF AN AGREEMENT TO CDM SMITH INC. FOR OWNER'S REPRESENTATIVE SERVICES FOR FIRE STATION 113; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY RENEWALS AND/OR AMENDMENTS AND TAKE ALL ACTIONS NECESSARY TO EFFECTUATE THIS AGREEMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Delray Beach (City) is authorized to produce agreements to provide design and construction services, and programming and products in accordance with its Charter; and

WHEREAS, the City desires to enter into an agreement with CDM Smith Inc., for Owner's Representative services for the design and construction of Fire Station 113 and an Emergency Operations Center; and

WHEREAS, the City Commission deems approval of this Resolution to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby affirmed and ratified.

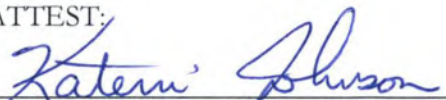
Section 2. The City Commission of the City of Delray Beach has reviewed and hereby approves this Agreement between the City and CDM Smith, Inc.

Section 3. The City Commission authorizes the City Manager to execute the Agreement and any amendments and/or renewals thereto and take any other actions necessary to effectuate this Agreement.

Section 4. This Resolution shall become effective immediately upon adoption.

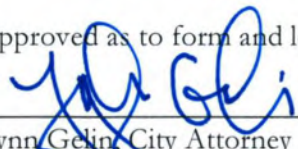
PASSED AND ADOPTED in regular session on the 20<sup>th</sup> day of November, 2020.

ATTEST:

  
Katerri Johnson, City Clerk

  
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

  
Lynn Gelin, City Attorney