

## **PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, entered into this 15<sup>th</sup> day of September, 2017 by and between **THE TOWN OF PALM BEACH**, 360 South County Road, Palm Beach, Florida 33480, a political subdivision of the State of Florida, hereinafter referred to as the "TOWN", and **APTIM ENVIRONMENTAL & INFRASTRUCTURE, Inc.**, 2481 NW Boca Raton Boulevard, Boca Raton, FL 33431, a Louisiana Corporation, hereinafter referred to as the "CONSULTANT".

### **WITNESSETH**

WHEREAS, the TOWN advertised under the TOWN'S purchasing policies, RFQ No. 2017-35 – Coastal Engineering Design, Permitting and Construction Management Services, to solicit proposals from qualified Consultants; and

WHEREAS, the TOWN has selected CONSULTANT under the provision of Section 287.055 Florida Statutes, the Consultant's Competitive Negotiation Act; and

WHEREAS, the TOWN agrees to retain the CONSULTANT for professional Coastal Engineering work prescribed herein in connection with Coastal Engineering Design, Permitting and Construction Management Services, hereinafter called the "WORK"; and

WHEREAS, the TOWN has investigated the qualifications of the CONSULTANT to perform the WORK herein contemplated and found them satisfactory; and

WHEREAS, the CONSULTANT has examined the scope of the WORK required hereunder and has expressed CONSULTANT'S desire and willingness to provide such Coastal Engineering Design, Permitting and Construction Management Services and has presented its qualifications to the TOWN in support of its expressed desires; and

WHEREAS, as a result of the aforementioned, the TOWN agrees to enter into this agreement with the CONSULTANT; and

WHEREAS, the TOWN COUNCIL has approved the selection of the CONSULTANT to perform such services, and the CONSULTANT agrees to accept employment upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the TOWN agrees to employ the CONSULTANT for a period commencing on the date this agreement is signed for a three (3) year period with an option to renew for up to two (2) additional annual periods, the CONSULTANT agrees to perform all engineering services in connection with the WORK, as described herein, for the total duration of this agreement, upon the following terms and conditions; namely:

### **SECTION I – GENERAL PROVISIONS**

1.1 The TOWN may propose a Scope of Work and request a Cost Estimate from the CONSULTANT for any or all of the professional services specified in Section 3 of this document.

The CONSULTANT may be issued a Purchase Order to encompass the entire Coastal Engineering Design, Permitting and Construction Management Services, as defined in paragraph 3.1 for a project, the entire Basic Services, as defined in paragraph 3.2 for a project, or for discrete tasks as specified in paragraphs 3.3 Additional Professional Services, for the miscellaneous engineering services that may be required.

1.2 It is understood that a Purchase Order will be issued on an as needed basis at the sole discretion of the TOWN. The TOWN reserves, at all times, the right to perform any and all coastal engineering work in-house or with other engineers/entities. This Agreement does not confer on the CONSULTANT any exclusive rights to TOWN WORK, nor does it obligate the TOWN in any manner to guarantee WORK for the CONSULTANT. The CONSULTANT may submit proposals for any professional services for which proposals may be publicly solicited by the TOWN outside of this agreement.

1.3 The CONSULTANT shall prepare a Letter Proposal and Cost Estimate for WORK specified by the TOWN. Estimates may include engineering or other professional services specified in the agreement and any permit fees, equipment rental costs, subcontracting costs and reasonable contingencies associated with the WORK. The CONSULTANT acknowledges that Cost Estimates will be reviewed by the TOWN and may require scope modification subject to budgetary constraints of the TOWN.

1.4 The TOWN will confer with the CONSULTANT before any Purchase Order is issued to discuss the scope of the WORK, the time needed to complete the WORK and the fee for the services to be rendered in connection with the WORK.

1.5 The TOWN will issue a Notice to Proceed based on the TOWN approved Scope of Work and Cost Estimate provided by the CONSULTANT.

1.6 The TOWN agrees that it will furnish to the CONSULTANT plans and other data available in the TOWN files pertaining to the WORK to be performed under this Agreement within thirty (30) days of each Notice to Proceed.

1.7 The TOWN shall establish an overall budget for the Project, including the Construction Cost, engineering and other sub professional fees, relocation costs, on- and off-site improvements, the TOWN'S other costs and reasonable contingencies related to all of the costs. The CONSULTANT shall design the necessary improvements within the TOWN'S budgetary constraints.

1.8 The Construction Cost shall be the total cost or estimated cost to the TOWN of all elements of the Project designed or specified by the CONSULTANT.

1.9 Evaluations of the TOWN'S Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the CONSULTANT, represent the CONSULTANT'S best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the CONSULTANT nor the TOWN has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from the TOWN'S

Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the CONSULTANT.

1.10 The CONSULTANT will submit a proposal upon the TOWN'S request prior to the issuance of a Purchase Order. No payment will be made for the CONSULTANT'S time and services in connection with the preparation of any such proposal.

1.11 The TOWN has designated the Coastal Program Manager to act as the TOWN'S contact and representative with respect to the services provided under this Agreement. The Town Manager and the Director of Public Works reserve the right to re-assign the Coastal Program Manager. The Coastal Program Manager, or representative designated by the Town Manager or Director of Public Works, shall examine the documents provided by the CONSULTANT and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in progress of the CONSULTANT'S services.

1.12 All data and work products associated with task orders on this Agreement are the property of the TOWN.

## **SECTION 2 – GENERAL RESPONSIBILITIES OF THE CONSULTANT**

The CONSULTANT is responsible for the professional quality, technical accuracy, timely completion and coordination of all design, drawings, specifications, reports, and other services under this Agreement. The CONSULTANT is responsible for all assigned and accepted tasks as well as liability for any damage suffered by the TOWN as a result of non-performance to the extent described under Section 18 - Insurance and Section 19 - Indemnification.

The CONSULTANT shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, and other services which exist prior to acceptance by the TOWN. This provision is not intended to limit the payment of compensation for the finalization or completion of draft documents or work products if evidenced by an approved task order.

The CONSULTANT represents that its services shall be performed, within the limits provided by the TOWN, in a manner consistent with the level of care and skill ordinarily exercised by other professional consultants under similar circumstances at the time the services are performed.

## **SECTION 3 – PROFESSIONAL SERVICES**

The project(s) anticipated deliverables shall be identified by the TOWN and communicated to the CONSULTANT. The CONSULTANT services required shall be identified within a proposed Scope of Services document to be prepared by the CONSULTANT and approved by the TOWN'S representative. Each Purchase Order issued by the TOWN upon approval of the proposed Scope of Services will be uniquely numbered and shall be subject to the TOWN'S adopted purchasing procedures.

### **3.1 Coastal Engineering Design, Permitting and Construction Management Services**

Pursuant to RFQ No. 2017-35, services shall include, but will not be limited to developing coastal protection alternatives, feasibility studies, coastal strategic planning, engineering and permitting, construction management, physical monitoring, provide advisory information, and act as expert witnesses for the TOWN. The following is an overview of the WORK that may be required:

- Design of coastal protection projects, including but not limited to, beach nourishment, storm protective and erosion control structures, inlet maintenance, and innovative technologies.
- Perform coastal modeling for beach erosion, wave hydrodynamics, storm recession, shoreline change, and sediment transport, using the most advanced and diverse modeling suites available.
- Provide permitting assistance for both State and Federal approval/authorization of coastal protection projects.
- Conduct and evaluate topographic and bathymetric surveying.
- Perform offshore sand search/geotechnical investigations.
- Prepare construction cost estimates and assist in bidding processes, including pre-construction conferences.
- Perform construction management activities such as field observations, project oversight, construction progress meetings, contract administration, permit compliance, and monitoring.
- Provide public outreach assistance regarding coastal protection projects.
- Develop or assist the TOWN with annual state funding requests.
- Provide emergency storm damage response.
- Provide capabilities for administering coastal data within Geographic Information Systems, conduct website development, perform database design and manage document records.
- Develop estuarine enhancement projects within the Lake Worth Lagoon.
- Participate in Shore Protection Board meetings as deemed necessary by staff or board members.
- Perform all other coastal engineering duties, as deemed necessary by the TOWN.

### 3.2 Basic Services

Upon Notice to Proceed from the Director of Public Works or his designee, the CONSULTANT agrees to provide complete professional Coastal Engineering Design, Permitting and Construction



Management Services for any portion or all categories listed below.

Services required of the CONSULTANT for the project will be described in other appropriate sections of this Agreement and quantified in individual Purchase Orders.

### 3.2.1 Phase I - Schematic Design and Programming

- A. The CONSULTANT shall confer with representatives of the TOWN to determine the full scope of the Project that will meet the program requirements within the allocated funds.
- B. The CONSULTANT shall use proper and adequate design control to provide an increased level of confidence to the TOWN that the Project may be constructed within the allocated funds.
- C. The CONSULTANT shall prepare a Design Concept and Schematic Report, comprising the Project Timetable (Master Schedule) Planning Summary (if requested), Schematic Design Studies (if requested) as defined below, and the Engineering Cost Estimate.
- D. The Proposed Project timetable shall consist of a schedule showing the proposed completion date on each Phase of the Project through design, bidding, construction, and proposed date of completion.
- E. The Planning Summary (if requested) shall consist of a vicinity plan and blow-up of the Site (if applicable) showing Project orientation, and a brief summary of all pertinent planning criteria used for the Project.
- F. The Schematic Design Studies (if requested) shall consist of all plans, elevations, sections, etc., as required to show the scale and relationship of the parts and the design concept of the whole. A simple perspective sketch, model or photograph thereof may be provided to further show the design concept.
- G. The CONSULTANT shall prepare a Project Management Plan (PMP) identifying project scope, schedule, team members, contact information, stakeholders, deliverables, etc.
- H. The CONSULTANT'S Cost Estimate shall include estimated cost of the Project including hard and soft costs but not limited to fixed equipment, professional fees, contingencies (if any), escalation factors adjusted to the estimated bid date, movable estimate (if any), land cost (if applicable) and utility service extensions (if applicable).
- I. The CONSULTANT shall submit and present two (2) copies of all documents required under this Phase, for approval by the TOWN and shall not proceed with the next Phase until directed in writing by the TOWN.

### 3.2.2 Phase II - Design Development

- A. From the approved Schematic Design documents, the CONSULTANT shall prepare Design Development Documents, comprising the drawings, outline specifications and other documents to fix and describe the size and character of the entire Project as to construction

and finish materials and other items incidental thereto as may be appropriate and applicable.

- B. The Design Development Documents shall comprise the Proposed Project Timetable (updated), Outline Specifications, Updated Statement of Engineering Cost Estimates, and design Development Drawings, etc., as required to clearly delineate the Project. These documents are to be submitted at 30% and 60%. If the updated Engineering Cost Estimate exceeds the allocated funds, appropriate cost or scope reduction must be included.
- C. Prior to submission of the 60% Design Development Documents, the CONSULTANT responsible for each project shall field walk the entire project area with the design drawings to ensure that the design is fully field checked with field conditions. Additional walk through should be made to ensure that the final drawings meet field conditions.
- D. The CONSULTANT shall submit and present, upon request, two (2) sets of all documents required under this Phase, for approval by the TOWN and shall not proceed with the next Phase until directed in writing by the TOWN.

### 3.2.3 Phase III - Construction Documents/Bidding

- A. Upon 95% completion of the Construction Documents, the CONSULTANT shall submit to the TOWN a final, updated Statement of Probable Construction Cost along with two (2) unbound copies each of Check Set drawings, specifications, reports, programs, etc., for a final review and comments or approvals. The CONSULTANT shall make final revisions to the plans.
- B. The CONSULTANT shall make submissions to appropriate authorities as necessary, to ascertain that the construction documents meet the necessary requirements to obtain all the necessary permits for construction.
- C. When all necessary approvals of the Construction Documents are obtained, upon approval by the TOWN of the latest engineering cost estimate, and upon revisions to the documents, the CONSULTANT shall furnish five (5) sets of drawings and specifications as indicated above for bidding, and assist the TOWN in obtaining bids and awarding and preparing construction contracts. If requested, the CONSULTANT shall be present during the bid opening and as part of his assistance to the TOWN will tally, evaluate and issue a recommendation to the TOWN.
- D. If the lowest responsible Base Bid received exceeds the Total Allocated Funds the TOWN may:
  - 1. Approve the increase in Project Cost and award a construction contract or,
  - 2. Reject all bids and rebid the Project within a reasonable time with no change in the Project, or
  - 3. Direct the CONSULTANT to revise the Project scope or quality, or both, as approved by the TOWN and rebid the Project, or

4. Suspend or abandon the Project.
5. Exercise all options under the TOWN Charter and Code of Ordinances and State Law.

Note: Under item (2) above, the CONSULTANT shall, after negotiating and receiving approval for additional compensation, assist the TOWN in obtaining re-bids, and awarding the re-bid of the project. Under item (3) above, the CONSULTANT shall, without additional compensation, modify the Construction Documents as necessary to bring the Probable Construction Cost within the Total Allocated Funds when the excessive difference is caused as a direct result of the CONSULTANT design effort.

- E. The CONSULTANT shall provide three (3) sets of plans and specifications, signed and sealed, to the TOWN'S Public Works Department to be used for permitting.

#### 3.2.4 Phase IV - Construction Administration

- A. The CONSULTANT'S responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the earlier of the issuance to the TOWN of the final Certificate for Payment or 60 days after the date of Substantial Completion of the WORK, unless extended by mutual agreement.
- B. The CONSULTANT, as the representative of the TOWN during the Construction Phase, shall advise and consult with the TOWN and shall have authority to act on behalf of the TOWN to the extent provided in the General Conditions and as modified in the Supplementary Conditions of the Construction Contract.
- C. The CONSULTANT shall attend pre-construction meetings.
- D. The CONSULTANT shall at all times have access to the project wherever it is in preparation or progress, so he may perform as intended under this Agreement.
- E. The CONSULTANT shall visit the site at least weekly, and at all key construction events to ascertain the progress of the Project and to determine in general if the WORK is proceeding in accordance with the Contract Documents. On the basis of on-site observations, the CONSULTANT will use reasonable and customary care to guard the TOWN against defects and deficiencies in the WORK. On the basis of the on-site observations, the CONSULTANT will advise the TOWN as to the progress of and any observed defects and deficiencies in the WORK immediately in writing.
- F. The CONSULTANT shall furnish the TOWN with a written report of all observations of the WORK made by him during each visit to the WORK. CONSULTANT shall also note the general status and progress of the WORK, and shall submit same weekly. The CONSULTANT shall ascertain at least monthly that the Contractor is making timely, accurate, and complete notations on record drawings.

- G. The CONSULTANT shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the WORK, since these are solely the Contractor's responsibility under the Contract for Construction. The CONSULTANT shall not be responsible for the Contractor's schedules or failure to carry out the WORK in accordance with the Contract Documents. The CONSULTANT shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the WORK.
- H. Based on observations at the site and on the Contractor's Payment Certificate, the CONSULTANT shall determine the amount due the Contractor on account and shall recommend approval of the Certificate in such amounts. The recommendation of approval of a Payment Certificate shall constitute a representation by the CONSULTANT to the TOWN that CONSULTANT certifies to the TOWN that the WORK has progressed to the point indicated, and the quality of the WORK is in accordance with the Contract Documents subject to:
1. An evaluation of the WORK for conformance with the contract documents upon substantial completion.
  2. The results of any subsequent tests required by the contract documents.
  3. Minor deviations from the contract documents correctable prior to completion and acceptance of the project.
- I. The issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the WORK, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the TOWN to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- J. With the TOWN'S prior approval, the CONSULTANT shall have affirmative duty to recommend rejection of WORK which does not conform to the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to insure compliance with the Contract Documents, CONSULTANT will have authority to recommend special reviews or testing of any WORK deemed not to be in accordance with the Contract whether or not such WORK has been fabricated and delivered to the Project, or installed and completed.
- K. The CONSULTANT shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken

with such reasonable promptness as to cause no delay in the WORK, while allowing sufficient time in the CONSULTANT'S professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The CONSULTANT'S review shall not constitute approval of safety precautions, of construction means, methods, techniques, sequences or procedures. The CONSULTANT'S approval of a specific item shall not indicate approval of an assembly of which the item is a component. Changes or substitutions to the Contract Documents shall not be authorized without concurrence with the TOWN.

- L. The CONSULTANT shall review and recommend action on proposed change orders within the scope of the Project initiated by others, and initiate proposed change orders as required by his own observations.
- M. The CONSULTANT shall examine the WORK upon receipt of the Contractor's Certificate of Substantial Completion of the Project. A Punch list of any defects and discrepancies in the WORK required to be corrected by the Contractor shall be prepared by the CONSULTANT in conjunction with representatives of the TOWN and satisfactory performance obtained thereon before the CONSULTANT recommends execution of Certificate of Final Acceptance and final payment to the Contractor.
- N. The CONSULTANT shall furnish to the TOWN, reproducible record drawings updated based on information furnished by the Contractor; such drawings shall become the property of the TOWN. The CONSULTANT shall be paid for this service on an hourly basis up to a not-to-exceed figure as agreed to in writing by the TOWN.
- O. If requested, the CONSULTANT shall assist the TOWN in the inspection of the WORK one month before the expiration of any guarantee period and report any defective WORK in the Project under terms of the guarantee/warranties for correction. CONSULTANT shall assist the TOWN with the administration of guarantee/warranties for correction of defective WORK that may be discovered during the said period. The CONSULTANT shall be paid by the TOWN for this service as an additional service.

### 3.3 ADDITIONAL PROFESSIONAL SERVICES

#### 3.3.1 Additional Services

Additional Services as listed below are normally considered to be beyond the scope of the Basic Services for design and construction, as defined in this Agreement but which are additional services which may be authorized within the Scope of Work given the CONSULTANT.

- A. Financial feasibility, life cycle costing, or other special studies.
- B. Planning surveys, site evaluations, or comparative studies of prospective sites.

- C. Design services relative to future facilities, systems and equipment which are not intended to be constructed as part of a specific Project.
- D. Services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the TOWN.
- E. Professional detailed Estimates of Construction Cost consisting of quantity surveys itemizing all material, equipment and labor required for a Project.
- F. Consultation concerning replacement of any WORK damaged during construction, and furnishing professional services of the type set forth in Basic Services as may be required relative to replacement of such WORK, providing the cause is found by the TOWN to be other than by fault of the CONSULTANT.
- G. Professional services made necessary by the default of the Contractor or by major defects in the WORK under the Construction Contract, providing the cause is found by the TOWN to be other than by fault of the CONSULTANT.
- H. Making major revisions changing the Scope of a project, to drawings and specifications when such revisions are inconsistent with written approvals or instruction previously given by the TOWN and are due to causes beyond the control of the CONSULTANT. (Major revisions are defined as those changing the Scope and arrangement of spaces and/or scheme or any portion).
- I. Making revisions in Drawings, Specifications or other documents when such revisions are:
  - 1. Inconsistent with approvals or instructions previously given by the TOWN, including revisions made necessary by adjustments in the TOWN'S program or Project budget;
  - 2. Required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
  - 3. Due to changes required as a result of the TOWN'S failure to render decisions in a timely manner.
- J. Preparing to serve or serving as an expert witness in connection with any legal proceeding in connection with a Project.
- K. Professional services required after approval by the TOWN or the Contractor's Requisition for Final Payment, except as otherwise required under Basic Services.
- L. Preparing supporting data, drawings, and specifications as may be required for Change Orders affecting the scope of a Project provided the Changes are due to causes found by the TOWN, to be beyond the control of the CONSULTANT.

#### **SECTION 4 – TOWN OBLIGATIONS**



The TOWN agrees to provide the following material, data, or services as required in connection with the WORK to be performed under this Agreement:

- A. Provide the CONSULTANT with available data, drawings, surveys, right-of-way maps, reports, and other information in the possession of the TOWN that are pertinent to the project and allowed to be shared.
- B. The TOWN shall assist in making provisions for the CONSULTANT to enter upon public or private property as required for the CONSULTANT to perform his services.

## **SECTION 5 – PROJECT WORKLOAD**

The TOWN, through its designated representative, shall, in its sole discretion, assign work to the Coastal Engineering firm(s) as deemed appropriate by the TOWN. The Professional Services Agreement in no way guarantees any future work. CONSULTANT shall have no right to appeal or challenge the TOWN'S decision regarding distribution of work.

## **SECTION 6 – PERFORMANCE OF WORK**

The CONSULTANT agrees to perform all necessary professional coastal engineering design, permitting, and construction management services in connection with the assigned project(s) as required and as set forth in the following:

### **A. General**

1. The CONSULTANT will endeavor not to duplicate any previous work done on any project. Before issuance of a Purchase Order and written authorization to proceed, the CONSULTANT shall consult with the TOWN to clarify and define the TOWN'S requirements and deliverables for the project and review all available data. TOWN may request the CONSULTANT to prepare a written proposed Scope of Services as part of this process.

2. The CONSULTANT shall attend meetings with the TOWN and its representatives, upon request. Meetings not included in the Purchase Order shall be treated as additional services when such meetings are related to approved Purchase Orders.

3. In order to accomplish the WORK described under this Agreement under the timeframes and conditions set forth in this Agreement, the CONSULTANT shall observe the following requirements:

a. The CONSULTANT will complete its WORK on the project within the time allowed by maintaining an adequate staff of registered engineers, project managers, surveyors, draftsmen, and other employees as may be required on the WORK at all times. Alternatively, the CONSULTANT may contract for such services in lieu of providing the same as employees of the CONSULTANT.

b. The CONSULTANT shall comply with all federal, state, and local laws applicable to this project(s). The CONSULTANT'S WORK product shall conform with all applicable federal, state and local laws applicable to this project(s).

c. The CONSULTANT shall prepare or provide for all necessary sketches, drawings, and survey documents as necessary for each project.

d. The CONSULTANT shall reply in a timely manner to the TOWN'S requests for additional information related to the CONSULTANT'S WORK product. The CONSULTANT shall cooperate fully with the TOWN in order that all phases of the WORK may be properly scheduled and coordinated.

e. The CONSULTANT will contact all known utility companies having installations in the vicinity of the proposed WORK and coordinate locations of utilities, if necessary and included on the Purchase Order. The CONSULTANT shall provide the TOWN with all obtained information relative to any required utility below ground utilities on all survey work products.

f. The CONSULTANT shall report project status to the TOWN'S Representative upon request and hold all drawings, calculations and related work open to the inspection of the TOWN'S Representative or said Representative's authorized agent at any time, upon reasonable request.

4. If sufficient funding has been provided for within the applicable Purchase Order the CONSULTANT shall furnish additional copies of reports, drawings, sketches, and survey documents as required by the TOWN, but may charge only for the actual cost of providing such copies where outsourced and rates included in this Agreement or in the Purchase Order do not apply. CONSULTANT will submit request for reimbursement in a format as directed by the TOWN'S Representative. The CONSULTANT shall furnish to the TOWN the necessary number of sets of the drawings, sketches, survey documents and other pertinent items as set forth in individual Purchase Orders. The cost of these sets of documents are not included in the basic compensation paid to the CONSULTANT but will be paid as a direct expense. All created documents, survey notes, field books, tracings, drawings, sketches, survey documents, and the like including all items furnished to the CONSULTANT by the TOWN pursuant to this Agreement, are and shall remain the property of the TOWN, and shall be delivered to the TOWN upon completion of the WORK if requested. All items prepared by the CONSULTANT shall be created, maintained, updated, and provided in the format as specified by the TOWN including but not limited to Print, CADD, PDF, EXCEL, etc. Unless noted otherwise on the Purchase Order, AutoCAD, Excel, Word, shall be understood to be standard formats for CAD, Spreadsheet, and word documents.

5. The CONSULTANT acknowledges that preparation of all applicable drawings, sketches, survey documents, and written or oral responses to all regulatory agencies' questions about the CONSULTANT'S WORK product, are included within the scope of basic compensation in each particular Purchase Order. Any additional WORK required by regulatory agencies or entity which establish such regulations or need after the effective date of the particular Purchase Order, shall be an additional service, and the TOWN shall compensate the CONSULTANT in accordance with Section VIII – "Direct Payment for Additional Services," of this Agreement, and in accordance with the fee schedule in an approved Purchase Order.

6. Compensation to the CONSULTANT for basic services shall be in accordance with each Purchase Order, as mutually agreed upon by the CONSULTANT and the TOWN. Schedule of

current hourly billing rates are included in "Exhibit B" incorporated herein by reference and attached hereto, and will be included as part of each Purchase Order when approved. CONSULTANT shall provide a resource plan, time to complete, and other information as needed relative to the Purchase Order to support the TOWN'S effective management of the TOWN'S business.

## **SECTION 7 – TIME FOR COMPLETION**

The time for completion of each project shall be defined in the Purchase Order.

## **SECTION 8 – COMPENSATION**

The TOWN agrees to pay, and the CONSULTANT agrees to accept, for services rendered pursuant to this Agreement, fees in accordance with the following:

### **A. Professional Services Fee:**

The basic compensation shall be agreed upon prior to issuance of each Purchase Order and the work hours for each discipline and work schedule shall be included in the Purchase Order. All hourly rates, fees and charges shall be in accordance with the Schedule of Billing Rates, which is incorporated herein by reference and attached hereto as Exhibit B, and is to be completed by the CONSULTANT and submitted to the TOWN upon execution of this Agreement. The TOWN may accept or reject any resource, unit or rate contained therein prior to Agreement execution and will attempt to negotiate any rejected resource, rate or unit. Acceptance of the proposed Schedule of Billing Rates shall be in the TOWN'S sole discretion. CONSULTANT may request an amendment to the resources, units or rates contained within the Schedule of Billing Rates, but may not do so any less often than annually following the execution of the Agreement or the approval of a revised Schedule of Billing Rates by both parties.

### **B. Direct Payment for Additional Services:**

The TOWN agrees to pay on a direct basis for services or goods provided by others working in conjunction with the CONSULTANT, as follows:

1. **Printing and Reproduction.** The TOWN shall make direct payment to the CONSULTANT for the cost of printing project plan sheets required for project coordination. The maximum cost allowed per printed sheet utilized for this purpose shall be set forth in the schedule of billing rates.
2. **All travel expenses** must be agreed to in advance by Purchase Order and included therein. Travel is defined as a day trip or overnight stay(s) outside the confines of Broward, Martin or Palm Beach counties.
3. **Mileage reimbursement** shall be made based upon the adopted IRS mileage reimbursement rate allowed at the time of occurrence of the mileage, but only for approved WORK related travel within the confines of Broward, Martin and Palm Beach counties.

4. Surveying and other work as mutually agreed upon.

## **SECTION 9 – PAYMENTS**

The TOWN shall make monthly partial payments to the CONSULTANT as provided for in the Purchase Order. Unless otherwise stated in the Purchase Order, the CONSULTANT shall submit duly certified invoices to the TOWN'S Representative for review monthly. Invoices shall indicate the Purchase Order, and deliverables provided. The Purchase Order shall be divided into units of deliverables which may include, but not be limited to, electronic files, reports, findings, drawings, and drafts that must be received and accepted in writing by the TOWN'S Representative prior to payment.

## **SECTION 10 – RIGHT OF DECISIONS**

All services shall be performed by the CONSULTANT to the satisfaction of the TOWN'S Representative who shall decide all questions, difficulties, and disputes of whatever nature which may arise under or by reason of this Agreement, according to the prosecution and fulfillment of the service hereunder, and the character, quality, amount and value thereof. The TOWN'S Representative's decision upon all claims, questions and disputes shall be final, conclusive and binding.

Adjustments of compensation and contract time because of any major changes in the WORK that might become necessary or be deemed desirable as the WORK progresses shall be reviewed and approved by the TOWN'S Representative prior to the CONSULTANT beginning work on such changes.

## **SECTION 11 – OWNERSHIP AND REUSE OF DOCUMENTS**

### **A. Ownership and Copyright:**

Unless agreed otherwise, ownership and copyright of all reports, tracings, plans, specifications, field books, survey information, maps, contract documents, data, and other deliverables developed by the CONSULTANT pursuant to this Agreement, shall be vested in the TOWN. Said materials shall be made available by the CONSULTANT at any time upon request of the TOWN.

### **B. Reuse of Documents:**

All documents, including but not limited to reports, drawings and specifications, prepared by the CONSULTANT pursuant to this Agreement, are related to the services described herein. They are not intended for reuse by the TOWN on any other project. The TOWN'S reuse of any document or drawing shall be at the TOWN'S own risk.

## **SECTION 12 – NOTICES**

Any notices, reports or other written communications from the CONSULTANT to the TOWN shall be considered delivered when posted by certified mail or delivered in person to the TOWN'S Representative. Any notices, reports or other communications from the TOWN to the CONSULTANT shall be considered delivered when posted by certified mail to the

CONSULTANT at the last address left on file with the TOWN or delivered in person to said CONSULTANT or his authorized representative. Unless TOWN is subsequently notified otherwise, the CONSULTANT'S address shall be as shown in this Agreement.

### **SECTION 13 – TERMINATION**

Either party may terminate this Master Agreement for any reason upon thirty (30) days written notice to the other party, except that in the event the CONSULTANT terminates this agreement, such termination shall not be effective, absent the TOWN'S consent, until the CONSULTANT'S completion or partial completion, to the TOWN'S satisfaction, of any Purchase Order in progress.

### **SECTION 14 – AUDIT RIGHTS**

The TOWN reserves the right to audit the records of the CONSULTANT related to this Agreement at any time during the prosecution of the WORK included herein and for a period of three years after final payment is made.

### **SECTION 15 – SUBLETTING**

The CONSULTANT shall not sublet, assign, or transfer any WORK under this Agreement without the written consent of the TOWN. When applicable and upon receipt of such consent in writing, the CONSULTANT shall cause the names of the firms responsible for the major portions of each separate specialty of the WORK to be inserted on the reports or other data, including a description of their respective contribution to the WORK product.

### **SECTION 16 – WARRANTY**

The CONSULTANT warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage fee, gifts or any other considerations, contingent upon or resulting from the award or making of this Agreement. For the CONSULTANT'S breach of violation of this warranty, the TOWN shall have the right to terminate this Agreement without liability.

### **SECTION 17 – DURATION OF AGREEMENT**

The Master Agreement shall remain in full force and effect for a period of three years after the date of, or until completion of all project phases of the then Work Orders in progress, or unless otherwise terminated by mutual consent of the parties hereto. By mutual agreement of both parties, this Agreement may be extended up to two (2) additional annual periods.

### **SECTION 18 – INSURANCE**

The CONSULTANT shall provide at its own cost and expense during the life of the contract, the following insurance coverages to the Town of Palm Beach thirty (30) business days prior to the commencement of any WORK. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance shall be evidenced by certificates and/or policies to include premiums as determined by the Town of Palm Beach. It shall be an affirmative obligation upon the Service Provider to advise the TOWN'S Risk Manager at fax no. 561-838-5497,

e-mail [risk@townofpalmbeach.com](mailto:risk@townofpalmbeach.com), 360 S. County Road, Palm Beach, FL 33480 within 24 hours or the next business day of cancellation, non-renewal or modification of any stipulated insurance and failure to do so shall be construed to be a breach of agreement/contract. The Town of Palm Beach reserves the right to require additional insurance coverages and limits based upon the particular service or change order requested by the CONSULTANT.

If the CONSULTANT maintains higher limits than the minimums shown below, the TOWN requires and shall be entitled to coverage for the higher limits maintained by the contractor. The requirements contained herein, as well as TOWN'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.

Professional Liability, or equivalent Errors & Omissions Liability with limits of liability not less than \$1,000,000 Per Occurrence. For policies written on a Claims-made basis, service provider shall maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the service provider shall agree to purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

Comprehensive General Liability Insurance coverage with limits of liability not less than \$1,000,000 Each Occurrence. The Certificate of Insurance shall indicate an Occurrence Basis. The Town of Palm Beach shall be endorsed as an additional insured under the General Liability coverage. The Service Provider's General Liability coverage shall be primary and non-contributory. For policies written on a Claims-made basis, service provider shall maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the service provider shall agree to purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

Business Auto Liability coverage for any auto (all owned, hired, and non-owned autos) with limits not less than \$1,000,000 each occurrence combined single limit each accident. In the event service provider does not own any autos, the TOWN will accept proof of Hired and Non-Owned Auto Liability. For personally owned vehicles, the TOWN requires limits not less than \$300,000 each occurrence combined single limit.

Workers' Compensation coverage with statutory limits pursuant to Florida State Statute 440 or an exemption letter from the State. Should the scope of work performed by CONSULTANT qualify its employees for benefits under federal workers' compensation statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine act), proof of appropriate federal act coverage must be provided. A waiver of subrogation must be provided.

Employers Liability coverage with limits not less than \$100,000 for each accident, \$100,000 disease (each employee) and \$500,000 disease (policy limit).

In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under the contract, the amount excess of such claims or any portion thereof may be



withheld from any payment due or to become due the Service Provider until such time the Service Provider shall furnish such additional security covering such claims as may be determined by the Town of Palm Beach.

Umbrella or Excess Liability is required up to the minimum limit of liability if the limits of liability shown on the Certificate of Insurance under General Liability do not meet the minimum limit of liability as required.

All required insurance policies shall provide a waiver of subrogation and rights of recovery against the Town of Palm Beach, including its agents, officers, past and present employees, elected officials and representatives, the insurance policy in effect shall protect both parties and be primary and non-contributory for any and all losses covered by the above described insurance. Insurers have no recourse against the Town of Palm Beach for payment or assessments in any form on any insurance policy.

TOWN, by and through its Risk Management Office, in cooperation with the contracting/hiring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the life of this Contract. TOWN reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

#### **SECTION 19 – INDEMNIFICATION**

To the fullest extent allowed by law the CONSULTANT shall protect, defend, reimburse, indemnify and hold harmless the Town of Palm Beach, and the TOWN'S officers, agents, employees free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, attorneys or other professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, cause or causes of action of every kind and character to the extent caused by the negligent acts, errors or omissions of the CONSULTANT in the performance of this Contract and the WORK performed hereunder. Without limiting the generality of the foregoing, CONSULTANT'S indemnity shall include all claims, damages, losses, or expense arising out of or related to personal injury, death, damages to property, actual or alleged infringement of any patent, trademark, copyright, proprietary information, or applications of any thereof, or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or order of any court. Notwithstanding the foregoing, CONSULTANT'S indemnity shall not extend to liability for damages to persons or property to the extent such damage was caused by any act, omission, or default of the TOWN, or by the TOWN'S officers, agents and employees.

#### **SECTION 20 – SAFETY**

In accordance with generally accepted practices, the CONSULTANT shall report any observed job site safety violations to the TOWN and to the Contractor's Representative. Although the CONSULTANT accepts this responsibility, it is acknowledged by the parties that the Engineer does not have an expertise in job site safety.

## **SECTION 21 - CONTRACTUAL AGREEMENT**

RFQ No. 2017-35 – Coastal Engineering Design, Permitting and Construction Management Services is included and incorporated herewith in its entirety as Exhibit A. The order of contractual precedence will be this Agreement document, original Terms and conditions of RFQ No. 2017-35 (Exhibit A), and CONSULTANT'S response with rate sheet (Exhibit B).

## **SECTION 22 - PUBLIC RECORDS**

Upon award recommendation or ten (10) days after opening, whichever occurs first, proposals become "public records" and shall be subject to public disclosure consistent with Chapter 119 Florida Statutes. Proposers must invoke the exemptions to disclosure provided by law in the response to the RFQ, and must identify the data or other materials to be protected, and must state the reasons why such exclusion from public disclosure is necessary. Document files may be examined, during normal working hours.

## **SECTION 23 - NEWS RELEASES**

The CONSULTANT shall obtain the prior approval of the Town Manager's Office or the prior approval of the office of the Director of Public Works of all news releases or other publicity pertaining to Purchase orders for each project.

## **SECTION 24 - FAMILIARITY WITH LAWS**

The CONSULTANT is assumed to be familiar with all federal, state and local laws, ordinances, rules and regulations that may in any manner affect the WORK. The failure to familiarize itself with applicable laws will in no way relieve CONSULTANT from responsibility.

## **SECTION 25 - PERMITS, TAXES, LICENSES**

The CONSULTANT shall at its own expense obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under the contract. Proposers, both corporate and individual must be fully licensed and certified in the State of Florida at the time of this Agreement.

## **SECTION 26 – CHOICE OF LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Palm Beach County, Florida, or in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

## **SECTION 27 – ENTIRETY OF AGREEMENT**

This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other Agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.

## **SECTION 28 - SEVERABILITY**

In the event any provision, section or paragraph of this Agreement is determined by a court of competent jurisdiction to be void, illegal, or unenforceable, the remaining portions not found to be void, illegal, or unenforceable, shall remain in full force and effect.

## **SECTION 29 – PUBLIC RECORDS LAW**

In accordance with Florida Statutes 119.0701, the contractor shall comply with public records laws, specifically to:

- (1) Keep and maintain public records required by the public agency to perform the service.
- (2) Upon request from the public agency's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.
- (3) 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 contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (4) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, 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 contract, the contractor shall meet all applicable requirements of retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

A copy of Section 119.0701, Florida Statutes, has been provided to the contractor.

**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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**Town Clerk, or designee**

**Phone 561-838-5416**

**Email [townclerk@townofpalmbeach.com](mailto:townclerk@townofpalmbeach.com)**

IN WITNESS WHEREOF, this Agreement is accepted on the date first above written subject to the terms and conditions set forth herein.

By authority of the Town Council

TOWN OF PALM BEACH, FLORIDA

By: Thomas B. Bradford

Town Manager

ATTEST:

Gwendolynn B. Peice  
Town Clerk

STATE OF FLORIDA

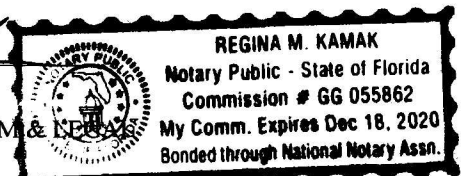
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority this day personally appeared Thomas B. Bradford and Gwendolynn Peice, Town Manager and Town Clerk, respectively, of the TOWN OF PALM BEACH, who did acknowledge to and before me that they executed the above and foregoing contract for the uses and purposes therein expressed with due authority in that behalf from the Town Council of the Town of Palm Beach, Florida on this 15th day of September, 2017.

Regina M. Kamak  
Notary Public

Recommend Approval:

APPROVED AS TO FORM & SUFFICIENCY:



H. Paul Brazil, P.E. 9/6/17  
Director of Public Works DATE

John C. Randolph 9/5/17  
Town Attorney DATE

ATTEST:

Jordan Chelfet  
Jordon Chelfet

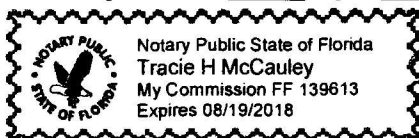
Aptim Environmental & Infrastructure, Inc. 8/31/17  
Engineering Firm Date

By: Thomas Pierro  
Typed/Printed Name:  
Thomas Pierro, Director of Operations

STATE OF FLORIDA

COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority this day personally appeared Thomas Pierro of APTIM Environmental & Infrastructure Inc., a Louisiana Corporation, who did acknowledge to and before me that they executed the above and foregoing contract for the uses and purposes therein expressed with due authority in that behalf from said corporation on 31 day of August, 2017.



Tracie H. McCauley  
Notary Public