
Continuing Contract Agreement for Consulting Services

THIS CONTINUING CONTRACT AGREEMENT for Consulting Services ("Agreement"), entered into as of this 10th day of May, 2022, by and between INDIAN RIVER COUNTY, a political Subdivision of the State of Florida, ("COUNTY"), and Witt O'Brien's, LLC ("CONSULTANT").

BACKGROUND RECITALS:

In compliance with state and local laws and requirements, through RFP 2022034, the COUNTY has selected the CONSULTANT to provide certain professional services in the discipline of Grant Consultant Services.

- A. The CONSULTANT is willing and able to perform the Services for the COUNTY on the terms and conditions set forth below; and
- B. The COUNTY and the CONSULTANT wish to enter into this Agreement for the CONSULTANT's Services.

NOW THEREFORE, in accordance with the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GENERAL

1.1 Professional services provided by the CONSULTANT for the COUNTY shall be identified in individual Task Orders prepared by the COUNTY, in the form substantially similar to the template attached hereto as Exhibit 2. All Task Orders are incorporated herein by reference.

1.2 Services related to any individual Task Order which would increase, decrease or which are otherwise outside the scope of Services or level of effort contemplated by a Task Order shall be Services for which the CONSULTANT must obtain the prior written approval of the COUNTY as provided by this Agreement. All terms for the performance of such Services must be agreed upon in a written document prior to any deviation from the terms of a Task Order; and when properly authorized and executed by both the CONSULTANT and the COUNTY, shall become an amendment to the Task Order or a new Task Order, at the sole option of the COUNTY. A separate Notice-to-Proceed may, at the sole option of the COUNTY, be given for each phase of the services contained in any Task Order hereunder.

1.3 A schedule of current hourly billing rates is set forth in Exhibit 1 attached to this Agreement and made a part hereof by this reference. These hourly billing rates will remain effective for the initial five-year term of this Agreement.

1.4 No representation or guarantee is made by COUNTY as to the minimum or maximum dollar value, volume of work, or type of work, if any, that CONSULTANT will receive during the term of this Agreement.

1.5 The Background Recitals are true and correct and form a material part of this Agreement.

2. COUNTY OBLIGATIONS

2.1 The COUNTY shall provide all requested information requested by CONSULTANT in a reasonable amount of time.

2.2 The CONSULTANT shall not be considered in default for a failure to perform if such failure arises out of causes reasonably beyond the CONSULTANT's control and through no fault or negligence of the CONSULTANT. The parties acknowledge that adverse weather conditions, acts of God, or other unforeseen circumstances of a similar nature, may necessitate modifications to this Agreement. If such conditions and circumstances do in fact occur, then the COUNTY and CONSULTANT shall mutually agree, in writing, to the modifications to be made to this Agreement.

3. RESPONSIBILITIES OF THE CONSULTANT

3.1 The CONSULTANT agrees to perform all necessary Services in connection with the assigned Project(s) as set forth in the Work Orders and in this Agreement.

3.2 The CONSULTANT will endeavor not to duplicate any previous work done on any Project. Before execution of a Work Order, the CONSULTANT shall consult with the COUNTY to clarify and define the COUNTY's requirements for the Project.

3.3 The CONSULTANT agrees to complete the Project within the time frame specified in the Work Order.

3.4 The CONSULTANT will maintain an adequate staff of qualified personnel.

3.5 The CONSULTANT will comply with all present and future federal, state, and local laws, rules, regulations, policies, codes, and guidelines applicable to the Services performed under this Agreement.

3.6 The CONSULTANT, as a part of the consideration hereof, does hereby covenant and agree that: (1) in connection with the furnishing of Services to the COUNTY hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to the services to be performed by CONSULTANT under this Agreement on the grounds of such person's race, color, creed, national origin, religion, physical disability, age, or sex; and (2) the CONSULTANT shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines; as such rules, regulations, or guidelines may be from time to time amended.

3.7 The CONSULTANT shall during the entire term of this Agreement, procure and keep in full force, effect, and good standing any and all necessary licenses, registrations, certificates, permits, and any and all other authorizations as are required by local, state, or federal law, in order for the CONSULTANT to render its Services as described in this Agreement. The CONSULTANT shall also require all sub-consultants to comply by contract with the provisions of this section.

3.8 The CONSULTANT will cooperate fully with the COUNTY in order that all phases of the work may be properly scheduled and coordinated.

3.9 The CONSULTANT will cooperate and coordinate with other COUNTY CONSULTANTS, as directed by the COUNTY.

3.10 The CONSULTANT shall report the status of the Services under this Agreement to the County Project Manager upon request and hold all drawings, calculations and related work open to the inspection of the County Project Manager or his authorized agent at any time, upon reasonable request.

3.11 All documents, reports, tracings, plans, specifications, field books, survey notes and information, maps, contract documents, and other data developed by the CONSULTANT for the purpose of this Agreement, are and shall remain the property of the COUNTY. The foregoing items will be created, maintained, updated, and

provided in the format specified by the COUNTY. When all work contemplated under this Agreement is complete, all of the above data shall be delivered to the County Project Manager.

3.12 The CONSULTANT agrees to maintain complete and accurate books and records ("Books"), in accordance with sound accounting principles and standards for all Services, costs, and expenditures under this Agreement. The Books shall identify the Services rendered during each month of the Agreement and the date and type of each Project-related expense. The COUNTY shall have the right at any reasonable time and through any of its designated agents or representatives, to inspect and audit the Books for the purpose of verifying the accuracy of any invoice. The CONSULTANT shall retain the Books, and make them available to the COUNTY as specified above, until the later of three (3) years after the date of termination of this Agreement, or such longer time if required by any federal, state, or other governmental law, regulation, or grant requirement.

3.14 The CONSULTANT shall not assign or transfer any work under this Agreement without the prior written consent of the COUNTY.

3.15 Consultant is registered with and will use the Department of Homeland Security's E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S. Consultant is also responsible for obtaining proof of E-Verify registration and utilization for all subconsultants.

4. TERM; DURATION OF AGREEMENT

4.1 This Agreement shall commence on August 29, 2022, and remain in full force and effect for an initial term of five years, with two additional two-year renewals available, subject to mutual agreement, unless otherwise terminated by mutual consent of the parties hereto, or terminated pursuant to Section 8 "Termination".

5. COMPENSATION

5.1 The COUNTY shall pay to the CONSULTANT based on actual hours worked at the rates provided in Exhibit 1 and submitted by monthly invoice. All payments for services shall be made to the CONSULTANT by the COUNTY in accordance with the Florida Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.). Payment for Purchase Orders will be included in the proposal for Purchase Order.

5.1.1 The CONSULTANT shall include on the invoices any identifiable per diem, meals and lodgings, taxi fares and miscellaneous travel-connected expenses for CONSULTANT's personnel subject to the limitations of F. S. section 112.061, as may be amended from time to time. Travel expenses, if any, shall not be on a direct pay basis by the COUNTY. Notwithstanding the foregoing, the CONSULTANT acknowledges and agrees that it will not be reimbursed for any travel within Indian River County, both after a CONSULTANT arrives from outside of Indian River County, and where a CONSULTANT maintains an office in Indian River County.

5.2 The COUNTY may at any time notify the CONSULTANT of requested changes to the Services under an existing Work Order, and thereupon the COUNTY and the CONSULTANT shall execute a mutually agreeable amended Work Order or a new Work Order.

5.3 The COUNTY shall have the sole right to reduce or eliminate, in whole or in part, any portion of the Services under any Work Order at any time and for any reason, upon written notice to the CONSULTANT specifying the nature and extent of the reduction. In such event, the CONSULTANT shall be paid for the Services

already performed and also for the Services remaining to be done and not reduced or eliminated, upon submission of invoices as set forth in this Agreement.

5.4 The COUNTY may, at any time and for any reason, direct the CONSULTANT to suspend Services, in whole or in part under this Agreement. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The CONSULTANT shall resume its Services upon the date specified, or upon such other date as the COUNTY may thereafter specify in writing. Where the COUNTY has suspended the Services under this Agreement for a period in excess of six (6) months, the compensation of CONSULTANT for such suspended Services may be subject to modification. The period during which the Services are stopped by the COUNTY shall be added to the time of performance of this Agreement.

6. ADDITIONAL WORK

6.1 If services in addition to the Services provided hereunder are required or desired by the County in connection with the Project, the COUNTY may, at the sole option of the COUNTY: separately obtain same outside of this Agreement; or request the CONSULTANT to provide, either directly by the CONSULTANT or by a sub consultant, such additional services by a new Work Order or by a written amendment to a specific Work Order.

7. INSURANCE AND INDEMNIFICATION

7.1 The CONSULTANT shall not commence work on this Agreement until it has obtained all insurance required under this Agreement and such insurance has been approved by the County's Risk Manager.

7.2 CONSULTANT shall procure and maintain, for the duration of this Agreement, the minimum insurance coverage as set forth herein. The cost of such insurance shall be included in the CONSULTANT's fee:

7.2.1 Workers' Compensation: Workers' Compensation as required by the State of Florida Employers' Liability of \$100,000 each accident, \$500,000 disease policy limit, and \$100,000 disease each employee.

7.2.2 General Liability: commercial general liability coverage, including contractual liability and independent contractor, with a minimum combined single limit of \$300,000 per occurrence.

7.2.3 Business Automobile Liability: owned, hired, and non-owned vehicles at a minimum combined single limit of \$300,000 per occurrence.

7.2.4 Professional Liability Insurance: providing coverage for negligent acts, errors, or omissions committed by CONSULTANT with a limit of \$1,000,000 per claim/annual aggregate. This insurance shall extend coverage to loss of interest, earning, profit, use, and business interruption, cost of replacement power, and other special, indirect, and consequential damages.

7.3 CONSULTANT's insurance coverage shall be primary.

7.4 All required insurance policies shall be placed with insurers licensed to do business in Florida and with a Best's rating of A-VII or better.

7.5 The insurance policies procured shall be occurrence forms, not claims made policies with the exception of professional liability.

7.6 A certificate of insurance shall be provided to the County's Risk Manager for review and approval prior to commencement of any work under this Agreement. The COUNTY shall be named as an additional insured on all policies except business automobile liability, workers' compensation and professional liability.

7.7 The insurance companies selected shall send written notice to the County Risk Manager of its intent to cancel or modify any required policies of insurance.

7.8 CONSULTANT shall include all subconsultants as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall also be subject to all of the requirements stated herein.

7.9 The COUNTY, by and through its Risk Manager, reserves the right periodically to review any and all policies of insurance and reasonably to adjust the limits of coverage required hereunder, from time to time throughout the term of this Agreement. In such event, the COUNTY shall provide the CONSULTANT with separate written notice of such adjusted limits and CONSULTANT shall comply within thirty (30) days of receipt thereof. The failure by CONSULTANT to provide such additional coverage shall constitute a default by CONSULTANT and shall be grounds for termination of this Agreement by the COUNTY.

7.10 To the extent permitted by law, CONSULTANT will release, indemnify, defend and hold harmless COUNTY from and against all claims, losses, damages, costs (including legal fees), expenses and liabilities in respect of:

- (A) Loss of or damage to the property of CONSULTANT whether owned or leased by CONSULTANT; and
- (B) Personal injury, including death or disease, to any person employed by CONSULTANT;

arising from or relating to CONSULTANT's performance of the agreement.

7.11 To the extent permitted by law, and to the limits set forth in section 768.28, Florida Statutes, OWNER will release, indemnify, defend and hold harmless CONSULTANT from and against any claims, losses, damages, costs (including legal fees), expenses and liabilities in respect of:

- (A) Loss of or damage to the property of COUNTY, whether owned or leased by COUNTY; and
- (B) Personal injury, including death or disease, to any person employed by COUNTY;

Arising from or relating to the COUNTY's actions in connection with the agreement.

Notwithstanding anything herein to the contrary, neither party excludes or limits its liability for fraud.

7.12 In no event shall either party be liable for any exemplary, punitive, incidental, special, or consequential damages of any kind. Except for indemnity obligations and claims arising from breach of confidentiality, each party's liability for any and all claims arising out of or in connection with the agreement shall not exceed, in the aggregate, the fees actually paid by COUNTY to CONSULTANT under this agreement.

7.13 All indemnities and limitations of liability under this agreement shall apply irrespective of cause and notwithstanding any negligence (whether sole, joint, concurrent, active, passive or gross), breach of duty (whether statutory, contractual or otherwise) or other fault or strict liability of any party (including any indemnified party), and shall apply irrespective of any claim in tort, under contract or otherwise at law.

8. TERMINATION

8.1 The occurrence of any of the following shall constitute a default by CONSULTANT and shall provide the COUNTY with a right to terminate this Contract in accordance with this Article, in addition to pursuing any other remedies which the COUNTY may have under this Contract or under law:

- (A) if in the COUNTY's opinion CONSULTANT is improperly performing work or violating any provision(s) of the Contract Documents;
- (B) if CONSULTANT neglects or refuses to correct defective work;
- (C) if in the COUNTY's opinion CONSULTANT's work is being unnecessarily delayed and will not be finished within the prescribed time;
- (D) if CONSULTANT assigns this Contract or any money accruing thereon or approved thereon; or
- (E) if CONSULTANT abandons the work, is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for CONSULTANT or for any of his property.

8.2. COUNTY shall, before terminating the Contract for any of the foregoing reasons, notify CONSULTANT in writing of the grounds for termination and provide CONSULTANT with ten (10) calendar days to cure the default to the reasonable satisfaction of the COUNTY.

8.3 The obligation to provide services under this Agreement may be terminated by either party upon seven (7) days prior written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.

8.4 This Agreement may be terminated for convenience at any time by either Party provided the requesting Party provides the other with 30 days written notice. If either Party fails to perform any of its duties or obligation or shall violate any of the prohibitions imposed upon it under this Agreement, or shall be dissolved or be adjudged bankrupt or shall have a petition in bankruptcy filed against it, or shall make a general assignment for the benefit of creditors, or if a receiver shall be appointed for a Party, the other Party may terminate this Agreement, without prejudice to any other rights or claims which it may have under this Agreement, on written notice to the other Party and fifteen (15) business days opportunity to cure such breach. In any event, COUNTY shall pay all fees due and expenses incurred for Services rendered through the date of termination.

8.5 In the event that the CONSULTANT merges with another company, becomes a subsidiary of, or makes any other substantial change in structure, the COUNTY reserves the right to terminate this Agreement in accordance with its terms.

8.6 In the event of termination of this Agreement, the CONSULTANT agrees to surrender any and all documents prepared by the CONSULTANT for the COUNTY in connection with this Agreement.

8.7 The COUNTY may terminate this Agreement for refusal by the CONSULTANT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 Florida Statutes and made or received by the CONSULTANT in conjunction with this Agreement.

8.8 The COUNTY may terminate this Agreement in whole or in part if the CONSULTANT submits a false invoice to the COUNTY.

8.9 TERMINATION IN REGARDS TO F.S. 287.135: CONSULTANT certifies that it and those related entities of consultant as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONSULTANT certifies that it and those related entities of CONSULTANT as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

8.10 COUNTY may terminate this Contract if CONSULTANT is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

8.11 COUNTY may terminate this Contract if CONSULTANT, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

9. TRUTH-IN-NEGOTIATION CERTIFICATE: CONTINGENCY FEES

9.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a truth- in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement. The wage rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the wage rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside CONSULTANTS. The COUNTY shall exercise its rights under this "Certificate" within one (1) year following final payment. COUNTY has the authority and right to audit CONSULTANT's records under this provision. The COUNTY does not hereby waive any other right it may have pursuant to Section 287.055, Florida Statutes, as it may be from time-to-time amended.

10. MISCELLANEOUS PROVISIONS

10.1 Independent Contractor. It is specifically understood and acknowledged by the parties hereto that the CONSULTANT or employees or sub-consultants of the CONSULTANT are in no way to be considered employees of the COUNTY, but are independent contractors performing solely under the terms of the Agreement and not otherwise.

10.2 Merger; Modification. This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings of any nature whatsoever concerning the subject matter of the Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior or contemporaneous representations or agreements, whether oral or written. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by the CONSULTANT and the COUNTY.

10.3 Governing Law; Venue. This Agreement, including all attachments hereto, shall be construed according to 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 Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

10.4 Remedies; No Waiver. All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity. Each right, power and remedy of the parties provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The failure of either party to insist upon compliance by the other party with any obligation, or exercise any remedy, does not waive the right to so in the event of a continuing or subsequent delinquency or default. A party's waiver of one or more defaults does not

constitute a waiver of any other delinquency or default. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own costs.

10.5 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

10.6 Availability of Funds. The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Indian River County.

10.7 No Pledge of Credit. The CONSULTANT shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

10.8 Survival. Except as otherwise expressly provided herein, each obligation in this Agreement to be performed by CONSULTANT shall survive the termination or expiration of this Agreement.

10.9 Construction. The headings of the sections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such sections. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the parties or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's-length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement.

10.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy and all of which shall constitute but one and the same instrument.

10.11 Public Records Compliance

Indian River County is a public agency subject to Chapter 119, Florida Statutes. The CONSULTANT shall comply with Florida's Public Records Law. Specifically, the CONSULTANT shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the County 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 Chapter 119 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 CONSULTANT does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the CONSULTANT or keep and maintain public records required by the County to perform the service. If the CONSULTANT transfers all public records to the County upon completion of the contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored

electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

B. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424
publicrecords@ircgov.com
Indian River County Office of the County Attorney
1801 27th Street
Vero Beach, FL 32960

C. Failure of the CONSULTANT to comply with these requirements shall be a material breach of this Agreement.

11. FEDERAL CLAUSES

11.1 During the performance of this contract, the CONSULTANT agrees to ensure equal employment opportunity as follows:

(A) The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(B) The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(C) The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(E) The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(F) In the event of the CONSULTANT's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(G) The CONSULTANT will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction by the administering agency the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

11.2 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

(A) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(B) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section the CONSULTANT and any subcontractor or vendor responsible therefor shall be liable for the unpaid wages. In addition, such CONSULTANT and subcontractor or vendor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

(C) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONSULTANT or subconsultant or vendor under any such contract or any other Federal contract with the same prime CONSULTANT, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONSULTANT, such sums as may be determined to be necessary to satisfy any liabilities of such CONSULTANT or subconsultant or vendor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

(D) Subcontracts. The CONSULTANT or subconsultant or vendor shall insert in any subcontracts the clauses set forth in paragraph (A) through (D) of this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs (A) through (D) of this section.

11.3 The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The CONSULTANT agrees to report each violation to COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

11.4 The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONSULTANT agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and

the appropriate Environmental Protection Agency Regional Office. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

11.5 The CONSULTANT agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, where applicable.

11.6 A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSULTANT is required to verify that none of the CONSULTANT, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The CONSULTANT must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida and COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

11.7 CONSULTANTS who apply or bid for an award of \$100,000 or more shall file the required certification under the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended)). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

11.8 In the performance of this contract, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (A) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (B) Meeting contract performance requirements; or
- (C) At a reasonable price.
- (D) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

11.10 The following access to records requirements apply to this contract:

(A) The CONSULTANT agrees to provide State of Florida, Indian River County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(B) The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(C) The CONSULTANT agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

11.11 The CONSULTANT shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

11.12. This is an acknowledgement that FEMA financial assistance may be used to fund the contract. The CONSULTANT will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

11.13 The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT, or any other party pertaining to any matter resulting from the contract.

11.14 The CONSULTANT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT's actions pertaining to this contract.

11.15 CONSULTANT shall take the following affirmative steps to ensure minority business, women's business enterprises and labor surplus area firms are used when possible:

(A) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

(B) Ensuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

(C) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

(D) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

(E) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

11.16 Prohibition on Contracting for Covered Telecommunications Equipment or Services:

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the consultant and its subconsultants may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (c) Exceptions.
- (1) This clause does not prohibit consultants from providing—
 - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
 - (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - (i) Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
 - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- (d) Reporting requirement.
- (1) In the event the consultant identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the consultant is notified of such by a subconsultant at any tier or by any other source, the consultant shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
 - (2) The Consultant shall report the following information pursuant to paragraph (d)(1) of this clause:
 - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the consultant shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) Subcontracts. The Consultant shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

11.17 Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the consultant should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

IN WITNESS WHEREOF, OWNER and CONSULTANT have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONSULTANT. All portions of the Contract Documents have been signed or identified by OWNER and CONSULTANT or on their behalf.

This Agreement will be effective on August 29, 2022.

OWNER:

Witt O'Brien's, LLC

INDIAN RIVER COUNTY _____

By: _____
Peter D. O'Bryan, Chairman

By: _____
(Consultant)

By: _____
Jason E. Brown, County Administrator

(CORPORATE SEAL)

Attest _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Dylan Reingold, County Attorney

Address for giving notices:

Jeffrey R. Smith, Clerk of Court and Comptroller

License No. _____
(Where applicable)

Attest: _____
Deputy Clerk
(SEAL)

Agent for service of process: _____

Designated Representative:
Name: Kristin Daniels, CGFO
Title: Director, Office of Management and Budget
Address: 1801 27th Street, Vero Beach, FL 32960
Phone: 772.226.1257
Email: kdaniels@ircgov.com

Designated Representative:
Name: _____
Title: _____
Address: _____

Phone: _____
Email: _____

(If CONSULTANT is a corporation or a partnership, attach evidence of authority to sign.)

Exhibit 1 to the Agreement – Pricing

2022034 RFP for Grant Consultant Services

PROPOSAL PRICING – RFP #2022034 Grant Consultant Services

Proposer submits the following prices for the work described in this solicitation: Rates provided include all costs associated with the performance of the work, such as overhead and profits. Reimbursement for travel expenses will be made at actual cost and without markup.

| Position or Equivalent | Hourly Rate |
|---|-------------|
| 1. Project Manager | \$ 220.00 |
| 2. PA Specialist - Disaster Recovery Specialist I | \$ 105.00 |
| 3. Disaster Recovery Specialist II | \$ 115.00 |
| 4. Disaster Recovery Specialist III | \$ 133.00 |
| 5. Subject Matter Expert | \$ 155.00 |
| 6. Administrative Support I | \$ 60.00 |
| 7. | \$ |
| 8. | \$ |
| 9. | \$ |
| 10. | \$ |

Describe processes in place or methods used to ensure hours worked are reasonable and not inflated (attach additional pages, if necessary): Please see our response in 'Section G.1 Hours Tracking and Cost Reasonableness' of our proposal.

The undersigned hereby certifies that they have read and understand the contents of this solicitation and agree to furnish at the prices shown above all of the services specified in the RFP document, subject to all instructions, conditions, specifications and attachments hereto. Failure to have read all the provisions of this solicitation shall not be cause to alter any resulting contract or request additional compensation.

Witt O'Brien's, LLC

Name of Firm

2200 Eller Drive, P.O. Box 13038

Address



Authorized Signature

Fort Lauderdale, Florida 33316

City, State, Zip Code

Senior Managing Director, Government Solutions
Title

(202) 817-5802

Phone

3/22/2022

Date Signed

Jhoyes@wittobriens.com;
cc - contractrequests@wittobriens.com

E-mail

G.1 HOURS TRACKING AND COST REASONABLENESS

Witt O'Brien's utilizes a combination of active project management, as detailed in previous sections of this response, and a robust time-keeping entry and approval process through our Workday application. The Project Manager and senior staff allocated to the County will be present and up to speed with the tasks assigned to our staff to support grant application submittal and follow-through at all times. We are also keenly aware of the management costs allocations that can be obtained for supporting various grants to fund our services and what is required to document and support costs for our assistance. Our time-keeping system allows entry down to the 15-minute increment; the person entering time is required to select their activities from a two-level FEMA eligible list of direct and indirect tasks, and the additional comment box must be populated with the work being conducted for a specific project or group of projects. In the time approval process, we ensure all of the appropriate data is populated for each stage of the grant support and that the deliverables match that work effort accordingly. The steps and processes detailed here will help to ensure hours worked are reasonable and not inflated, and that the County is getting the best value for the support it is funding.

Exhibit 2 - Task Order Template

This Task Order No. ____, Statement of Work for _____ for the _____ (“Task Order”) effective as of _____, between Indian River County (“County”) and Witt O’Brien’s, LLC (“Consultant”).

WHEREAS, this Task Order is in support of the _____ (“Agreement”), dated _____, and attached herein as an exhibit;

WHEREAS, the County selected the Consultant to provide Services, as defined in the proposal (“Proposal”) dated _____, and attached herein as an exhibit;

NOW, THEREFORE, in consideration of the terms and conditions contained in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, County and Consultant hereby agree as follows:

1. Parties mutually agree to add the following terms (if applicable): _____
2. Parties mutually agree to add the following specific scope: _____
3. Parties mutually agree to add the following performance period: _____
4. Parties mutually agree to add the following not to exceed amount: _____
5. Other Terms and Conditions: All other terms and conditions of the basic Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, execute this Task Order to be effective as of the date set forth above.

| Indian River County , FL | Witt O’Brien’s, LLC |
|--------------------------|---------------------|
| | |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |