



CONTRACT #03-2022

**RE-BID #1 OF CITY OF BELLE GLADE
CLASSIFICATION & COMPENSATION STUDY**

**PURCHASING DIVISION
110 DR. MARTIN LUTHER KING, JR. BLVD., WEST
BELLE GLADE, FL 33430-3900**



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**PURCHASING DIVISION
110 DR. MARTIN LUTHER KING, JR. BLVD., WEST
BELLE GLADE, FL 33430-3900**

**CONTRACT BETWEEN THE CITY OF BELLE GLADE
AND
(CONSULTANT)**

THIS CONTRACT is made and entered into this **ENTER DAY#** day of **ENTER MONTH**, 2022 by and between the **City Of Belle Glade**, a political subdivision existing under the laws of the State of Florida ("**CITY**") and **NAME**, located at **ADDRESS** ("**CONSULTANT**") authorized to do business in the State of Florida whose Federal I.D.# is

WHEREAS, the CITY OF BELLE GLADE issued Request for Proposals# ; NAME to solicit proposals from qualified firms to provide services, and;

WHEREAS, CONSULTANT is willing and able to perform the work of for the compensation and on the terms hereinafter set forth and;

WHEREAS, CITY is vested with the appropriate authority and wishes to grant to CONSULTANT the exclusive beverage availability rights described herein with respect to all in the CITY OF BELLE GLADE ("CITY") and with respect to all other facilities owned or operated by the CITY and;

WHEREAS, at its meeting of **ENTER MEETING DATE**, 2022, by **Resolution OR Consent #ENTER #**, the CITY Commission authorized the proper CITY officials to execute this Contract hereinafter referred to as "Contract and;

NOW, THEREFORE, the CITY and CONSULTANT hereto, in consideration of the mutual covenants, contracts, terms, and conditions contained herein, do agree as follows:

I. TERMS AND CONDITIONS

- 1.1. **CONTRACT TERM:** The term of this contract shall commence on the date of execution of this contract by the CITY and continue through the successful completion of the engagement and on-call consultation period.
2. **SERVICES TO BE PROVIDED:** CONSULTANT shall perform and/or provide the equipment and services described in the exhibits attached hereto and incorporated herein as if set forth in full. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Contract or repeated therein. In the event of a conflict between this document and any other contract documents, this Contract shall prevail.
3. **NOTICE TO PROCEED:** The CONSULTANT shall not commence work upon any phase of the Project until it receives a written Notice to Proceed from the CITY. The CONSULTANT shall commence work within ten (10) days after receiving the Notice to Proceed unless the notice indicates otherwise.
4. **CONTRACT DOCUMENTS:** The contract documents consist of this Contract, RFP Document No. (herein after known as **ATTACHMENT "A"**) including all conditions therein, (General Terms and Conditions, Special Conditions and/or Special Provisions), drawings, Technical Specifications, all addenda, CONSULTANT's RFP included (herein after known as **ATTACHMENT "B"**), **Exhibit "A"** **Exhibit "B"** **Exhibit "C"** **Exhibit "D"** **Exhibit "E"**, and all modifications issued after execution



of this Contract. These contract documents form the Contract, and all are as fully a part of the Contract as if attached to this Contract or repeated therein. In the event that there is a conflict between RFP # _____, as issued by the CITY, and the CONSULTANT's RFP submittal, (**ATTACHMENT "B"**) RFP# _____, as issued by the CITY shall take precedence over CONSULTANT's RFP. Furthermore, in the event of a conflict between this document and any other contract documents, this Contract shall prevail.

5. ORDER OF PRECEDENCE: In resolving conflicts resulting from errors or discrepancies in any of the RFP or Contract Documents, the order of precedence numerical (lower number item controls) shall be as follows:

- 5.1. Change Order
- 5.2. Contract/Purchase Order
- 5.3. Addenda, with later date having greater priority
- 5.4. RFP Form
- 5.5. Technical Specifications
- 5.6. Special Conditions
- 5.7. Request for Proposals (RFP)
- 5.8. Instructions to Proposers
- 5.9. General Conditions

6. PAYMENTS TO CONSULTANT

6.1. General

6.1.1. The CITY will pay the CONSULTANT upon satisfactory performance of said services as detailed in each of the CONSULTANT's invoices ("Invoices"), in accordance with the schedule of fees and reimbursable expenses (if any) per **Exhibit** _____, the sum of _____ (\$_____) Dollars.

6.1.2. The CONSULTANT fully acknowledges and agrees that if at any time it performs services which have not been fully negotiated, reduced to writing and formally executed by both the CITY and CONSULTANT, then the CONSULTANT shall perform such services without liability to the CITY, and at the CONSULTANT's own risk.

6.1.3. Method of Payments by CITY:

- 6.1.3.1. For Basic Scope of services, CONSULTANT shall submit invoices in a form approved in writing by the CITY.
- 6.1.3.2. The CITY reserves the right to make P-card payment, versus sending a check through mail. Payment should then occur within two to four business days of invoice approval.

6.1.4. Time of Payment:

6.1.4.1. The CITY shall pay CONSULTANT for services and expenses pursuant to Florida Statute after receipt of the CONSULTANT's invoice. In the event the CONSULTANT falls behind schedule outlined in **Exhibit** _____ of this contract, no further progress payments will be made until the CONSULTANT brings the Project back on schedule or a revised schedule is submitted and approved by the CITY, or until all work has been completed and accepted by the CITY. Any portion of an invoice that is objected to or questioned by the CITY shall not be considered due for the purposes of this section. To the extent the CITY does not pay CONSULTANT the total amount invoiced, the CITY shall provide the CONSULTANT a written explanation of the objection along with any amount paid on that invoice or in lieu of payment if the objection is to the entire amount invoiced.

6.1.4.2. CONSULTANT shall not incur costs for performance of services under this Contract in excess of said amount without the prior written authorization of the CITY's Purchasing Department. Payments shall be processed upon receipt of a properly completed invoice in accordance with Chapter 218 Part VII, F.S., The Local Government Prompt Payment Act.

7. SCOPE, COST AND FEE ADJUSTMENT:

**7.1. General:**

7.1.1. The CITY may at any time notify the CONSULTANT of requested changes to the Scope of Basic services as set forth in **Exhibit _____** to this contract. The notification shall state the Scope modification and an adjustment of the cost estimate and fee specified in **Exhibit _____** to reflect such modification. The CONSULTANT and the CITY understand that, unless the cost and fee adjustment is within a previously approved budget, any change to the Scope of Basic services must be approved or authorized by the CITY. Duties, responsibilities and limitations of authority of the CONSULTANT shall not be restricted, modified or extended without written agreement of the CITY and the CONSULTANT.

7.2. Scope Reduction:

7.2.1. The CITY shall have the sole right to reduce (or eliminate, in whole or in part) any portion of the Scope of Basic services for the overall Project at any time and for any reason, upon written notice to the CONSULTANT specifying the nature and extent of the reduction. The CITY shall pay the CONSULTANT for services rendered with respect to the reduced scope items, any reasonable and provable future costs actually incurred due to the reduced scope.

7.2.2. **Final Payment:** The acceptance by the CONSULTANT, its successors, or assigns, of any Final Payment due upon the termination of this contract, shall constitute a full and complete release of the CITY from any and all claims or demands regarding further compensation for authorized services rendered prior to such Final Payment that the CONSULTANT, its successors, or assigns have or may have against the CITY under the provisions of this contract. This section does not affect any other portion of this contract that extends obligations of the parties beyond Final Payment.

8. CHANGE ORDERS: The CITY may at any time, by issuance of a written Change Order to this Contract by the CITY Purchasing Department make changes, within the scope or period of performance of this Contract. CONSULTANT and the CITY Purchasing staff or designee shall negotiate an equitable adjustment, if appropriate, in the terms of this Contract to cover any such change. The CITY shall make no payment for additional work performed that is not provided for in this Contract unless such work is performed pursuant to a written Change Order.

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9. CITY RESPONSIBILITIES:

9.1. **Information Pertinent to the Project:** The CITY shall assist the CONSULTANT by placing at the CONSULTANT's disposal all available information pertinent to the Project (including previous reports and any other relevant documents and data relative to the Project). The CONSULTANT is ultimately responsible for satisfying itself as to accuracy of any data provided, and, furthermore, the CONSULTANT is responsible for bringing to the CITY's attention, for the CITY's resolution, any material inconsistencies or errors in such data which come to the CONSULTANT's attention.

9.2. **Access to Property:** The CITY shall arrange for access to, and make provisions for, the CONSULTANT to enter upon public property (where required) as necessary for the CONSULTANT to perform its services upon the timely written request of CONSULTANT to CITY per the RFP specifications.

9.3. **Examination:** The CITY shall examine any and all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the CONSULTANT, and render, in writing, decisions pertaining thereto within a reasonable time.

9.4. **No Warranty by CITY:** Approval by the CITY of any of the CONSULTANT's work, including but not limited to drawings, food specifications, written reports, or any work products of any nature whatsoever furnished hereunder, shall not in any way relieve the CONSULTANT of responsibility for the technical accuracy and adequacy of the work. Neither the CITY's review, approval or acceptance of, or payment for, any of the services furnished under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract. The CONSULTANT shall be and remain liable in accordance with all applicable laws for all damages to the CITY caused by the negligent performance by the CONSULTANT or any specialty CONSULTANT of any of the services furnished under this contract. CONSULTANT shall warrant that all designs, plans and specifications, written works, or any work product are compliant with all applicable codes, laws, ordinances, standards, etc. in effect at the time of this contract.



9.5. Response Time; Schedule; Notice of Extension of Time: The CITY shall give prompt written notice to the CONSULTANT whenever the CITY observes or otherwise becomes aware of any development that affects the timing or delivery of the CONSULTANT's services. If the CONSULTANT has been delayed in completing its services through no fault or negligence of either the CONSULTANT or any specialty CONSULTANT, and, as a result, will be unable complete timely performance fully and satisfactorily under the provisions of this contract, then the CONSULTANT shall promptly notify the CITY. At the CITY's sole discretion, and only upon the previous submission to the CITY of evidence of the causes of the delay, the CITY may grant the CONSULTANT an extension of its Project schedule equal to the period the CONSULTANT was actually and necessarily delayed, subject to the CITY'S rights to change, terminate, or stop any or all of the services at any time in accordance with this contract.

9.6. CITY Project Manager: The CITY reserves the right to appoint a Project Manager for this Project. The Project Manager shall issue all written authorizations to the CONSULTANT that the Project may require, or that may otherwise be defined or referred to in this contract. The Project Manager shall also:

9.6.1. Act as the CITY's agent with respect to the services rendered, hereunder;

9.6.2. Transmit instructions to and receive information from the CONSULTANT;

9.6.3. Communicate the CITY's policies and decisions to the CONSULTANT regarding the services;

9.6.4. Determine, initially, whether the CONSULTANT is fulfilling its duties, responsibilities, and obligations hereunder; and;

9.6.5. Determine, initially, the merits of any allegation by the CONSULTANT respecting the CITY's non-performance of any project obligation.

9.6.6. All determinations made by the Project Manager, as outlined above, shall be final and binding upon the CONSULTANT, but shall not be binding upon CONSULTANT in regard to general appearances before or appeals to the CITY, or appearances before or appeals to a court of competent jurisdiction..

10. FUNDING OUT: Florida laws prohibit the Commission or its designee from creating obligations on anticipation of budgeted revenues from one (1) fiscal year to another without year-to-year extension provisions in the contracts. It is necessary that fiscal funding out provisions be included in all bids in which the terms are for periods of longer than one year. Therefore, the following funding out provisions are an integral part of this Request for Proposal and must be agreed to by all bidders:

10.1. The Commission or its designee may, during the contract period, terminate or discontinue the items covered in this bid for lack of appropriated funds upon the same terms and conditions.

10.2. Such prior written notice will state that the lack of appropriated funds is the reason for termination, and;

10.3. Commission agrees not to replace the equipment or services being terminated with equipment and services with functions similar to those performed by the equipment covered in this bid from another awarded bidder in the succeeding funding period.

11. CONSULTANT PROJECT TEAM: CONSULTANT shall assign members of its staff (Principal-in-Charge, Project Manager and Key Personnel identified in CONSULTANT's proposal to CITY) as the CONSULTANT's Project Team, who shall collectively devote such working time and attention as may be reasonably required to ensure that the services are properly, economically, and efficiently performed. The CONSULTANT shall indicate to the CITY the authority and powers that the CONSULTANT's Project Team shall possess during the life of the project. The CONSULTANT agrees that the CITY shall have the right to approve the CONSULTANT's Project Team, and that the CONSULTANT shall not change any member of its Project Team without written notice to the CITY. Furthermore, if any member of the CONSULTANT's Project Team is removed from project duties, or employment is otherwise terminated or curtailed by the CONSULTANT, or if the CONSULTANT's Project Team member terminates his employment with the CONSULTANT, then the CONSULTANT shall promptly replace its Project Team member with a person of comparable experience and expertise, who shall also be subject to the CITY's approval. The CITY covenants that its approval shall not be unreasonably withheld.

12. AVAILABILITY OF CONSULTANT: CONSULTANT shall be reasonably available to the CITY through telephone access and shall notify the CITY promptly of any absence or anticipated delay in the performance of services under this Contract.



13. INDEPENDENT CONSULTANT RELATIONSHIP: This Contract does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONSULTANT is an independent CONSULTANT under this Contract and not the CITY's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The CONSULTANT shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONSULTANT's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Contract shall be those of CONSULTANT, which policies of CONSULTANT shall not conflict with CITY, State, or United States policies, rules or regulations relating to the use of CONSULTANT's funds provided for herein. The CONSULTANT agrees that it is a separate and independent enterprise from the CITY, that it had full opportunity to find other business, that it has made its own investment in its business, and that it shall utilize a high level of skill necessary to perform the work. This Contract shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY and the CITY shall not be liable for any obligation incurred by CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

14. SPECIALTY CONSULTANTS:

14.1. General: The CONSULTANT shall have the right, conditioned upon the CITY's prior consent (which shall not be unreasonably withheld), to employ or use (whether or not for compensation or consideration of any nature whatsoever) other firms, CONSULTANTS, subCONSULTANTS, and so forth (specialty CONSULTANTS); provided, however, that the CONSULTANT shall: 1) inform the CITY as to the nature of particular services for which the specialty CONSULTANTS shall be employed; 2) inform the CITY as to the extent (what percentage) of the total Project services each specialty CONSULTANT shall be employed to do; 3) be solely responsible for the performance of all of the CONSULTANT'S specialty CONSULTANTS, including but not limited to maintenance of schedules, correlation of services, and the resolution of all differences between or among them; 4) promptly terminate the use and services of any specialty CONSULTANTS upon written request from the CITY (which may be made for the CITY's convenience); and 5) promptly replace each such terminated specialty CONSULTANT with a specialty CONSULTANT of comparable experience and expertise and who are otherwise acceptable to the CITY. After the specialty CONSULTANT has received notice of the termination, or two (2) business days after the CITY has notified the CONSULTANT in writing of the required termination of the specialty CONSULTANT whichever shall occur first, the CITY shall have no obligation to reimburse the CONSULTANT for the services subsequent to the notice of termination of any specialty CONSULTANT who may be terminated pursuant to the provision of this section. It is also understood that the CITY does not, by accepting a specialty CONSULTANT, warrant or guarantee the reliability or effectiveness of that entity's services.

14.2. Work Outside Scope and Time of Payment: The CITY shall have no obligation to reimburse the CONSULTANT for the services of any specialty CONSULTANT that may be in addition to the services, or for those specialty CONSULTANT services not previously made known to the CITY, or that are otherwise outside of the Scope of the Project unless and until the CITY has given written approval of such reimbursement. CONSULTANT agrees to pay all such specialty CONSULTANTS for their Project related services within thirty (30) calendar days after the CONSULTANT's receipt of payment, from the CITY for work performed by the specialty CONSULTANTS, unless such payment is disputed by the CONSULTANT, and the CITY receives written notice thereof.

14.3. Specialty CONSULTANT Contracts: The CONSULTANT shall provide a copy of all relevant provisions of this contract to all specialty CONSULTANTS hired by it, or for which it may have management responsibilities and shall inform all specialty CONSULTANTS that all services performed hereunder shall strictly comply with the contract terms and provisions. The CONSULTANT shall also furnish the CITY, upon demand, with a copy of all CONSULTANT specialty CONSULTANT contracts. The CITY agrees that it shall not demand that the CONSULTANT hire a particular specialty CONSULTANT for the Project.

15. NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT: During the performance of the Contract, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, age, national origin, marital status, political affiliation, familial status,



sexual orientation, or disability if qualified. The CONSULTANT shall take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; 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 shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The CONSULTANT further agrees that he/she shall ensure that sub-CONSULTANTS, if any, shall be made aware of and shall comply with this nondiscrimination clause.

16. CONFLICTS OF INTEREST:

16.1. The CONSULTANT represents and warrants to the CITY that no officer, employee, or agent of the CITY has any interest, either directly or indirectly, in the business of the CONSULTANT to be conducted hereunder. The CONSULTANT further represents and warrants to the CITY 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 contract, and that it has not paid, or agreed to pay any person, company, corporation, individual, or firm, other than bona fide personnel working solely for the CONSULTANT any fee, commission, percentage, gift or other consideration, contingent upon, or resulting from the award or making of this contract. Further, the CONSULTANT also acknowledges that it has not agreed as an expressed or implied condition for obtaining this contract, to employ or retain the services of any person, company, individual or firm in connection with carrying out this contract. It is understood and agreed by the CONSULTANT that, upon the breach or violation of this section, the CITY shall have the right to terminate the contract without liability and at its sole discretion, and to deduct from the contract price, or to otherwise recover, the full amount of such fee, commission, percentage, gift or consideration paid by the CONSULTANT.

16.2. The CONSULTANT represents that it presently has no interest, either direct or indirect, while performing the services required by this contract, which would conflict in any manner with Florida Statutes. The CONSULTANT represents that no person having any such interest shall be employed during the term of this contract, including any officer, employee or agent of the CITY.

16.3. The CONSULTANT represents and warrants that it has no current contracts with any entity that would create any conflict of interest in the CONSULTANT's ability to perform the services required by this contract. Further, the CONSULTANT represents and warrants that throughout the term of this contract it will not undertake any work that would create such a conflict in interest.

16.4. The CONSULTANT shall promptly notify the CITY in writing by certified mail or electronic mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence the CONSULTANT's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the CONSULTANT. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the CITY shall so state in the notification and the CONSULTANT shall, at its option, enter into such association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the CITY by the CONSULTANT under the terms of this Contract.

17. NO CONTINGENCY FEES: CONSULTANT warrants that it will not employ or retain any company or persons, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract and that CONSULTANT has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this contract in compliance with §287.055, Fla. Stat. For the breach or violation of this provision, CITY shall have the right to terminate the contract at its discretion, without liability and to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.



- 18. USE OF INFORMATION / OWNERSHIP OF DOCUMENTS:** CONSULTANT shall be required to work in harmony with other CONSULTANTS relative to providing information requested in a timely manner and in the specified form. Any and all work products, documents, records, disks, original drawings, specifications or other information developed as a result of this Contract shall become the property of the CITY upon completion for its use and distribution as may be deemed appropriate by the CITY. Except as specifically authorized by the CITY in writing, information and other data developed or acquired by or furnished to CONSULTANT in the performance of this Contract shall be used only in connection with the services provided the CITY.
- 19. COMPLIANCE WITH CITY REGULATIONS:** The CONSULTANT shall cause all persons performing work to comply with all instructions pertaining to conduct and building regulations issued by the CITY. All such persons shall wear readily visible identification mutually satisfactory to the CITY and the CONSULTANT.
- 20. INSURANCE REQUIREMENTS:** The CONSULTANT agrees to, in the performance of work and services under this contract, comply with all federal, state, and local laws and regulations now in effect, or hereinafter enacted during the term of this agreement that are applicable to the CONSULTANT, its employees, agents, or subCONSULTANTS, if any, with respect to the work and services described herein. The CITY reserves the right to require higher limits depending upon the scope of work under this contract.
- 20.1. CONSULTANT hereby agrees to procure and maintain insurance, as may be required, for the term of this agreement, and provide proof of insurance as evidenced by a valid Certificate of Insurance. A Certificate of Insurance (COI), deemed acceptable to the CITY OF BELLE GLADE, must be received by the contract administrator or their designee at least thirty (30) days prior to the start of any work. Notice of Cancellation prior to the expiration date thereof, for any reason other than non-payment of premium or fraud, must be delivered to the contract administrator with at least thirty (30) days advance notice. If requested, a complete copy of the insurance policy must be provided to the contract administrator or their designee within seven (7) days from the date requested.
- 20.2. Commercial General Liability – insurance coverage for death, bodily injury, personal injury, or property damage. Coverage must be on an occurrence form with limits of least \$1,000,000 each occurrence and \$2,000,000 general aggregate. The CITY OF BELLE GLADE must be added as an ADDITIONAL INSURED. Any requirements, conditions, or stipulations that limit or restrict a covered activity must be clearly indicated on the Certificate of Insurance or attached thereto. If coverage is afforded solely or in part, through membership, registration, or participation in a master association, organization, or group, the terms and conditions for continued eligibility must be maintained. A lapse in insurance or failure to maintain appropriate coverage may result in the termination of this agreement.
- 20.3. Professional Liability – insurance coverage for errors and omissions resulting from the services provided under this agreement. Coverage must be for limits of at least \$1,000,000 each occurrence and \$2,000,000 general aggregate with a deductible or self-insured retention not to exceed \$25,000. Professional liability insurance is only required if your business provides certain professional services including but not limited to architectural, design, engineering, electrical, and construction, as well as professional services including but not limited to consulting, counseling, therapy or teaching.
- 20.4. Automobile Liability – insurance coverage for any auto, including hired and non-owned, used in the course and scope of work. Business automobile liability insurance coverage must be on an occurrence form with limits of at least \$1,000,000 combined single limit, or \$100,000 per person and \$300,000 per accident. Insurance is required as noted herein if your business owns, leases or rents vehicles. For personal vehicles that are not owned by the business but are driven onto City property in order to conduct business, we require evidence of personal automobile insurance at least equal to the Florida legal minimum of \$10,000 personal injury protection (PIP) and \$10,000 property damage liability (PDL).
- 20.5. Workers' Compensation and Employers' Liability – insurance that complies with Florida Statute, Chapter 440. Minimum coverage limits must be the greater of (1) the statutory requirement or (2) \$500,000 each accident, \$500,000 disease - each employee, \$500,000 disease - policy limit. Workers' Compensation insurance is only required if Florida Statute mandates that your business have coverage.
- 20.6. Neither the CONSULTANT nor any subCONSULTANT shall commence work under this Contract until they have obtained all insurance required under this section and have supplied the CITY with evidence



of such coverage in the form of an insurance certificate and endorsement. The CONSULTANT shall ensure that all subCONSULTANTS shall comply with the above guidelines and shall maintain the necessary coverage throughout the term of this contract.

- 20.7. All insurance carriers shall be rated at least A-VII per A.M. Best's Key Rating Guide and be licensed to do business in Florida. Policies shall be "Occurrence" form. Each carrier shall give the CITY sixty (60) days' notice prior to cancellation.
- 20.8. The CONSULTANT's liability insurance policies shall be endorsed to add the CITY of Belle Glade as an "additional insured". The CONSULTANT's Worker's Compensation carrier shall provide a Waiver of Subrogation to the CITY. The CONSULTANT shall be responsible for the payment of all deductibles and self-insured retentions.
- 20.9. The CITY may require that the CONSULTANT purchase a bond to cover the full amount of the deductible or self-insured retention. If the CONSULTANT is to provide professional services under this contract, the CONSULTANT must provide the CITY with evidence of Professional Liability insurance with, at a minimum, a limit of \$1,000,000 per occurrence and in the aggregate. "Claims-Made" forms are acceptable for Professional Liability insurance.
- 21. INDEMNIFICATION:** CONSULTANT agrees to protect, defend, indemnify, and hold harmless the CITY, its employees, representatives, and elected officials from any and all claims and liabilities including all attorney's fees and court costs, including appeals, for which the CITY, its employees, representatives, and elected officials can or may be held liable as a result of injury (including death) to persons or damage to property occurring by reason of any negligence, recklessness, or intentional wrongful misconduct of the CONSULTANT, its employees, or agents, arising out of or connected with this contract.
- 21.1. The CONSULTANT shall not be required to indemnify the CITY or its agents, employees, representatives, or elected officials when an occurrence results solely from the wrongful acts or omissions of the CITY, or its agents, employees or representatives.
- 21.2. The CONSULTANT, without exemption, shall indemnify and hold harmless, the CITY, its employees, representatives and elected officials from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, service marked, trademarked patented or unpatented invention, process, or any other intellectual property right or item manufactured by the CONSULTANT. Further, if such a claim is made, or is pending, the CONSULTANT may, at its option and expense, procure for the CITY the right to use, replace, or modify the item to render it non-infringing. If none of the alternatives are reasonably available, the CITY agrees to return the article on request to the CONSULTANT and receive reimbursement from the CONSULTANT. If the CONSULTANT used any design, device or materials covered by letters, patent or copyright, it is mutually agreed and understood, without exception, that the bid prices shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the work. This article shall survive the termination of any contract with the CITY.
- 21.3. The parties agree that Ten Dollars (\$10.00) of the total compensation paid to the CONSULTANT for performance of this contract shall represent the specific consideration for the CONSULTANT's indemnification of the CITY.
- 21.4. The CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONSULTANT under the indemnification agreement.
- 21.5. The CONSULTANT agrees to promptly repair, at its sole cost and expense and in a manner acceptable to the CITY, any damage caused by the CONSULTANT or any specialty CONSULTANT, or by any of their respective employees or agents, to CITY property, or to any improvements or property located thereon. The CONSULTANT's shall be under no liability or indemnity to the CITY for any loss of profit, loss of income, loss of use, loss of business, loss of revenue, loss of goodwill, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in tort (including negligence), contract.



21.6. It is the specific intent of the parties hereto that the foregoing indemnification complies with F.S. 725.06 (Chapter 725). It is further the specific intent and agreement of the parties that all of the Contract Documents on this project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.

21.7. Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.

22. LICENSES: The CONSULTANT shall, during the life of this contract, procure and keep in full force, effect, and good standing 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 herein. The CONSULTANT shall also require all specialty CONSULTANTS to comply by contract with the provisions of this section.

23. TERMINATION: This contract may be terminated as follows: In the event of the termination of this contract, any liability of one party to the other arising out of any services rendered, or for any act or event occurring prior to the termination, shall not be terminated or released.

23.1. Termination for CITY's Convenience: The CITY, by written notice, shall have the right to terminate and cancel this contract, without the CONSULTANT being at fault, for any cause or for its own convenience, and require the CONSULTANT to immediately stop work. In such event, the CITY shall pay the CONSULTANT for the work actually performed. The CITY shall not be liable to the CONSULTANT for any other costs, charges, or expenses, including but not limited to, prospective profits and overhead on work not performed.

23.2. Termination for CONSULTANT's Failure to Perform: In addition to any other termination provisions that may be provided in this contract, the CITY may terminate this contract in whole or in part if the CONSULTANT makes a false invoice or fails to perform any obligation under this contract and does not remedy the failure within fifteen (15) calendar days after receipt by the CONSULTANT of written demand from the CITY to do so, unless, however, the nature of the failure is such that it cannot, in the exercise of reasonable diligence, be remedied within fifteen (15) calendar days, in which case the CONSULTANT shall have such time as is reasonably necessary to remedy the failure.

23.3. Payment Upon Termination: Upon termination of this contract for any reason, CITY will refund any prepaid Sponsorship Funding and/or Advanced Commissions pro rated to the date of termination or, if earlier, the date of any default hereunder by CITY. Where the contract is terminated for cause by the CITY, such payment shall be reduced by an amount equal to any reasonable and provable expenses actual incurred by the CITY as a direct result of the termination.

23.4. Delivery of Materials Upon Termination: In the event of termination of this contract by the CITY, prior to the CONSULTANT's satisfactory completion of all the services described or alluded to herein, the CONSULTANT shall promptly furnish the CITY, at no additional cost or expense, with one (1) copy of the following items (collectively "Documents"), any or all of which may have been produced prior to and including the date of termination: data (including electronic data), specifications, calculations, estimates, plans, drawings, photographs, summaries, reports, memoranda; and any and all other documents, instruments, information, and materials (whether or not completed) generated or prepared by the CONSULTANT, or by any specialty CONSULTANT, in rendering the services described herein, and not previously furnished to the CITY by the CONSULTANT pursuant to this contract. The Documents shall be the sole property of the CITY, and the CITY shall be vested with all rights provided therein of whatever kind and however created. The CONSULTANT shall also require that all such specialty CONSULTANTS agree in writing to be bound by the provisions of this section.

24. REPRESENTATIONS, WARRANTIES, AND COVENANTS

24.1. Each of the parties hereto agree that the representations, warranties and covenants contained herein shall survive the execution and delivery, and if appropriate the termination, of this Agreement.



- 25. SUSPENSION:** The CITY may, at any time and for any reason, direct the CONSULTANT to suspend work (in whole or in part) under this contract. 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 CITY may thereafter specify in writing. The period during which the services are stopped by the CITY shall be added to the time of performance of this contract; provided, however, that any work stoppage not approved or caused by the actions or inactions of the CITY shall not give rise to any claim against the CITY by the CONSULTANT.
- 26. DELAY DAMAGES:** LIQUIDATED DAMAGES: It is mutually agreed between the parties hereto that time is of the essence in the performance of this Contract. In the event the construction of the Work is not completed within the time herein specified the CITY will suffer damages, the amount of which is difficult if not impossible to ascertain. It is agreed, therefore, that from the compensation otherwise to be paid to the CONSULTANT, the CITY may retain the sum of **One Thousand Dollars (\$1,000.00)** per calendar day for each day thereafter, Sundays and holidays included, that the Work remains uncompleted. This sum shall represent liquidated damages that the CITY will have sustained per calendar day from the inconvenience and expense caused to the CITY by the delay in the completion of the Work. This sum is not a penalty, being the liquidated damages the CITY will have sustained in event of such default by the CONSULTANT. The CITY reserves the right to additionally recover direct job site expenses incurred during the period of any delay. The CONSULTANT shall be liable for liquidated damages even if the Contract is terminated by the CITY for cause or if the CONSULTANT abandons the Work. The liability of the CONSULTANT and its surety or sureties for damages provided by this Article is joint and several.
- 27. MATERIALS, REUSE OF DOCUMENTS, AND CONFIDENTIALITY:**
For each phase, CONSULTANT agrees to furnish and provide to CITY five (5) full-size copies of all plans, specifications, drawings, and other documents (except correspondence) prepared by CONSULTANT hereunder, same to be furnished as the same are prepared and completed by CONSULTANT, and if CITY requires additional copies of any of same, CONSULTANT will promptly furnish same to CITY upon request for the reasonable cost of the reproduction of same. CITY may, at CITY'S expense, obtain a set or sets of reproducible prints of any or all drawings and other documents prepare hereunder by CONSULTANT for the project.
The final work product of all such materials along with all formal CONSULTANT/CITY correspondence concerning the Project shall be the sole property of the CITY. All materials described above shall be retained by the CONSULTANT for the statutory period (Florida Statutes §95.11, as it may be from time to time amended). Furthermore, the CITY may reuse them at no additional cost, and the CITY shall be vested with all rights of whatever kind and however created that may be in existence thereto; provided, however, that the CONSULTANT shall not be liable or legally responsible to anyone for the CITY's reuse of any such materials on any other CITY Project and that the CONSULTANT timely notified the CITY of such potential liability.
- 28. LOCAL, STATE AND FEDERAL OBLIGATIONS:**
- 28.1. No Discrimination : The CONSULTANT, for itself, its delegates, successors, interest, and its assigns, and as a part of the consideration hereof, does hereby covenant and agree that:
- 28.1.1. In connection with the furnishing of services to the CITY hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to this contract on the grounds of such person's race, color, creed, national origin, religion, physical disability, age or sex; and
- 28.1.2. The CONSULTANT shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines, and as such rules, regulations, or guidelines may be from time to time amended. In the event of a breach of any of the nondiscrimination covenants described in this section, the CITY shall have the right to terminate this contract, without liability, as set forth in Section 21 of this contract, and such right shall not be exercised unreasonably.
- 28.2. Compliance with Law: The CONSULTANT and its employees shall promptly observe, comply with, and execute the provisions of any and all present and future federal, state, and local laws, rules, regulations, requirements, ordinances, orders, codes, mandatory guidelines, and mandatory directions, including §553.70 et. seq., Fla. Stat., which may pertain or apply to the services that may be rendered pursuant to this contract, or to the wages paid by the CONSULTANT to its employees. The CONSULTANT shall



also require, by contract, that all specialty CONSULTANTS shall comply with the provisions of this section.

28.3. Compliance With New Regulations: The CONSULTANT agrees that at such time as the local, state, or federal agencies modify their grant procedures in order for the CITY or the CONSULTANT to qualify for local, state, or federal funding for the services rendered by the CONSULTANT, then the CONSULTANT shall consent to and make such modifications or amendments in a timely manner. If the CONSULTANT is unable to comply with applicable local, state, or federal laws and regulations governing the grant of such funds for services to be rendered herein, then the CITY shall have the right, by written notice to the CONSULTANT, to terminate this contract without liability, as outlined in Section 15, above. Furthermore, if the CONSULTANT's compliance with such laws, regulations, rules, or procedures causes a material change to a term or condition of this contract, then the CITY agrees, upon sufficient proof of material changes as may be presented to it by the CONSULTANT, to amend this contract.

29. PALM BEACH COUNTY IG; PUBLIC ENTITY CRIMES: In accordance with Palm Beach County ordinance number 2011-009, this Addendum and the Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. Vendor should review Palm Beach County ordinance number 2011-009 in order to be aware of its rights and/or obligations under such ordinance and as applicable.

29.1. As provided in Sections 287.132-133, Florida Statutes, as amended from time to time, by entering into the Agreement Documents, Vendor certifies that it and its affiliates who will perform hereunder have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof.

30. ASSIGNMENT AND DELEGATION: The CITY and the CONSULTANT bind themselves and their respective partners, successors, executors, administrators, and assigns, to the other party of this contract in respect to all duties, rights, responsibilities, obligations, provisions, conditions, and covenants of this contract; except that the CONSULTANT shall not assign, transfer, or delegate its rights or duties, or either or both of these things, under this contract without the prior written consent of the CITY.

30.1. The CITY has the absolute right to withhold such consent at its convenience, and, furthermore, if the CONSULTANT attempts to assign, transfer, or delegate its rights or duties in violation of these provisions without the CITY's consent, then the CITY may terminate this contract as a breach of contract by the CONSULTANT and a failure by the CONSULTANT to substantially perform its obligations hereunder, and any such assignment shall be null, void, and of no legal effect whatsoever. The CITY shall have the right to assign its rights (or any part of them) or to delegate its duties and obligations (or any part of them) to another entity that shall be bound by all applicable terms and conditions as provided in this contract.

30.2. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY or the CONSULTANT.

31. AUDITS/ACCOUNTING REQUIREMENTS:

31.1. Periodic Auditing of CONSULTANT's Books: The CONSULTANT's financial and accounting records ("Books") specific to this contract may (but need not) be kept separate and apart from the CONSULTANT's other books; but the CITY 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 or Completion Report and to ensure payment to subCONSULTANT of the CONSULTANT. In addition, upon request of the CITY, the CONSULTANT shall prepare an audit (for the most recent fiscal year) for the CITY, which shall include the CONSULTANT's paid salary, fringe benefits, general and administrative overhead costs, and the total amount of money paid by the CITY to the CONSULTANT. The audit shall be certified as true and correct by, and shall bear the signature of, the CONSULTANT's Chief Financial Officer or its Certified Public Accountant.

31.2. Retention of Books: The CONSULTANT shall retain the books, and make them available to the CITY as specified above, until the later of five (5) years after the date of termination of this contract, or such



longer time if required by any federal, state, or other governmental law, regulation, policy, or contractual or grant requirement or provision.

- 31.3. **Overpayment:** In the event any audit or inspection conducted after final payment, but within the period provided in Section 15 above, reveals any overpayment to the CONSULTANT by CITY under the terms of the contract, CONSULTANT shall refund such overpayment to CITY within thirty (30) days of notice by the CITY.
- 31.4. CITY must approve the CONSULTANT's monthly report format for the purpose of monitoring the making of monthly commission payments. Such reports shall be submitted to a designated CITY representative monthly and shall include commission reports by location. The CONSULTANT shall maintain complete and accurate records of vending transactions for each machine in accordance with the accepted industry standards, and will keep such financial records for a minimum period of five years after the close of each year's operation. The monthly payment must be received by the CITY cost centers no later than the 20th of each month for activity for the preceding month. Failure to provide monthly drafts or management reports in a timely manner can result in cancellation of the contract or the imposition of penalties.
32. **PLEDGE OF CREDIT:** The CONSULTANT shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this contract.
33. **PUBLIC RECORDS:** The CONSULTANT shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law) in connection with this contract. The CONSULTANT shall cause all such persons to preserve and protect all confidential information of the CITY to which they have access during the performance of work. The CITY may promulgate and modify the rules and regulations relating to the conduct of the CONSULTANT and all persons performing work under the Agreement as the CITY, in its sole discretion, may determine. CONSULTANT shall cause all persons performing work to comply with such modifications.
- 33.1. Upon request from CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- 33.2. 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 CITY.
- 33.3. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the CONSULTANT or keep and maintain public records required by the CITY to perform the service. If the CONSULTANT transfers all public records to the CITY 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 CITY, upon request from the CITY'S custodian of public records, in a format that is compatible with the information technology systems of the CITY.
- 33.4. **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 IN THE OFFICE OF THE CITY CLERK AT 561-992-2218, OR E-MAIL DBUFF@BELLEGLADE-FL.COM , OR 110 DR. MARTIN LUTHER KING JR. BLVD WEST, BELLE GLADE FL, 33430.**



34. TRADE SECRETS: Any language contained in the CONSULTANT's response to the RFP purporting to require confidentiality of any portion of the CONSULTANT's response to the RFP, except to the extent that certain information is in the CITY's opinion a Trade Secret pursuant to Florida law, shall be void.

34.1.If a CONSULTANT submits any documents or other information to the CITY which the CONSULTANT claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Law"), the CONSULTANT shall clearly designate that it is a Trade Secret (in bold 14 point font and capitalized letters) and that it is asserting that the document or information is exempt. The CONSULTANT must specifically identify the exemption being claimed under Florida law. The CITY shall not be liable for the use or disclosure of trade secret data that CONSULTANT has failed to mark as such.

34.2.The CONSULTANT agrees and consents that the CITY shall be the final arbiter of whether any information contained in the CONSULTANT's response to the RFP constitutes a Trade Secret. Pricing will not be considered a Trade Secret.

34.3.The CITY's determination of whether an exemption applies shall be final, and the CONSULTANT agrees to defend, indemnify, and hold harmless the CITY and Commission and the CITY's officers, employees, Commission members, and agents, against any loss, damages, judgments, attorneys' fees or costs incurred by any person or entity as a result of the CITY's treatment of records as public records or records exempt as Trade Secrets. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

34.4.EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK ANY PORTION OF YOUR CONTRACT AS PROPRIETARY, COPYRIGHTED, OR CONFIDENTIAL.

34.5.The CITY will provide CONSULTANT with prompt notice by phone and/or email of any request for public records in which that CONSULTANT has claimed an exemption information being a Trade Secret so that the CONSULTANT may seek, at its sole expense, an appropriate protective order from a court of competent jurisdiction. In the event the CONSULTANT elects not to seek an appropriate protective order or is unable to obtain such an order within no later than ten (10) business days following receipt of notice, the CONSULTANT agrees and consents that the CITY shall be permitted to respond to the public records request with the response not being deemed a breach by the Commission of its obligations under the Agreement or the Florida Statutes governing Trade Secret exemptions. The CONSULTANT would then be waiving any rights relating to Trade Secrets under Florida law. CONSULTANT agrees to defend, indemnify, and hold harmless the CITY and Commission and the CITY's officers, employees, Commission members, and agents, against any loss, damages, judgments, attorneys' fees or costs incurred by Commission as a result of the CITY's providing the records in response to the public records request or withholding them based on CONSULTANT's assertion of the Trade Secret exemption.

34.6.The indemnification provisions survive the Commission's award of the contract and remain as long as the trade secret data is in the possession of the Commission.

35. TRUTH NEGOTIATION CERTIFICATE: Execution of this contract by the CONSULTANT shall act as the execution of a truth negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this contract are accurate, complete and current as of the date of the contract and no higher than those charged the CONSULTANT's most favored customer for the same or substantially similar service.

35.1.The wage rates and costs shall be adjusted to exclude any significant sums should the CITY 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.

35.2.The CITY shall exercise its rights under this "Certificate" within one (1) year following final payment. CITY has the authority and right to audit CONSULTANT's records under this provision. The CITY does not hereby waive any other right it may have pursuant to Florida Statutes.

36. FEDERAL AND STATE TAXES: The CITY is exempt from payment of Florida State Sales and Use Taxes. The CONSULTANT shall not be exempt from paying sales tax to its suppliers for materials used to fulfill



contractual obligations with the CITY, nor is the CONSULTANT authorized to use the CITY's Tax Exemption Number in securing such materials. The CONSULTANT shall be responsible for payment of all federal, state, and local taxes and fees incurred in connection with this contract.

- 37. REMEDIES, ATTORNEYS' FEES AND COSTS:** All remedies provided in this contract 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. If any legal action or other proceeding is brought for the enforcement of this contract or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this contract, each party shall bear its own costs and attorney's fees.
- 38. ENTIRE CONTRACT:** This contract, including the Exhibits hereto, constitutes the entire contract between the parties, and shall supersede and replace all prior or contemporaneous negotiations, correspondence, conversations, agreements or understandings, written or oral, relating to the matters set forth therein, and that specifically related to the execution of this particular document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- 39. AMENDMENT:** This contract may be amended or modified only by a writing of import equal to this contract, and as duly authorized and executed by the parties.
- 40. FORCE MAJEURE/ UNCONTROLLABLE FORCES:**
- 40.1. Neither the CITY nor CONSULTANT shall be considered to be in default of this contract if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this contract and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.
- 40.2. Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within twenty four (24) hours of being prevented or delayed from performance by an uncontrollable force, give written notice to the Project Manager and the Purchasing Department by telephone with follow-up via facsimile, registered letter or electronic mail to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this contract.
- 40.3. CONSULTANT acknowledges that the CONSULTANT is responsible for, and is taking all risk with respect to any reduction of gross sales/and or profits due to theft, fire, accident, vandalism, temporary loss of power, weather, acts of God, changes to CITY or individual calendars, temporary or permanent closures, changes to or facility construction plans, machine failure (refunds), other acts beyond CITY control, and actions within CITY control that are necessary for sound educational reasons that are considered typical for public systems.
- 41. SIGNATORY AUTHORITY:** The CONSULTANT shall supply the CITY with copies of requisite documentation evidencing that the signatory for CONSULTANT has the authority to enter into this contract.
- 42. MERGER; AMENDMENT:** This contract constitutes the complete understanding of the parties and shall be governed by the laws of the State of Florida as now and hereinafter in force.
- 43. NO CONSTRUCTION AGAINST DRAFTING PARTY:**
- 43.1. Each party to this contract expressly recognizes that this contract results from the negotiation process in which each party was represented by counsel and contributed to the drafting of this contract. Given this fact, no legal or other presumptions against the party drafting this contract concerning its construction, interpretation or otherwise accrue to the benefit of any party to the contract, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out



of, or involving this contract.

43.2. 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 party or parties may require.

43.3. It is the parties' further intention that this contract be construed liberally to achieve its intent.

- 44. SEVERABILITY; WAIVER OF PROVISIONS:** Any provision in this contract that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this contract. The CITY's consent to or approval of any act by CONSULTANT requiring consent or approval shall not be deemed to render unnecessary the obtaining of CITY's consent to or approval of any subsequent act by CONSULTANT requiring consent or approval, whether or not similar to the act so consented or approved.
- 45. WAIVER OF CLAIM:** The CONSULTANT and the CITY hereby mutually waive any claim against each other, their elected or appointed officials, agents, and employees, for any loss of anticipated profits caused by any suit or proceedings brought by any third party directly or indirectly attacking the validity of this contract or any part thereof, or by any judgment or award in any suit or proceeding declaring this contract null, void, or voidable, or delaying the same, or any part thereof, from being carried out.
- 46. DELIVERY:** All items shall be delivered F.O.B. destination to a specific CITY address. All delivery costs and charges must be included in the bid price. The CITY reserves the right to cancel orders or any part thereof, without obligation if delivery is not made at the time specified in the bid.
- 46.1. NOTE TO CONSULTANTS DELIVERING TO CITY HALL.** Normal receiving hours are Monday through Thursday (excluding holidays) 8:00 A.M. to 4:30 P.M.
- 47. WARRANTY:** CONSULTANT shall guarantee their product to be free of defects and workmanship for a period of one (1) year (or per the warranty stated in the RFP document and agreed to by the CITY and CONSULTANT) from date material is received and accepted by the CITY. Any defective material noted during the warranty period shall be replaced by the successful bidder in a timely manner, at no additional cost to the CITY.
- 48. DISPUTE RESOLUTION:** Any disputes relating to interpretation of the terms of this contract or a question of fact or arising under this contract shall be resolved through good faith efforts upon the part of the CONSULTANT and the CITY or its Project Manager. At all times, the CONSULTANT shall carry on the work and maintain its progress schedule in accordance with the requirements of the contract and the determination of the CITY or its representatives, pending a final resolution of the dispute, including, if necessary, any determination by a court of competent jurisdiction. Any dispute which is not resolved by mutual agreement shall be decided by the CITY Superintendent or designee who shall reduce the decision to writing. The decision of the CITY Superintendent or designee shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, and so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence.
- 49. MEDIATION:** Prior to initiating any litigation concerning this contract, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Belle Glade. The fee of the mediator shall be shared equally by the parties. To the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall not be admissible as evidence in any subsequent proceeding concerning the disputed issue.
- 50. INTERPRETATION:** This contract constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements between the parties with respect thereto. This contract may only be amended by written document, properly authorized, executed and delivered by both parties hereto. This contract shall be interpreted as a whole unit and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. It is the parties'



further intention that this contract be construed liberally to achieve its intent.

51. VENUE: In the event it is necessary for either party to initiate legal action regarding this contract, venue shall be exclusively in the Nineteenth Judicial Circuit for Belle Glade, Florida, for claims under state law and the Southern CITY of Florida for any claims which are justicable in federal court.

52. NOTICE: All notices required in this Contract shall be sent by certified mail, return receipt requested, and/or email, and if sent to the CITY shall be mailed to:

CITY OF BELLE GLADE
Attn: Director of Finance
110 Dr. Martin Luther King Jr., Blvd W.
Belle Glade FL., 33430-3900
PH (561) 996-0100, Ext 2129
Fx (561) 286-2031
Email: tibbs@belleglade-fl.com

Copy to: CITY OF BELLE GLADE
Attn: Purchasing Manager
110 Dr. Martin Luther King Jr., Blvd W.
Belle Glade FL., 33430-3900
PH (561) 996-0100, Ext 2135
Fx (561) 286-2031
Email: nappel@belleglade-fl.com

and if sent to the CONSULTANT shall be mailed to:

53. CAPTIONS AND PARAGRAPH HEADINGS: Captions and paragraph headings contained in this contract are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this contract, nor the intent of any provisions hereof.

54. COUNTERPARTS: This contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same contract.

55. EXHIBITS ARE INCLUSIONARY: All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

56. SURVIVAL: Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

57. SCRUTINIZED COMPANIES: Vendor certifies that it and its subCONSULTANTS are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate the Agreement Documents at its sole option if the Vendor or any of its subCONSULTANTS are found to have submitted a false certification; or if the Vendor or any of its subCONSULTANTS, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement Documents.

57.1. The Vendor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under the Agreement Documents.

57.2. The Vendor agrees that the certifications in this section shall be effective and relied upon by the City for the term of the Agreement Documents, including all renewals.

57.3. The Vendor agrees that if it or any of its sub-consultants' status changes in regard to any certification herein, the Vendor shall immediately notify the City of the same.



57.4. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative

58. DATES: This contract shall be effective beginning _____ notwithstanding it or some of the contract documents being signed on a different date.

IN WITNESS WHEREOF, the parties hereto have executed this contract in multiple copies, each of which shall be considered an original on the following dates:

As to CONSULTANT on the _____ day of _____,

_____	_____
Corporate Seal	COMPANY NAME

_____	_____
Witness	NAME, POSITION

As to the CITY on the _____ day of _____.

_____	_____
CITY OF BELLE GLADE	

_____	_____
Attest: Debra R. Buff, City Clerk, MMC	Steve Wilson, Mayor

APPROVED AS TO FORM AND
LEGAL CORRECTNESS

City Attorney

ALL EXHIBITS SHALL BE ATTACHED HERE



EXHIBIT "A"

SAMPLE