

**PR _____ Master AGREEMENT
FOR
INFORMATION TECHNOLOGY (IT)
PROFESSIONAL SERVICES**

This Agreement for Information Technology (IT) Professional Services ("Agreement") is made effective as of the last signature, ("Effective Date") by and between the **Orlando Utilities Commission** ("OUC"), located at 100 W. Anderson Street, Orlando, Florida 32801 and _____, located at _____, (hereinafter referred to as "Consultant"). OUC and Consultant may be individually referred to as a "Party" or jointly the "Parties".

ARTICLE 1

**GENERAL DESCRIPTION OF OBJECTIVES
AND SCOPE OF SERVICES**

1.1 Consultant is an IT consulting firm. OUC wishes to utilize Consultant's services to perform certain consulting, support and maintenance, development or other professional services, as described under Exhibit A attached to and made a part of this Agreement ("Services") The purpose of this Agreement is to set forth the terms and conditions under which Consultant will provide such services for each individual Statement of Work (as this term has been defined below) agreed to from time to time by the Parties. All Work shall be performed as set forth in the applicable Statement of Work and the Purchase Order issued pursuant to it.

1.2. The Parties acknowledge that this is not an exclusive Agreement and no guarantee of work is provided. The purpose of this Agreement is to set forth the terms and conditions under which Consultant will provide such services.

1.3. For purposes of this Agreement, the following words and expressions when initially capitalized shall have the meanings hereby assigned to them:

"Change Order" shall have the meaning set forth in Article 5, Change Orders.

"Agreement Price Schedule" means the price rates agreed upon by the Parties and set forth in Exhibit B attached hereto and made part of this Agreement.

"Facility" means OUC facility or facilities designated in the Statement of Work or Purchase Order where Services are to be performed by Consultant.

"Final Acceptance" shall have the meaning assigned to such term in Article 7.

“Party” or “Parties” shall mean OUC and Consultant, individually or together, as applicable.

“Purchase Order” shall mean the general authorizing document (including Change Orders thereto) utilized by OUC to procure Services from Consultant under this Agreement and any attachments and appendices attached thereto.

“Schedule” shall mean timing of the performance of Services by Consultant as described in detail in the Statement of Work or Purchase Order.

"Services" shall mean work, direction of work, technical information, technical consulting, software programming and development, software and system maintenance and support services, or other technical services furnished by Consultant as described in detail in the Statement of Work or Purchase Order.

“Statement of Work” shall mean individual statement of works agreed to from time to time by the Parties using statement of work form set forth in Exhibit D attached to and made part of this Agreement. Each Statement of Work requires prior written approval/acceptance by OUC before Consultant proceeding with work on same.

“Work Product” shall have the meaning set forth in each Statement of Work.

ARTICLE 2

PERSONNEL

- 2.1. Each party will designate one qualified member of its staff who will operate as the main interface between OUC and Consultant. OUC's designee shall have authority to act in OUC's behalf and will provide information and answer any questions concerning the Services to be performed by Consultant personnel as contemplated by this Agreement.
- 2.2. OUC shall have the right to interview and otherwise evaluate all Consultant personnel assigned to perform Services and to accept or reject any individual(s) based upon the experience of the individual(s). In the event that any of the Consultant's personnel performing Services under this Agreement are found to be unacceptable to OUC for cause, including, but not limited to, a reasonable belief that he or she is not qualified to perform or is not performing the Services as required under this Agreement, OUC shall notify Consultant of such fact in writing, setting forth such cause. Consultant shall immediately remove said employee from performing Services, if requested by OUC, shall immediately provide a qualified replacement. OUC is the sole judge as to performance capability but shall exercise its discretion reasonably.
- 2.3. Consultant agrees to use its best efforts to insure the continuity of Consultant

personnel assigned to perform Services under this Agreement. Consultant will not remove any of its personnel from work under a particular Schedule without OUC's consent. In the event that any of Consultant's personnel are removed before completion of Services, Consultant shall immediately supply a replacement acceptable to OUC. The fees to be paid by OUC under this Agreement shall be adjusted so that OUC is not charged for any duplicative Services incurred because of the change.

- 2.4 OUC desires to retain the current consultants' employees assigned to insure continuity of personnel and when there is a change, OUC will utilize its discretion on requesting replacements.
- 2.5. For each engagement hereunder, the parties will enter into a Statement of Work describing the services and deliverables. The form for each Statement of Work is set forth in Exhibit D attached.
- 2.6 The assignment of additional personnel to work pursuant to a Statement of Work hereunder shall be made by mutual written agreement between OUC and Consultant and shall in no way alter or cancel any other applicable terms and conditions of this Agreement or Statement of Work issued hereunder.
- 2.7. Consultant, in performance of this Agreement, is acting as an independent contractor. Any personnel to be supplied by Consultant hereunder are not OUC employees or agents. Consultant shall be solely responsible for the payment of compensation of Consultant personnel assigned to perform Services hereunder, and such personnel shall be informed that they are not entitled to the provisions of any OUC employee benefits. OUC shall not be responsible for payment of workmen's compensation, disability or other similar benefits, unemployment or other similar insurance or for withholding, income, or other similar taxes or social security for Consultant personnel, but such responsibility shall be solely that of Consultant. Consultant shall indemnify and defend OUC from any and all claims made and costs and expenses incurred (including reasonable attorneys' fees) on account of or otherwise related to any of Consultant's obligations under this Section.
- 2.8 Some OUC systems and/or software may be subject to U.S. export control laws. Consultant agrees to perform the work with "U.S. persons" as defined by the applicable export regulations (Export Administration Regulations, 15 CFR Part 730-770).

ARTICLE 3

STATUS REPORTS; STATUS MEETINGS

- 3.1. Unless otherwise agreed to by the Parties, Consultant shall submit to OUC's designee every week during the term of this Agreement, written status reports describing Consultant's activities and accomplishments during the preceding report period.

The status reports will include the following:

- 3.1.1. Current status and progress since last report.
 - 3.1.2. Identification of actual and anticipated problem areas.
 - 3.1.3. Planned activities for the succeeding report period.
- 3.2. If OUC so requests, Consultant shall hold status meetings with OUC's management in order to review the status of Consultant's activities. Such meetings will be conducted at such locations as are mutually agreed to by OUC and Consultant.

ARTICLE 4

FEES & EXPENSES; RECORDS; TAXES

- 4.1. For work performed pursuant to Statement(s) of Work, Consultant shall invoice OUC on a monthly basis based on the rates set forth in Exhibit B hereto. Each invoice shall be accompanied by Consultant's time reports for services billed on a time and materials basis. The time report will be forwarded to OUC's designee prior to submission by Consultant for invoicing purposes. OUC's designee will sign and return these time reports within three (3) working days, indicating agreement to the hours shown. Should OUC's designee not return the time reports within the specified period, invoicing will be based upon the unsigned time reports. Any discrepancy between the final, approved time report and those from which billing was made will be rectified on the next invoice.
- 4.2. In addition to the charges invoiced in accordance with Section 4.1 hereof, Consultant shall invoice OUC on a once monthly basis for project related expenses actually incurred by Consultant in the preceding month, which expenses shall comply with OUC's travel and expense policy contained in Exhibit E hereto and incorporated by this reference. Such expenses must be approved in advance by OUC.
- 4.3. OUC shall have access to Consultant's records described herein for the purposes of audit during normal business hours for a period of one year after termination of this Agreement.
- 4.4. The charges set forth herein do not include, and OUC will pay, all taxes levied against or upon the service provided hereunder, or arising out of this Agreement,

exclusive, however, of taxes based on Consultant's gross or net income, which taxes shall be paid by Consultant.

ARTICLE 5

CHANGE ORDERS

- 5.1. In the event that OUC desires to make any changes to any Services, a description of the requested change shall be submitted to the Consultant on a System Change Order Form ("Change Order") attached hereto as Exhibit C and incorporated by this reference. Consultant shall evaluate the requested change and determine whether there are any costs or scheduling impacts due to the requested change. Consultant shall complete the Consultant's Statement of Costs portion on the Change Order and return it to OUC. OUC shall then determine whether to approve, disapprove or defer implementation of the requested change and return a copy of the Change Order with its action noted thereon to Consultant. Consultant shall not be obligated to perform and OUC shall not be obligated to pay for any changes unless OUC's approval of the change is noted on the Change Order.
- 5.2. In the event that any error, ambiguity or inconsistency is discovered in Statement of Work which interferes with or prevents Consultant's completion of Services in compliance with this Agreement and Statement of Work, Consultant and OUC shall meet immediately to resolve any problems and agree on correction in the Statement of Work. If the corrections to Statement of Work cause delays in the time schedule or increase the work required of Consultant beyond the original requirements of the Statement of Work, Consultant and OUC shall prepare a Change Order that identifies any changes to costs, time schedule and functionality of the Services, Services of other items as specified in the schedule. Upon completion of the Change Order, OUC shall have sole right to decide whether to approve all, a portion or no part of the Change Order.

ARTICLE 6

FACILITIES & SERVICES TO BE PROVIDED BY OUC

OUC is solely responsible for obtaining and maintaining computer equipment and facilities which are adequate for its operational needs and for the Services. OUC will provide Consultant's personnel with computer system time and facilities including, but not limited to: OUC or time-shared data processing facilities, service bureau facilities, data preparation services, work space, desks, and incidental supplies on a "no cost to Consultant" basis. OUC will also make employees with knowledge relevant to Consultant's Services available to Consultant and will cooperate with Consultant in its rendition of Services hereunder.

ARTICLE 7

ACCEPTANCE OF SERVICES

Acceptance of Services.

All Services and any Work Product shall be subject to OUC's review and approval. OUC may accept or reject Services or Work Product within a reasonable time after completed if such Services or Work Product do not comply with the requirements of this Agreement and Statement(s) of Work. Unless otherwise agreed to by express written statement in Agreement, OUC's review and approval of Services and Work Products provided by the Consultant shall in no way or manner be deemed to relieve or lessen Consultant's responsibility under this Agreement and any applicable Statement(s) of work for the professional quality, technical accuracy, and completeness of such Services or Work Product nor shall OUC's failure to so review the Services or Work Product impair OUC's right to reject or revoke its acceptance of nonconforming Services or Work Product, or to avail itself of any other remedies to which OUC may be entitled. OUC Acceptance of Services shall also be contingent upon Consultant demonstrating compliance with performance or operational testing set forth in the Agreement and Statement of Work.

Title and Intellectual Property Rights.

Under this Agreement, title to and ownership of all computer software, programming code and associated documentation prepared by Consultant ("Work Product"), including without limitation all copyrights or patent rights, licenses or other intellectual property rights therein (including derivative works), shall unless specifically agreed otherwise, be considered a work for hire and ownership shall be vested in OUC. Consultant shall assign right, title, and interest in the foregoing to OUC, and further agrees to execute, at OUC's request and expense, all documentation necessary to perfect title therein in OUC. Consultant agrees to assist OUC, at OUC's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause. If this Agreement provides OUC the right to terminate for Consultant's default or otherwise, OUC shall be entitled to the ownership of all Work Products even if not fully completed at the time of termination. Upon any such termination, consultant shall be required to transfer all right, title and interest in all such work-in-progress to OUC. If OUC enters into a Statement of Work in which the Parties agree that the Work Products are not works for hire and Consultant is to retain all ownership interest therein, then Consultant shall grant to OUC and its affiliates at a minimum and as part of the price, a fully paid-up, transferable, nonexclusive license to use (and copy for archival purposes) all Work Product provided by Consultant pursuant to that Statement of Work. In the event that the source code for any computer program is not provided as part of the Work Product then at OUC's request, the Consultant shall commit to escrow the source code for OUC's use in the event Consultant ceases to support and maintain the software.

Final Acceptance.

Final acceptance of the Services and Work Product for purposes of this Agreement and any Statement(s) of Work issued hereunder shall be the date upon which OUC confirms that all Services and Work Product have been completed and tested and function in accordance with the terms of this Agreement and any applicable Statement(s) of Work (“Final Acceptance”).

ARTICLE 8

FACILITY ACCESS

Site Access Conditions.

Consultant(s) shall be granted access to the Facility under this Agreement, to the extent access is required for the performance of the Services, but any such access will be subject to the following conditions:

Consultant will be required to confine its activities to only those portions of the Facility necessary for performance of the Services.

Consultant shall be required to take all safety measures reasonably necessary to protect OUC, its permittees and licensees and the property of each, from injury or damage caused by or resulting from the performance of Services. Consultant shall follow any and all safety and security procedures established by OUC for the Facility or Facilities where Services are being performed. To the extent applicable, Consultant shall be provided a copy of applicable safety and security rules and Consultant shall read and follow such rules. In the event of a security emergency, OUC may deny Consultant access to a Facility or request that Consultant leave the Facility.

Consultant shall be required to maintain an agreed level of insurance coverage of the types set forth in this Article at all times during the term of the performance of the Services at OUC Facilities.

Consultant’s performance of Services shall not be permitted to interfere with the use, occupancy or enjoyment of the Facility by OUC.

No work or activity performed as part of the Services shall be permitted to cause OUC to be in violation of any requirement of law nor shall Consultant or any agent, employee or representative be permitted to violate any federal, state or local laws while performing Services.

Consultant shall be required to perform all Services in a manner that will not damage the Facility and Consultant shall be responsible for the cost of repairing any such damage.

The Consultant’s and any subcontractor’s personnel who perform the work in connection with this Agreement shall conform to the Orlando Utilities Commission (OUC) Alcohol and

Controlled Substance Abuse Policy. This policy may be found on the Orlando Utilities Commission’s website, www.ouc.com under “Consultant Information”.

Required Insurance.

The Consultant shall acquire and maintain at all times during the performance of Services at the Facility under this Agreement, at the Consultant's expense and as part of the price, a minimum of the following insurance unless specifically agreed otherwise by OUC in its sole and exclusive discretion.

Workers Compensation and Employers Liability.

To the extent that Consultant has employees providing any of the Services, this insurance shall protect the Consultant against all claims under applicable state workers’ compensation laws. Consultant shall also be protected against claims for injury, disease, or death to employees which, for any reason, may not fall within the provisions of a state workers compensation law. The policy shall include an “all states” or “other states” endorsement.

The liability limits shall not be less than:

Workers’ Compensation	Statutory
Employers Liability	\$1,000,000 each occurrence

Commercial General Liability. Commercial general liability insurance with limits of liability of \$2,000,000 combined single limit (Bodily Injury & Property Damage). Commercial general liability Insurance shall include coverage for the entire Consultant's contractual liability under this Agreement.

Automobile Liability. Automobile liability insurance with limits of liability of \$500,000 combined single limit (Bodily Injury & Property Damage).

Certificates

Consultant shall be required, to furnish OUC with certificates of insurance as evidence that the policies required under this Agreement are in full force and effect.

Additional Insured

All insurance coverages furnished under this Agreement except Workers' Compensation, Employers' Liability and Professional liability (as applicable) shall include OUC, and their partners, commissioners, directors, officers, agents, and employees as additional insureds with respect to the activities of the Consultant and his subcontractors.

Notwithstanding any other provision of these policies, the insurance afforded shall apply separately to each insured, named insured, or additional insured with respect to any claim, suit, or judgment made or brought by or for any other insured, named insured, or additional insured as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount or amounts for which the

insurer would have been liable had only one insured been named.

OUC shall not by reason of their inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

Waiver of Subrogation

The Consultant and his subcontractors shall require their insurance carriers, with respect to all insurance policies, to waive all rights of subrogation against the Owner and the Engineer, their partners, directors, officers, agents, and employees and against other consultants and subcontractors.

ARTICLE 9

CONFIDENTIAL INFORMATION

Consultant acknowledges and agrees that (i) all material and information which has or will come into its possession or knowledge in connection with this Agreement or the performance hereof, consists of confidential and proprietary information of OUC, of its affiliates or of third-party vendors who have licensed the information to OUC under an obligation of confidentiality, and (ii) the disclosure to third parties or use by Consultant or third parties of such information will damage OUC. Consultant therefore agrees to hold such material and such information in strictest confidence, not to make use thereof other than for the performance of this Agreement, and not to release such information or material to any person except for Consultant's personnel who have a need to know such information for the purposes of this Agreement and who have signed a written agreement expressly agreeing not to use or disclose it. This confidentiality obligation shall survive termination of this Agreement.

ARTICLE 10

WARRANTIES

Consultant warrants that the Services and Work Products, on the date of Final Acceptance and for a period of a minimum of ninety (90) days thereafter, shall:

- a. Comply with the requirements of this Agreement;
- b. Be free from programming errors and shall conform to the Scope of Work; and,
- c. Be free from viruses, security risks or other intentional programming defects.

Prohibited "intentional programming defects" shall be deemed to include viruses or programming that responds to or provides information to outside system that can "retire," "shut down," "cripple" or "stop" the software or OUC's systems.

Remedy.

Consultant shall be required to remedy any defects in the warranties provided without

additional compensation. Consultant shall correct defects, errors or other nonconformities by, among other things, making additions, modifications or adjustments to the software as may be necessary to keep the software in operating order in conformity with the warranties provided.

ARTICLE 11

GENERAL INDEMNIFICATION

General Indemnification

Consultant shall to the maximum extent permitted by law defend, indemnify, and hold harmless OUC, its commissioners, officers, directors, and employees from and against all claims, damages, losses, and expenses, (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from (i) all third party claims for labor and materials furnished under the Scope of Work for which OUC may become liable for payment under the laws of Florida, (ii) the performance of Services by Consultant or any person or organization directly or indirectly employed by the Consultant to furnish any of the Services or anyone for whose acts any of them may be liable, (iii) breach of the terms of the Agreement by Consultant or any person or organization directly or indirectly employed by the Consultant to perform any of the Services, (iv) violations of applicable law by Consultant or any person or organization directly or indirectly employed by the Consultant to perform any of the Services or anyone for whose acts any of them may be liable, (v) injury or disease or death of third parties (including OUC employees and agents and those of Consultant), or damage to property caused by the negligence, strict liability or willful misconduct of the Consultant or any person or organization directly or indirectly employed by the Consultant to perform any of the Services or anyone for whose acts any of them may be liable. Agreement

ARTICLE 12

FORCE MAJEURE

Consultant Force Majeure Delay

Consultant will not be liable for failure to perform any obligation or delay in performance of Work resulting from any cause beyond the reasonable control of Consultant, or from any act of God; act of civil or military authority; act of war whether declared or undeclared; act (including delay, failure to act, or priority) of any governmental authority (federal, state or local); civil disturbance; insurrection or riot; sabotage; fire; inclement weather conditions; earthquake; or flood. Notwithstanding the above, Consultant shall not be excused from performance of any service under this Article for any cause resulting from the negligence of Consultant or failure to properly assess the availability of laborers, skilled trades or other workers or the timing of its service.

Extension of Services Schedule.

In the event of a delay or interruption in performance of Services excusable under this Article, the time of performance of such service by Consultant will be extended by a period of time the Parties agree is reasonably necessary to overcome the effects of the delay. An extension of time shall be the sole and exclusive remedy for any damages due to delay, including but not limited to loss of profits, loss of use, equipment rental or overhead expenses.

OUC Termination for Excessive Delay

If due to the conditions specified above Section and the Consultant's performance of Services is delayed for a period of more than ninety (90) Days, OUC may terminate the Agreement and shall have no further liability to Consultant except for payment for services completed in accordance with the Agreement up to the termination date.

ARTICLE 13

TERM OF AGREEMENT

This Agreement shall commence on the date last signed ("Effective Date") and shall continue in full force until the earlier of [DATE] or the date on which this Agreement is terminated by OUC earlier as permitted under this Article 13.

Consultant Default.

OUC may terminate this Agreement and/or any Statement(s) of Work or resulting Purchase Order issued hereunder for default by Consultant. Upon the occurrence of any event of default, OUC may terminate this Agreement and pursue any remedies available to it in law or in equity.

Termination for OUC's Convenience.

OUC may in its sole discretion terminate, in whole or in part, the Services. In the event of any such termination under the Agreement and/or any Statement of Work(s)/Purchase Order(s) issued hereunder, OUC shall commit to pay Consultant for the normal and reasonable expenses incurred by the Consultant in the performance of Services prior to receipt of Notice of termination, but OUC shall not be liable for any changes or expenses incurred by the Consultant subsequent to the Notice of Termination. No amount shall be allowed for anticipated profit on unperformed Services.

ARTICLE 14

INFRINGEMENT OF PATENTS, COPYRIGHTS AND TRADE SECRETS

Consultant shall defend or at its option settle any suit or proceeding brought against OUC so far as based on an allegation that any Services or Work Products (or any part thereof), or use thereof for its intended purpose, constitutes an infringement of any patent, copyright, trade secret or other proprietary right of a third party. Any such defense shall be at Consultant's cost. Consultant shall also be required to pay the damages and costs awarded in any suit or proceeding so defended. In case any suit or proceeding so defended, if the Services or Work Product or both are held to constitute infringement or its use by OUC is enjoined, Consultant shall be required, at its option and its own expense, to either: (a) procure for OUC the right to continue using said Services or Work Products; (b) replace them with substantially equivalent non-infringing Services or Work Products; or (c) modify them so they become non-infringing.

ARTICLE 15

LICENSES AND PERMITS

Consultant shall obtain and maintain any licenses, permits, and/or other authorizations of any kind required for the performance of the Services. Consultant shall be required to pay all costs of such licenses, permits and authorizations and all costs and expenses incurred in obtaining and maintaining them.

ARTICLE 16

COMPLIANCE WITH LAWS

The Services and Work Products provided by Consultant shall comply with all federal, state and local laws, and rules and regulations that are applicable to the Services. The Price shall be based on Consultant's compliance with these laws, rules and regulations.

ARTICLE 17

CODES AND STANDARDS

The Services and Work Products provided by Consultant shall comply with all applicable, codes and standards of federal, state or local authorities, or any subdivision thereof.

ARTICLE 18

INDEPENDENT CONTRACTOR

The relationship between Consultant to OUC under this Agreement shall be that of an independent contractor.

ARTICLE 19

CLAIMS FOR LABOR AND MATERIALS

The Consultant shall indemnify and save harmless OUC from all claims by third parties through Consultant for Services and materials furnished under this Agreement. When requested by OUC, the Consultant shall be required to submit satisfactory evidence that all persons, firms, or corporations who have performed Services or furnished Services and materials under this Agreement, for which OUC may become liable for payment under the laws of Florida, have been fully paid or satisfactorily secured. In case such evidence is not furnished or is not satisfactory, OUC shall have the right to retain an amount from money due the Consultant which in the opinion of OUC is necessary to satisfy all claims of such persons, firms, and corporations. This retention shall be in addition to any other amounts which OUC is entitled to retain under this Agreement.

ARTICLE 20

RECORDS AND AUDITS

To the extent that fees paid to Consultant under this Agreement consist in whole or in part of cost reimbursable items or hourly card rates paid by OUC, Consultant shall be required to maintain accurate and complete records specifically relating to the Services provided under this Agreement in accordance with generally accepted accounting principles and practices; including without limitation charges, disbursements, or expenses made or incurred by Consultant in the performance of Services. OUC shall retain the right, upon reasonable Notice, to audit at any time up to one year after payment of its final invoice under this Agreement, the direct costs, expenses and disbursements made or incurred in connection with the Services as well as for the validity of the representations made and in the compensation provisions of this Agreement. OUC shall retain the right to audit Consultant's books and records relating to these items.

ARTICLE 21

CUSTOMER SECURITY REGULATIONS

Consultant's personnel will be instructed in and shall comply with OUC's security regulations applicable to each location. Consultant's personnel, when deemed appropriate by OUC, will be issued visitor identification cards and each such card will be surrendered by Consultant's personnel upon demand by OUC or upon termination of this Agreement and/or the applicable Schedule pursuant to which Services are being performed.

ARTICLE 22

ASSIGNMENT

- 22.1. This Agreement shall be binding upon the Parties' respective successors and permitted assignees.
- 22.2. Neither Party may assign this Agreement and/or any of its rights and/or obligations hereunder without the prior written consent of the other Party, and any such attempted assignment shall be void.

ARTICLE 23

NOTICES

- 23.1. Notices and other official communication to OUC under this Agreement shall be in writing and shall be sufficiently given if delivered personally or by express courier, or mailed by first class mail, proper postage prepaid as follows:

Invoices:

Orlando Utilities Commission
Attn: Accounts Payable
P.O. Box 3193
Orlando, FL 32802-3193

Agreement Information:

Orlando Utilities Commission
Attn: Strategic Sourcing and/or IT Manager
100 W. Anderson Street
Orlando, FL 32801

Project Information:

Orlando Utilities Commission
Attn:
IT Manager
100 W. Anderson Street
Orlando, FL 32801

or to such other addresses or addressees as OUC may from time to time designate to Consultant by written notice as provided herein.

- 23.2. All notices and other official communication to Consultant under this Agreement shall be in writing and shall be sufficiently given if delivered personally or by express courier, or mailed by first class mail, proper postage prepaid to:

[]

or to such other addresses or addressees as Consultant may from time to time designate to OUC by written notice as provided herein.

- 23.3. Any such notice or other official communication shall be deemed to be given as of the date it is personally delivered or five (5) days after being placed in the mails in the manner specified.

ARTICLE 24

GOVERNING LAW AND DISPUTE RESOLUTION

- 24.1 Governing Law. The validity, construction, and performance of this Agreement, shall be governed exclusively by the laws of the State of Florida. Venue shall be any court of competent jurisdiction located in Orange County, Florida. The Parties agree that in no event shall the Uniform Law on the Formation of Contracts for the Sale of Goods, based upon the United Nations Convention on Contracts for the International Sale of Goods (CISG) be applicable to this agreement.
- 24.2 Dispute Resolution. The procedures specified herein shall be the sole and exclusive procedures for the resolution of general and billing disputes between the parties arising out of or relating to this Agreement. The parties will participate in good faith in the procedures specified herein.
- 24.2.1 General:
- 24.2.2 The procedures specified herein shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement. The parties will participate in good faith in the procedures specified in this Section.
- 24.2.3 All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section are pending. The parties will take such action, if any, required to effectuate such tolling.
- 24.2.4 In the event of any dispute under this Agreement which cannot be readily resolved, it shall be referred to the appropriate executives of the respective parties to this Agreement (hereinafter "Party" or "Parties") for negotiation and resolution as described below.
- 24.2.5 If the dispute has not been resolved by negotiation or mediation as provided herein within sixty (60) days of the initiation of such mediation procedure, either party may initiate litigation upon ten (10) days' written notice to the other party; provided, however, that if one party has requested the other to participate in a nonbinding procedure, as provided for under this Section, and the other has failed to participate, the requesting party may initiate litigation before expiration of the above period.

24.3 Disputes:

24.3.1 Disputes, as defined herein and under the Agreement, include disagreements, claims, counterclaims, matters in question, and differences of opinion between OUC and Consultant, regarding the Services and modifications or changes to the Services. Disputes may involve interpretation of Agreement Documents, acceptability of the Services, costs and/or time for performance.

24.3.2 Disputes may also involve other subjects mutually agreed by OUC and Consultant to be of concern to the Board.

24.3.3 Payment Disputes:

24.3.3.1 If a dispute arises between the Consultant and OUC, the dispute shall be submitted to an appropriate panel assembled by the Manager of Purchasing no later than forty-five (45) days after receipt of the disputed payment. OUC shall render a final decision on the disputed payment within sixty (60) days after receipt of the invoice.

24.3.3.2 If the dispute is decided in favor of OUC, interest shall begin to accrue fifteen (15) days after the decision is announced.

24.3.3.3 If the dispute is decided in favor of Consultant, interest shall accrue as of the original date the payment became due. The panel's final decision can be taken as a contract dispute through the process outlined below.

24.3.4 Step Negotiations:

24.3.4.1 Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one step above the project personnel who have not previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved by these persons within thirty (30) days of the disputing party's notice, or if the parties fail to meet within ten (10) days, the dispute shall be referred to senior executives of both parties who have authority to settle the dispute and who shall likewise meet to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may initiate mediation as provided hereinafter.

24.3.4.2 All negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

24.3.5 Mediation:

If the dispute has not been resolved by negotiation as provided herein, the Parties shall endeavor to settle the dispute by mediation. Either Party may initiate a mediation proceeding by a request in writing to the other Party, Thereupon, both Parties will be obligated to engage in mediation. The proceeding will be conducted in accordance with the then current Center for Public Resources ("CPR") Model Procedure for Mediation of Business Dispute or other mutually agreed upon procedures, with the following exceptions:

- 24.3.5.1 If the Parties have not agreed within thirty (30) days of the request for mediation on the selection of a mediator willing to serve, the CPR, upon the request of either Party, shall appoint a member of the CPR Panel of Neutrals as the mediator; and
- 24.3.5.2 Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: a) a written settlement is reached, or b) the mediator concludes and informs the Parties in writing that further efforts would not be useful, or c) the Parties agree in writing that an impasse has been reached. Neither Party may withdraw before the conclusion of the proceeding.
- 24.3.5.3 The Parties regard the aforesaid obligation to mediate as an essential provision of this Contract and one that is legally binding on them. In case of a violation of such obligation by either Party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction thereof.

24.3.6 Litigation:

- 24.3.6.1 If the dispute has not been resolved by negotiation or mediation as provided herein within sixty (60) days of the initiation of such mediation procedure, either Party may initiate litigation upon ten (10) days written notice to the other Party; provided, however, that if one Party has requested the other to participate in a nonbinding procedure, as provided for under this Section, and the other has failed to participate, the requesting Party may initiate litigation before expiration of the above period.
- 24.3.6.2 All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section are pending. The Parties will take such action, if any, required to effectuate such tolling.
- 24.3.6.3 Claims, counterclaim, disputes, and other matters in question between OUC and Consultant that are not resolved will be decided in the Ninth Judicial Circuit, in and for Orange County, Florida, which shall have exclusive jurisdiction and venue over all matters in question between OUC and Consultant.

ARTICLE 25

SEVERABILITY

In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired.

ARTICLE 26

LIMITATION OF ACTIONS

No action, regardless of form, arising out of the transactions under this Agreement may be brought by either Party more than one year after the cause of action has accrued, except that a claim for indemnity arising out of a third-party claim may be brought within one year after the Party seeking indemnity receives notice of the third-party claim.

ARTICLE 27

ADVERTISING OR PUBLICITY

- 27.1. Consultant shall not use the name of OUC or of any of its affiliates in publicity releases or advertising without OUC's prior written approval.
- 27.2. OUC shall not use the name of Consultant in publicity releases or advertising without Consultant's prior written approval.

ARTICLE 28

SCHEDULES, EXHIBITS AND ATTACHMENTS

Any Exhibits or Attachments hereto are incorporated herein by this reference and constitute part of this Agreement as if fully set forth herein.

ARTICLE 29

HEADINGS

The headings in this Agreement are for purposes of reference only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof.

ARTICLE 30

MODIFICATION, AMENDMENT, SUPPLEMENT OR WAIVER

- 30.1. No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon the Parties hereto unless made in writing and duly signed by both Parties.

30.2. A failure or delay of either Party to this Agreement to enforce or to require performance of any of the provisions hereof shall not be construed to be a waiver of such provision, or prevent future enforcement of such provision in the same or in a different situation.

ARTICLE 31

PUBLIC RECORDS NOTICE

IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED BELOW.

Consultant acknowledges that OUC is subject to Chapter 119, Florida Statutes ("Public Records Law") and that any record (regardless of form or format) created to memorialize OUC business or used to make OUC business decisions is considered a public record, unless exempted or deemed confidential by law or the Florida Constitution ("OUC Business Records"). Any OUC Business record provided to or generated by Supplier coincident with performing Services under this Agreement must be kept and maintained in accordance with the Public Records Law. Any such OUC Business Records held by Consultant must also be made available to the public for inspection or copying, within a reasonable time if requested under the Public Records Law. Further, upon request of OUC's records custodian, Consultant shall provide OUC a copy of the requested OUC Business Records or allow such records to be inspected or copied, within a reasonable time, at a cost that does not exceed the rate provided in the Public Records Law.

Consultant shall ensure that OUC Business 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 OUC. Upon completion of this Agreement, Consultant may transfer, at no cost to OUC, all OUC Business Records in possession of Consultant or keep and maintain OUC Business Records required by OUC to perform the services or work.

If Consultant receives a public records request for any OUC Business Records, Consultant shall notify OUC's Records Custodian in writing by email or US Mail at the following email address and provide OUC a copy of the request:

Custodian of Records
c/o Orlando Utilities Commission
100 West Anderson Street

Orlando, Florida 32801
Email: recordscustodian@ouc.com
Telephone: (407) 434-2160

Consultant shall provide any OUC Business Records responsive to the public records request to OUC along with the above notice. Consultant shall respond to the requestor within one working day from the date of receiving the public records request that all requests for such information should be provided to the OUC Records Custodian at the above address and email. Consultant shall keep all OUC Business Records stored in separate files (both hard copy and electronic) to minimize the chances of exposing Consultant files to a public records dispute.

Consultant shall routinely demonstrate that any electronic OUC public records can be transferred to OUC in a format that is compatible with OUC and industry standards (e.g. ASCII Text, Adobe PDF, XML, EDIF, CSV, etc.). Encryption of files and data must be accompanied with the appropriate mechanisms to transfer the data successfully (e.g. passwords, cipher, PGP, and SSL keys). Upon request from a member of the public, from OUC, or at the termination of services, Consultant shall provide any or all records in OUC supported format.

If the Consultant transfers all OUC Business Records to OUC upon completion of this Agreement, Consultant shall destroy any duplicate OUC Business Records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains OUC Business Records upon completion of this Agreement, the Consultant shall meet all applicable requirements for maintaining public records.

ARTICLE 32

E-VERIFY REQUIREMENTS

Pursuant to Section 448.095, Florida Statutes, Consultant acknowledges that if awarded this Agreement pursuant to this bid, Consultant and its subcontractors are required to utilize the U.S. Department of Homeland Security's (DHS) E-verify system to verify the employment eligibility status of all new employees hired by the Consultant during the Agreement term. Consultant shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the Agreement utilize the E-Verify system to verify employment of all new employees hired by the sub-contractor during the Agreement term.

By executing this Agreement, the Consultant certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. In addition, if Consultant enters into a contract with a subcontractor, the Consultant must obtain an affidavit from its subcontractor(s) in accordance with paragraph (2)(b) of section 448.095, F.S., and shall maintain a copy of such affidavit for the duration of the Agreement.

This section serves as notice to the Consultant regarding the requirements of section

448.095, F.S., specifically sub-paragraph (2)(c)(1), and OUC’s obligation to terminate the Agreement if it has a good faith belief that the Consultant has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Consultant will not be eligible for award of a public contract for at least one year after the date of such termination. OUC reserves the right to order the immediate termination of any contract between the Consultant and a subcontractor performing work on its behalf should OUC develop a good faith belief that the subcontractor has knowingly violated section 448.09 (1), F.S.

ARTICLE 33

COMPLETE AGREEMENT

This Agreement together with the Statement of Work and/or Purchase Order executed hereunder constitutes the entire Agreement between the Parties and supersedes all prior agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties respecting the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereto, each acting under due and proper authority, have executed this Agreement.

Consultant: _____

Orlando Utilities Commission

Signature: _____

Signature: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**Approved as to form and legality
OUC Legal Department**

Date: _____ By: _____

Buyer: _____

EXHIBIT A

(Consultant's Scope of Services / Proposal)

EXHIBIT B (Pricing Schedule)

EXHIBIT C

(Change Order Request)

Change Order Request Form

Requested by OUC: _____ PO No.: _____

WORK ORDER No.: _____ Change Order No.: _____
Date: _____

Requested Change: |

Proposed Solution: |

Schedule/Cost/Performance impact (if any): |

LEGAL APPROVED – JUNE 8, 2023

Status: Cancelled In Work Finished Other

OUC P.M.: _____ OUC Management: _____

Consultant P.M.: _____ Consultant Management: _____

EXHIBIT D (OUC Consulting Services Statement of Work Form)

Agreement Number OQ
Statement of Work No.

PROJECT INFORMATION	
BU:	Project Name & ID:
Project Manager:	Ext:
Requested by:	Ext:
SOW:	

PROJECT DELIVERABLE DESCRIPTION		
Due Date:	Requirement#:	Deliverable#:
Deliver to:		
Resource(s) Responsible:		
Deliverable Description:		

DELIVERABLE REVIEW		
Reviewer Signature:	Date:	Comments:

DELIVERABLE APPROVAL		
Approval Signature:	Date:	Comments:

EXHIBIT E

(OUC Consulting Services Travel and Expenses Policy)

Orlando Utilities Commission
Consulting Services

Travel and Expense Guidelines

Objective: *To provide definitive guidelines for the authorization, reimbursement and reporting of usual and reasonable business expenses.*

Expenses - shall include all expenses associated with:

1. Mileage, Tolls & Parking
2. Travel – Air & Rental Cars
3. Lodging
4. Meal Allowance – Flat Meal Option

Expenses not listed below are non-reimbursable.

Receipts - A receipt is defined as a written acknowledgement that a specified amount has been paid in return for goods or services. The receipt must include the name of establishment, if possible, the date and the amount paid. Hotel bills that itemize communication and meal expenses are acceptable receipts. Travel itineraries are not acceptable as substitution for receipts, except in cases where tickets/receipts are unavailable from the travel agency (ticketless plane reservations).

Summary Invoice – All receipts should be accompanied with a summary invoice indicating the dates covered.

1) Mileage, Tolls & Parking

Travel from one OUC location to another location to support OUC related business is reimbursable; however, travel from home/hotel to an OUC location is not reimbursable.

- a) Mileage – For personal cars only. Is determined by IRS rates (i.e. \$____ per mile as of _____)
- b) Tolls – Reimbursed at actual cost. Tolls incurred over \$10 require a receipt.
- c) Parking – Reimbursed at actual cost. Fees incurred over \$10 require a receipt.

2) Travel

- a) Air Travel – Air travel reimbursement is limited to coach, tourist or economy unless otherwise approved and documented. All air travel fees and surcharges within these travel classes are eligible for reimbursement. Book flights in advance to take maximum advantage of discounts. Flight changes are reimbursable only when approved by OUC Director/Vice President.
- b) Rental Car – Mid-size or smaller with receipt is required. Car sharing is a must unless otherwise approved by the IT/CIS Director. Gasoline at actual cost is reimbursed with receipts.

3) Lodging

- a) OUC will pay actual single rate room rental costs for each day that lodging away from home is required for business reasons. Consultants will use reasonably priced, good quality hotels or motels. Other hotel/motel charges will be the responsibility of the traveler.
- b) Examples of hotels in the Downtown Orlando Area:
 - i) Crowne Plaza - Orlando Downtown – 304 W. Colonial Drive 407-367-3626 or 800- 593-5447
 - ii) Courtyard by Marriott at Lake Lucerne – 211 N. Lucerne Circle 407-648-5188 or 888-336-2427
 - iii) Aloft Hotel by Starwood, 500 South Orange Avenue. 407-380-3500 or 877-GO-ALOFT
 - iv) Embassy Suites by Hilton, 191 East Pine Street, 407-841-1000

4) Meal Allowance

Flat Meal Option (without receipts)

OUC will reimburse Consultant a Flat Meal allowance of \$50 per day; no receipts required, for each full day worked at an OUC facility. For consultant travel days, the following allowance amount will be observed: \$25.00.

EXHIBIT F

(Compliance Forms & Certificate of Insurance)