

**TAMPA-HILLSBOROUGH COUNTY
EXPRESSWAY AUTHORITY**

Letter of Clarification No. 1

FOR

REQUESTS FOR QUALIFICATIONS

PD&E Selmon South Expressway

RFQ No. P-01018

Letter of Clarification No. 1 ~ RFQ No. O-01018

Date of Letter of Clarification: September 17, 2018

To all prospective respondents:

The following responds to questions received on the solicitation reference above:

Question 1:	<p>Are the primes and subs both who submit on this PD&E precluded from future Design Build project? or is it applicable to Primes only?</p> <p>Is this applicable to all firms who submit or the winning team only?</p>
Response 1:	<p>The PD&E firms will be required to provide a well-organized and comprehensive package of all data gathered and all information developed performing the PD&E study for THEA including, but not limited to survey, traffic, geotechnical, utility and environmental data, all reports and calculations, all CADD files, meeting minutes, project memorandums, etc. in addition to the required PD&E Report and all associated documentation.</p> <p>This package will be provided to all firms interested in pursuing future DB projects developed from the PD&E report.</p> <p>If these requirements are satisfactorily met, the prime firm and all subconsultants performing the PD&E Study will be eligible to team members on the future project DB Teams or CEI teams.</p>
Question 2:	<p>Will the proposals from the short listed firms be available to the public?</p>
Response 2:	<p>Documents will be available to the public once the Notice of Intended Decision has been issued.</p>
Question 3:	<p>Is the budget based on non-pier/non-elevated option?</p>
Response 3:	<p>The original PD&E estimate did not anticipate some of the scope items now being required. Additional funding will be added to the project budget in the future to reflect the work effort anticipated for this project scope.</p>
Question 4:	<p>Will any other plans made available?</p>
Response 4:	<p>The Selmon West Extension plans will be made available.</p>

Question 5:	Regarding the two alternatives, is THEA looking for support concept to go with those?
Response 5:	Yes, there is limited right of way, work hours issues and home owners.
Question 6:	What about roadway lighting for this project?
Response 6:	Yes, as part of the safety project, lights will be all LED and move to the median.
Question 7:	We are using the THEA RFQ #P-01018 for our Letter of Interest. Has THEA assigned a PD&E Project # for the South Selmon Expressway PD&E?
Response 7:	THEA has not assigned a PD&E Project #. Please use #P-01018, if needed.
Question 7:	Please provide a sample contract for the above referenced opportunity.
Response 7:	See attached "Sample Contract."

Respondents MUST acknowledge receipt of this Letter of Clarification by signing, dating and returning the completed Acknowledgement of Receipt of Letter of Clarification/Addendum form with Respondent's proposal.

All other items, conditions, and specifications in the RFQ document not specifically changed by the Addendum remain unchanged.

Please send all questions to THEA's Procurement Manager, Man Le, via email at Man.Le@tampa-xway.com.

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDUM and/or LETTER OF CLARIFICATION

Were Addenda issued on this Solicitation?

Yes

No

Were Letter of Clarification issued on this Solicitation?

Yes

No

I (We) hereby acknowledge receipt of the following Addendum/Addenda issued in reference to this solicitation by listing the Addenda by number, date and signing the form:

Addendum _____	Date: _____
Addendum _____	Date: _____
Addendum _____	Date: _____
Letter of Clarification _____	Date: _____
Letter of Clarification _____	Date: _____
Letter of Clarification _____	Date: _____

BIDDER:

By: _____
Authorized Signature

Printed Name of Signer

Title of Signer

Date Signed

[END OF ACKNOWLEDGMENT OF RECEIPT FORM]

SAMPLE

AGREEMENT

Between

TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY

and

For

PROJECT DEVELOPMENT AND ENVIRONMENTAL (PD&E) STUDY SERVICES

THEA CONTRACT NO. P-01018

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2018 ("**Effective Date**"), by and between the **TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY Authority**, a public body politic and corporate and agency of the State of Florida, organized and existing under the Laws of Florida ("**Authority**"), whose address is 1104 East Twiggs Street, Suite 300, Tampa, Florida 33602, and _____, ("**Consultant**"), a corporation duly existing under the laws of the State of Florida, whose address is _____.

WHEREAS, the Authority is created and established to construct, reconstruct, improve, extend, repair, maintain, and operate the "Expressway System", pursuant to Part IV, Chapter 348, Florida Statutes; and

WHEREAS, pursuant to Section 348.54, Florida Statutes, the Authority has been granted the power to make contracts of every name and nature and to execute all instruments necessary or convenient for the conduct of its business and for carrying out the purposes of the Authority; and

WHEREAS, in response to the Authority's competitive solicitation process known as Request for Proposals (RFP) P-01018, and the Consultant submitted its proposal on _____, incorporated herein as part of this contract and

WHEREAS, the Authority has identified that the Consultant is a highly qualified provider of the required services and requested Consultant to perform Project Development and Environmental (PD&E) Study ("**Services**") as more particularly described in the Scope of Services as contained in Exhibit "A" herein and incorporated hereto by reference; and

WHEREAS, the Authority agrees to compensate the Consultant for the Services, as authorized and described herein, and in accordance with the Method of Compensation attached hereto and made a part hereof as Exhibit "C" and Consultant agrees to perform such Services in accordance with the Scope of Services as contained in Exhibit "A" herein and as further described herein and authorized by Task Order(s) issued in the form of Task Order Form attached hereto as Exhibit "D" and incorporated herein and made a part hereof by reference; and

NOW, THEREFORE, in consideration of the mutual covenants herein made and the benefits to accrue to the parties, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. RECITALS.

The above recitals are true and correct and are incorporated herein.

2. SERVICES AND PERFORMANCE.

2.01 The Authority hereby retains the Consultant pursuant to the terms set forth in this Agreement and services to be performed by or on behalf of the Consultant is hereinafter described in the Scope of Services as contained in Exhibit "A" to this Agreement.

2.02 Before making any additions or deletions to the Services described in this Agreement or in the Scope of Services, as contained in Exhibit "A" that are essential to the completion of Services and which require additional compensation, the parties shall negotiate any changes or revisions to such Services and any necessary cost changes and shall enter into a supplemental written agreement providing for such modifications and the compensation to be paid therefore. Such supplemental agreement(s) may also be described on a Task Order in the sample form attached hereto as Sample Task Order Form, Exhibit "D," and such agreement(s) that will exceed the approved Project budget are subject to the approval of the Authority's governing Board. Upon execution, any such supplemental agreement(s) and/or Task Orders shall be attached hereto and incorporated herein by reference.

2.03 The Consultant's Proposal submitted for this Project was evaluated, in part, based upon the qualifications of the Consultant's organization, proposed staffing levels and upon the qualifications of key personnel presented in the Proposal. The Consultant agrees and acknowledges that it will provide the full complement of staff as outlined in their proposal and approved by the Authority required to perform the Services, including the specific individuals named in its Proposal. Deviations from the approved staffing levels must be approved in advance by the Authority. The specific key personnel named in the

Consultant's Proposal shall remain assigned for the duration of the Project, unless otherwise agreed to in writing by the Authority.

2.04 In the event Consultant proposes to substitute any of the key personnel, the individual(s) proposed as substitute(s) must demonstrate equal or superior qualifications and experience as required to successfully perform such duties. The Authority shall have the sole right to determine whether key personnel proposed as substitutes are accepted and qualified to work on the Project, which consent shall not be unreasonably withheld.

2.05 The Consultant's Proposal submitted for this Project designated from its staff a qualified "Project Manager" having at least 5 years of experience in performing and/or administering similar types of work as this Project. The "Project Manager" shall be the single point of contact as liaison with the Authority and administering the Agreement for the Consultant. The "Project Manager" shall be the responsible person in charge of coordinating day to day work activities on task assignments, preparing the itemized task order estimates, schedules, payment applications, directing Consultant work forces, reports, day to day administrative matters, coordinating the DBE policy to achieve the established goals and other related items necessary to fulfill the requirements of the Agreement.

2.06 The Consultant shall function as an extension of the Authority's staff by providing qualified technical and professional personnel to perform the Services assigned under the terms of this Agreement. The Consultant shall be expected to operate without extensive oversight and direction and to represent, advance, and further the interests of the Authority throughout all aspects and phases of the Project.

2.07 The Consultant and its sub-Consultants agree to provide the Services in accordance with the level of care and skill ordinarily exercised in the performance of services by members of the engineering profession currently practicing under similar circumstances, at the same time and in the same locality. Consultant shall perform its Services in accordance with applicable laws. Consultant has represented to the Authority during the selection process that the Consultant possesses that level of skill, knowledge, experience, and expertise that is required to perform the Services.

2.08 The Consultant shall perform the Services to the reasonable satisfaction of the Authority. All questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement regarding the prosecution and fulfillment of the Services or the character, quality, amount, or value thereof, which cannot be settled by mutual agreement of the parties shall be first attempted to be resolved by non-binding mediation, then settled by recourse to litigation under Florida Law, subject to the additional provisions of Sections 9 through 11.

2.09 The Services of the Consultant have been and will be rendered as an independent Consultant and not as an employee. In this regard, the Consultant shall not be deemed as an employee of the Authority for purposes of any tax or contribution levied by the Federal Social Security Act or any corresponding state law with respect to employment or compensation for employment, and the Consultant shall file all tax forms required of an independent Consultant.

2.10 The Authority will be entitled at all times to be advised, at its request, as to the status of work being done by the Consultant and of the details thereof. Coordination will be maintained by the Consultant with the Authority, or other agencies interested in the Project on behalf of the Authority.

2.11 The Consultant shall permit inspections of its Services by the Authority or its designee, if requested by the Authority.

2.12 Consultant agrees to provide Project Schedules and Progress Reports in a format acceptable to the Authority at intervals established by the Authority. The Authority's Executive Director and/or its designee(s) shall meet with the Consultant's key personnel to plan for performance of work activities and staffing levels to be provided by the Consultant. The closest collaboration and cooperation shall be maintained by the Consultant with authorized representatives of the Authority, or of other agencies and organizations designated by the Authority.

2.13 All plans, tracings, reports, drawings, maps, estimates, specifications, computer records, survey notes, reports, records management programs, and any other data, deliverable, and material, and any part thereof, created, compiled, prepared or obtained by or on behalf of the Consultant pursuant to this Agreement, as well as all data collected, together with summaries and charts derived therefrom and together with all materials and data furnished to the Consultant by the Authority, are instruments of service in respect to the Project hereunder and shall upon payment to Consultant for Services rendered hereunder be and remain the property of the Authority without restriction or limitations on its use will be made available, upon request, to the Authority at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Authority of said document(s), the Authority will become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Consultant will not copyright any material and products or patent any invention developed under this Agreement. Notwithstanding anything to the contrary contained herein, Consultant and its sub-Consultants shall retain ownership of all previously owned intellectual and/or proprietary property. None of the documents or materials are intended or represented by Consultant to be suitable for reuse by the Authority, or others on any extension of the project or on any other project. The Authority agrees that it

will not make any modifications to the signed and sealed documents of the Consultant or allow or enable others to reuse such documents without the prior written consent of the Consultant, which consent shall not be unreasonably withheld. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at Authority's sole risk and without liability or legal exposure to Consultant.

2.14 All final plans, documents, reports, studies and other data prepared by the Consultant shall bear the professional's seal/signature, in accordance with the applicable Florida Statute that governs and Administrative Rules promulgated by the Authority of Business and Professional Regulation, and guidelines published by the Authority, in effect at the time of execution of this Agreement. In the event that changes in the Statute or Rules create a conflict with the requirements of the published guidelines, requirements of the Statute and/or Rules shall take precedence.

3. TERM.

3.01 Subject to the termination provisions set forth in this Agreement, this Agreement shall begin upon the date set in the initial Notice to Proceed issued herein and shall continue in effect for a period of three (3) year with the option to renew for up to two (2) additional one (1) year terms. The renewal options, if exercised, will be authorized by a written Notice to Proceed in the form of a Task Order Authorization in the sample form attached as Exhibit "D", which requires Consultant's signature denoting its acknowledgement and acceptance to extend the Agreement for the subsequent one (1) year terms under the same terms and conditions.

3.02 The Consultant shall be instructed to commence the Work identified as described in the Scope of in Exhibit "A" by written Notice to Proceed instruction in the form of a Task Order Authorization in the sample form attached as Exhibit "D", which requires Consultant's signature denoting its acknowledgement and acceptance under the same terms and conditions.

3.03 The Work identified to be performed under this Agreement shall be commenced within four (4) calendar days after the date established as Day Number One in the Notice to Proceed. Whether or not the Notice to Proceed has been issued, Consultant will not be permitted to commence or continue work efforts if all conditions precedent to commencement under the Agreement have not been satisfied.

3.04 Upon the Authority's acceptance of the work and Substantial Completion, the Consultant shall be instructed to commence the work identified as set forth in the Scope of Services in Exhibit "A" by written Notice to Proceed instruction in the form of a Task Order Authorization in the sample form attached as

Exhibit “D”, which requires Consultant’s signature denoting its acknowledgement and acceptance under the same terms and conditions.

3.05 Upon the Authority’s acceptance of the work and Substantial Completion, the Consultant shall be instructed to commence the work identified as set forth in the Scope of Services in Exhibit “A” by written Notice to Proceed instruction of a Task Order(s) Authorization in the sample form attached as Exhibit “D”, which requires Consultant’s signature denoting its acknowledgement and acceptance under the same terms and conditions.

3.06 Upon execution, Task Orders shall be attached hereto and incorporated herein by reference.

3.07 In the event it becomes impracticable or impossible for the Consultant to complete the expected services within the term of this Agreement due to delays on the part of the Authority or circumstances beyond the control of the Consultant

Consultant, The Agreement may be extended. An extension of the Agreement must be in writing. In the event there are delays caused by the Authority in approval of any of the materials submitted by the Consultant or if there are delays occasioned by circumstances beyond the control and without fault or negligence of the Consultant which delay the scheduled Project completion date, the Authority may grant an extension of time equal to the aforementioned Project schedule delay, as a minimum by issuance of a Time Extension Letter.

3.08 It will be the responsibility of the Consultant to ensure at all times that sufficient time remains in the Project Schedule within which to complete the services on the Project. In the event there have been delays which would affect the Project completion date, the Consultant will submit a written request to the Authority which identifies the reason(s) for the delay, the amount of time related to each reason and specific indication as to whether or not the delays were concurrent with one another. The Authority will review the request and make a determination as to granting all or part of the requested extension.

3.09 In the event time for performance of the scheduled Project services expires and the Consultant has not requested, or if the Authority has denied, an extension of the Project Schedule completion date; partial progress payments will be stopped on the date time expires. No payment shall be made for work performed after the Project Schedule completion date until a time extension is granted or all work has been completed and accepted by the Authority if the Agreement term has not expired.

4. COMPENSATION AND PAYMENT.

4.01 The Authority agrees to compensate the Consultant for Services performed under this Agreement, as described in the Method of Compensation, Exhibit "C" and in authorized Task Order(s) in the sample form attached hereto as Exhibit "D". Payment will be based on hours worked and adherence to the Project Schedule which is included in Exhibit "C."

4.02 The Consultant shall submit one (1) original of its monthly invoice in a form acceptable to the Authority no more than thirty (30) calendar days after the end of the billing period. Such invoice shall include (a) a breakdown of authorized Services as set forth in individual Task Orders, and (b) information with respect to the Consultant's utilization of DBE sub-Consultants. Invoices based on Services provided on an upset-limit basis, must be submitted to the Authority in detail sufficient for a proper pre-audit and post-audit thereof.

4.03 The Consultant shall pay all sub-Consultants their proportionate share of payments received from the Authority within thirty (30) days after receipt of such payment.

4.04 When reimbursement is sought for pre-authorized travel expenses, such invoices shall be submitted and paid within the guidelines of Section 112.061, Florida Statutes.

4.05 Records of costs ("Records") incurred under terms of this Agreement will be maintained by the Consultant for the entire term of the Agreement and for a period of **five (5) years** after the later of (a) final payment and acceptance of a project by the Authority; (b) the end of the term of the Agreement; or (c) until all claims (if any) regarding the Agreement are resolved. Final acceptance is defined as when a project or service has been satisfactorily completed, as determined by the Authority, and at which time the Consultant shall be given written notice of final acceptance. Incomplete or incorrect entries in such Records shall be grounds for disallowance by the Authority of any fees, expenses, or costs based upon such entries. Records of costs incurred shall include the Consultant's general accounting records and project records, together with supporting documents of the Consultant and all sub-Consultants performing services under the Agreement, and all other records of the Consultant and sub-Consultants that are considered necessary by the Authority for a proper audit.

4.06 If a payment is not made to the Consultant within forty (40) days of receipt of an approved invoice, a separate interest penalty at a rate established pursuant to Section 218.74, Florida Statutes, will be due and payable to the Consultant. Invoices that are returned to the Consultant because of preparation

errors or uncompleted or Services not in compliance with the terms herein will result in a delay in the payment and are not subject to the 40-day payment provision.

4.07 Within ten (10) working days of receipt of either Services or invoice, whichever is later, the Authority shall notify the Consultant if such Services or invoice is unacceptable. The Authority reserves the right to withhold payment for Services not completed, or Services not completed in accordance with the terms herein, or Services that are deemed inadequate or untimely by the Authority. Any payment withheld will be released and paid to the Consultant within a reasonable time when Services are subsequently satisfactorily performed.

4.08 Effect of Payments. No payment by the Authority shall relieve the Consultant of its obligation to deliver timely the Services required under this Agreement. If after approving or paying for any service, product, or deliverable, the Authority determines that said service, product or deliverable does not satisfy the requirements of this Agreement, the Authority may reject same and, if the Consultant fails to correct or cure the same within a reasonable period of time and at no additional cost to the Authority, the Consultant shall return any compensation received therefore. No compensation shall be made for revisions to the Consultant's or sub-Consultant services or deliverables required due in any way to the error, omission, or fault of the Consultant, its employees, agents, or sub-Consultants. In addition to all other rights provided in this Agreement, the Authority shall have the right to set off any amounts owed by the Consultant pursuant to the terms of this Agreement upon providing the Consultant prior written notice thereof.

4.09.1 The Consultant hereby certifies, covenants and warrants that wage rates and other factual unit costs provided the Authority to support the compensation are accurate, complete and current as of the date of this Agreement. It is further agreed that the Agreement price will be adjusted to exclude any significant sums by which the Authority determines the Agreement price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such Agreement adjustments must be made within one year following the end of the Agreement. Determination of allowable costs shall be in accordance with Federal cost principles and will be performed for services under this contract.

4.09.2 For this purpose, the end of the Agreement is the date of final billing or acceptance of the work by the Authority, whichever is later.

5. INDEMNITY.

5.01 The Consultant will indemnify, save, and hold harmless the Authority, its members, officers, agents, representatives, and employees from any claim, loss, suit, action, demand, liability, damage, cost,

charge, and expense, including but not limited to reasonable attorneys' and paralegal fees (at trial and on appeal), to the extent caused by any negligent act, error, omission, recklessness, or intentional misconduct by the Consultant, its agents, employees, or sub-Consultants during the performance of Services under this Agreement. The Consultant, its agents, employees or sub-Consultants shall not be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Authority or any of its officers, agents, or employees during the performance of this Agreement.

5.02 If either party receives a notice of claim for damages that may have been caused by the Consultant in the performance of Services required of the Consultant under this Agreement, such party shall promptly evaluate the claim and report its findings to each other. The Authority and the Consultant will evaluate the claim and report their findings to each other within seven (7) working days from the date the last party received notice of such claim. The Authority's failure to notify the Consultant of a claim within seven (7) working days will not release the Consultant from any of the requirements of this section upon subsequent notification by the Authority to the Consultant of the claim.

5.03 The parties agree that one percent (1%) of the total compensation to the Consultant for performance of this Agreement is the specific consideration from the Authority to the Consultant for the Consultant's indemnity agreement.

6. INSURANCE.

6.01 The Consultant shall not commence any work until insurance of the types listed in the Insurance, Requirements, Coverages, and Limits, Exhibit "E" to this Agreement have been obtained. Consultant agrees to provide Certificate(s) of Insurance to the Authority. Such insurance shall be maintained in full force and effect during the term of this Agreement or for a longer term as may be otherwise provided hereunder. All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable to the Authority. All insurance coverages required of the Consultant shall be primary over any insurance or self-insurance program carried by the Authority. The Authority's approval or disapproval of Consultant's insurance shall not release the Consultant and sub-Consultants of their respective obligations to exercise due care in the performance of their duties.

6.02 The Certificate of Insurance shall include the following statement: "The policy(ies) will not be cancelled or materially changed during the period of coverages without at least thirty (30) days prior written notice addressed to the Authority, Attention: Contracts Department, at the address set forth in this Agreement or such other address as may hereafter be specified.

7. TERMINATION AND DEFAULT.

7.01 The Authority may terminate this Agreement unilaterally in whole or in part at any time the Authority deems it in its interest to effectuate such termination by providing thirty (30) days written notice of such intention. The Authority also reserves the right, with or without cause, to terminate any one or any combination of Services to be rendered by the Consultant without terminating the Agreement. Termination of the Agreement by the Authority shall occur as follows:

7.02 **Termination for Cause.** If the Authority determines the performance of the Consultant is not in compliance with the terms herein, the Authority may notify the Consultant of the deficiency with the requirement that the deficiency be corrected or remedied within a specified time ("Corrective Period"), but not less than 10 days. Upon Consultant's failure to correct the stated deficiency, the Agreement will be terminated at the end of the Corrective Period.

7.03 **Termination Without Cause.** If the Authority opts to terminate the Agreement or portions thereof for no stated reasons, the Authority will notify the Consultant of such termination, with instructions as to the effective date of work stoppage or specify the stage of work at which the Agreement is to be terminated.

7.04 If the Agreement is terminated under these provisions before performance is completed; the Consultant will be paid for the Services provided and expenses incurred in compliance with the requirements of this Agreement to the date of termination. Payment is to be on the basis of substantiated costs, not to exceed an amount, which is the same percentage of the contract price as the amount of Services satisfactorily completed called for by the Agreement. All Services in progress shall be deemed the property of the Authority and shall be promptly delivered at no expense to the Authority at the address set forth above, unless directed in writing to another location.

7.05 The Consultant may cancel this Agreement only by mutual consent of both parties.

8. MISCELLANEOUS PROVISIONS.

8.01 **Public Entity Crime Information Statement.** The Consultant represents that it is not currently on the convicted vendor list as provided in its Proposal under "Public Entity Crime Information Statement." The Consultant also represents that its sub- Consultant s are not currently on the convicted vendor list, and that it shall notify the Authority immediately if, during this Agreement, it or its sub- Consultant (s) is placed on said list. A person or affiliate who has been placed on the said list following a conviction for a public entity crime may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

8.02 **Publicity.** No information relative to the existence or the details of the Services or the Work shall be released by Consultant, either before or after completion of the Project, for publication, advertising or any commercial purposes without Authority's prior written consent.

8.03 **Public Records.** The Consultant and sub-Consultants shall comply with the provisions of Chapter 119, Florida Statutes, and shall permit public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received in conjunction with this Agreement. Specifically, if the Consultant is acting on behalf of the Authority, the Consultant must:

- a. Keep and maintain public records required by the Authority to perform the services being performed by the Consultant;
- b. Upon request from the Authority's custodian of public records, provide the Authority 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 costs provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. 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 Authority.
- d. Upon completion of the contract, transfer, at no costs, to the Authority all public records in possession of the Consultant or keep and maintain public records required by the Authority to perform the service. If the Consultant transfers all public records to the Authority 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 provide to the Authority, upon request from the Authority's custodian of public records, in a format that is compatible with the information technology systems of Authority.
- e. **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 RECORDS AT:**

Debbie Northington
Administrative Services Manager

1104 E. Twiggs Street, Suite 300,
Tampa, FL 33602
813-272-6740 ext. 118
Debbie@tampa-xway.com

8.04 **Audit Right.** Authority shall have the right to audit the books, records, and accounts of Consultant that are related to this Project. Consultant shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

8.05 **Record Retention.** Consultant and its sub- Consultants shall make available records, at reasonable times for examination and audit by Authority, financial records, supporting documents, statistical records, and any other documents including books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the Authority and/or the governmental agencies providing grant funds pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a period of three years from completion of the Project.

8.05.1 If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by Authority to be applicable to Consultant's records, Consultant shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Consultant. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Authority's disallowance and recovery of any payment upon such entry.

8.06 **Sub- Consultants.** The Consultant shall maintain an adequate and competent staff for the purpose of performing the Services hereunder. The Consultant may associate and utilize specialists for the purpose of rendering its Services hereunder, without additional costs to the Authority, other than those costs negotiated within the limits and terms of this Agreement. The Consultant shall require each authorized sub- Consultant to adhere to the appropriate provisions of this Agreement. The Consultant guarantees the payment of all just claims for materials, supplies, tools or labor and other just claims against it or any sub- Consultant in connection with this Agreement.

8.07 **Unauthorized Aliens.** The Authority will consider the employment by Consultant or its sub- Consultants of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act.

Such violation will be cause for unilateral cancellation of this Agreement, by the Authority, if the Consultant knowingly employs unauthorized aliens.

8.08 Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act.

During the performance of Services under this Agreement, Consultant agrees that it will comply with all federal, state, and local laws and ordinances applicable to the Services or payment for Services thereof, and will not discriminate against any employee or applicant for employment because of race, age, creed, color, gender, national origin, or disability.

8.09 E-Verify. Consultant shall utilize the U.S. Department of Homeland Security's E-Verify System (www.uscis.gov) in accordance with the terms governing use of the system to the employment eligibility of:

- (a) All persons employed by the Consultant during the term of the Contract to perform employment duties within Florida; and
- (b) All persons, including sub-Consultants, assigned by the Consultant to perform work pursuant to this Agreement with the Authority.

8.09.1 Consultant shall provide proof of registration in the E-Verify system to the Authority upon execution of this Agreement. Documentation evidencing Consultant's registration in the E-Verify system shall be incorporated herein and made a part hereof as Exhibit "F".

8.10 Drug-Free Workplace. Consultant agrees and certifies that it either has or that it will establish a drug-free work place.

8.11 Entire Agreement. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

8.12 Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.

8.13 **Successors and Assigns.** Authority and Consultant bind themselves, their successors, assigns, executors, administrators and other legal representatives to the other party hereto and to successors, assigns, executors, administrators and other legal representatives of such other party in respect to all terms and conditions of this Agreement.

8.14 **Assignment:** The Consultant shall not sublet, assign, or transfer any Services or obligation under this Agreement without the prior written consent of the Authority. Responsibility for sublet, assigned or transferred Services shall remain with the Consultant.

8.15 **Contingency Fee.** Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or Proposer, 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 Agreement. For a breach or violation of this provision, Authority shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

8.16 **Waiver of Breach and Materiality.** Failure by Authority to enhance any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

8.17 **Scrutinized Companies:** In executing this Agreement, Consultant certifies that it is not listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or engaged in business operations in Cuba or Syria.

8.17.1 Pursuant to Section 287.135(5), Florida Statutes, Consultant agrees that the Authority may immediately terminate this Agreement for cause if the Consultant is found to have submitted a false certification or if Consultant is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473 Florida Statutes, or becomes engaged in business operations in Cuba or Syria during the term of this Agreement.

8.18 **Venue.** The parties agree that venue lies in Hillsborough County, Florida, for any action brought under the terms of, or to enforce, this Agreement; and the Consultant hereby waives any and all privileges and rights it may have under Chapter 47, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule or case law, including, but not limited to those grounded on convenience.

8.19 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Judicial Circuit of Hillsborough County, Florida, the venue situs, and shall be governed by the laws of the State of Florida.

8.20 **Legal Fees and Costs.** The parties agree that in the event that it should become necessary for either party to employ an attorney to enforce any of its rights hereunder, the prevailing party shall be entitled to reimbursement of all costs and expenses, including attorney's fees and paralegal fees (at both trial and appellate court levels) which may reasonably be incurred or paid at any time or times by it in connection therewith.

8.21 **Counterparts.** This Agreement may be executed in several counterparts and each counterpart shall constitute an original of this Agreement.

8.22 **Truth-in-Negotiation.** Signature of this Agreement by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current as of the date of this Agreement. The original Agreement price and any additions thereto shall be adjusted to exclude any significant sums, by which the Authority determines the Agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such Agreement adjustments shall be made within one (1) year following the end of this Agreement.

8.23 **Access to Records.** The Consultant and sub-Consultants shall comply with the provisions of Chapter 119, Florida Statutes. A request to inspect or copy public records relating to the Authority's contract for services must be made directly to the Authority. If the Authority does not possess the requested records, the Authority shall immediately notify the Consultant of the request, and the Consultant must provide the records to the Authority or allow the records to be inspected or copied within a reasonable time.

9. WAIVER OF JURY TRIAL AGREEMENT.

9.01 Each party, by the execution hereof, knowingly, voluntarily and intentionally waive, for themselves and their respective successors and assigns, (including sub- Consultants and joint venture parties) any right which any one of them may have to a trial by jury in respect to any litigation, action, suit or proceeding (whether at law or in equity) based on this agreement and any amendment or addition to the agreement, or any course of conduct, course of dealing (whether oral or written) or actions of any party or their respective officers, principals, partners, employees, agents or representatives in connection with the agreement, whether arising in contract, tort or otherwise. No party shall seek to consolidate any such litigation, action, suit or proceeding in which a jury trial cannot be or has not been waived with any other action in which a jury trial has been waived. This provision is a material and mutual inducement to enter into this agreement.

9.02 If for any reason the foregoing waiver is declared or found by a court of competent jurisdiction to be invalid, illegal or unenforceable, then the provisions of Section 10 – Binding Arbitration shall govern.

9.03 The Consultant shall provide and require in any agreements with sub-Consultants and material suppliers for this provision to be included in whole as it appears in this contract. Further, notwithstanding the requirement of the preceding sentence, the waiver of jury trial set forth in this section shall be deemed incorporated into any and all agreements between the Consultant and sub-Consultants and/or material suppliers for the provision of services or materials under this agreement.

10. BINDING ARBITRATION (IF WAIVER OF JURY TRIAL IS UNENFORCEABLE).

10.01 If the provisions of Section 9 - "Waiver of Jury Trial," are found to be unenforceable, all claims, disputes and controversies between the Authority and the Consultant shall be decided and resolved by binding arbitration. The arbitration shall occur in Tampa, Florida, and shall be conducted by a three (3) member panel. For arbitration of claims between the Authority and the Consultant arising out of or in any way related to a claim of the Consultant (s) against the Authority, the Consultant agrees to resolve those claims pursuant to the Arbitration provisions of the Authority's contract with the applicable Consultant (s), which the Consultant has familiarized itself with and adopts herein by this reference. For arbitration of claims between the Authority and the Consultant, not arising out of or in any way related to a claim of the Consultant (s) against the Authority, the Consultant shall pick one arbitrator who is not an employee of or doing business with the Consultant. The Authority shall pick one arbitrator who is not an employee of or doing business with the Authority. The two selected arbitrators shall select the third arbitrator with concurrence of the Parties, unless additional parties are involved in the arbitration through consolidation or joinder and obtain authorization from the Authority and the Consultant to select a representative arbitrator. In that event, the parties shall arrive at a reasonable method for selecting the arbitrators.

11. PROCEDURE FOR BINDING ARBITRATION.

11.01 Notice of the demand for arbitration will be filed in writing with the other party to the contract. Arbitration shall be conducted in accordance with the Florida Evidence Code. The agreement to arbitrate (and any other agreement or consent to arbitrate entered into in accordance herewith) will be specifically enforceable under the laws of Florida.

11.02 Arbitration shall include by consolidation, joinder or in any other manner any person or entity who is not a party to the contract in circumstances where:

- a) The inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and,
- b) Such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and,
- c) The written consent of the other person or entity sought to be included and of Authority and Consultant has been obtained for such inclusion, which consent shall make specific reference to this Paragraph.

11.03 In order to assure complete resolution of any claim or controversy, the Consultant shall provide and require (in the agreements with sub-Consultants and material suppliers) for joinder in such arbitration proceedings, and all dispute resolution procedures set out herein as preconditions to such arbitration.

11.04 Therefore, notwithstanding Section 11.02(c) above, if a claim, dispute or other matter in question between Authority and Consultant involves the work of a sub-Consultants, either the Authority or the Consultant may join such sub-Consultants as a party to the arbitration. Nothing in this Paragraph nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of sub-Consultants or supplier, and against Authority, Engineer, Consultant, or any of their Consultant s that does not otherwise exist.

11.05 In connection with the arbitration proceeding all participants shall be afforded pre-hearing discovery in accordance with the rules of evidence of the Florida Evidence Code. The time frames and requirements of the Florida Evidence Code may be shortened or modified by the arbitration panel at their discretion or on motion by a party if acceptable to the arbitration panel or by agreement between the parties.

12. NOTICES.

12.01 All notices or other communications regarding this Agreement shall be made in writing and shall be deemed properly delivered to the addressee at the address set forth in this Agreement or such other address as may hereafter be specified in writing by (a) hand delivery, (b) courier service or overnight service, (c) facsimile transmittal, (d) mailing of such notice or (e) by email transmission.

13. CAPTIONS.

13.01 Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, extend or describe the scope of this contract or the intent of any provision hereof.

14. ATTACHMENTS.

14.01 The documents listed below, hereto after known collectively as the “Contract Documents” are expressly agreed to be incorporated herein by reference, the same as though fully written herein or attached hereto, and made a part of without being limited thereto, this “Agreement” consists of the following:

- Exhibit "A" Scope of Services
- Exhibit "B" The full extent of documents and forms executed by the Consultant as set forth and listed in the Table of Contents of the Response Package submitted by Consultant to Authority on _____.
- Exhibit “C” Method of Compensation
- Exhibit “D” Sample Task Order Form
- Exhibit “E” Certificate of Insurance

IN WITNESS WHEREOF, the parties have caused this instrument to be signed and witnessed by their respective duly authorized officials all as the dates set forth below.

**TAMPA-HILLSBOROUGH COUNTY
EXPRESSWAY AUTHORITY**

By: _____
Joseph Waggoner
Executive Director

Date: _____

Authorization as to availability of funds:

Approved as to form, content and legality:

Amy Lettelleir, Chief Financial Officer

Patrick T. Maguire, Esq., General Counsel

CONSULTANT

By: _____

Date: _____

Witnesses to the signature of _____

Signature: _____

Printed name: _____

Signature: _____

Printed name: _____