

TOWN OF BAY HARBOR ISLANDS



Request for Qualifications

RFQ -5-1024-PW-0-2024/FVR

ENGINEERING CONSULTANT WITH LAP CERTIFICATION

Pursuant to Section 287.055 Consultants' Competitive
Negotiation Act (CCNA)

1.INTRODUCTION

1.1 Purpose

The Town of Bay Harbor Islands is actively seeking qualified, experienced, and licensed firm(s) to provide **Engineering Consultant with LAP Certification**, as further described in Section III – Scope of Services. Those Consultant who are interested in submitting Statements of Qualification (SOQ) in response to this Request for Qualifications (RFQ) shall comply with Section IV– Submittal Requirements.

1.2 Submission Deadline

Sealed responses shall be delivered during the Town's normal business hours in a sealed envelope and addressed to the Town of Bay Harbor Islands Clerk's Office, 1030 95th Street, Town of Bay Harbor Islands, FL 33154 (Town Hall) no later than **April 1st, 2025, at 3:00 p.m EST** (the deadline), at which time and place the responses will be publicly opened and the names of the Consultant will be read. After the deadline, responses will not be accepted. Consultant are responsible for making certain that their proposal is received at the location specified by the due date and time. The Town of Bay Harbor Islands is not responsible for delays caused by any mail, package or courier service, including the U.S. mail, or caused by any other occurrence or condition. The Town's normal business hours are Monday through Friday, 9:00 a.m. through 5:00p.m. excluding holidays observed by the Town.

All bids will be opened by the Town Clerk's Office.

1.3 Pre-Proposal Meeting

A Pre-proposal meeting is not currently scheduled for this solicitation.

1.4 DEMANDSTAR

The Town of Bay Harbor Islands uses DEMANDSTAR (www.DEMANDSTAR.com) to administer the competitive solicitation process, including but not limited to soliciting responses, issuing addenda, posting results and issuing notification of an intended decision. There is no charge to register and download the RFQ from DEMANDSTAR. Consultants are strongly encouraged to read the various vendor Guides and Tutorials available in DEMANDSTAR well in advance of their intention of submitting a response to ensure familiarity with the use of DEMANDSTAR. The Town shall not be responsible for an Offeror's inability to submit a response by the end date and time for any reason, including issues arising from the use of DEMANDSTAR.

1.5 Point of Contact

All inquiries concerning this RFQ, questions, and requests for additional information shall be sent via email to:

Attn: Fausto Vargas, Procurement Officer
1030 95th Street, Town of Bay Harbor Islands, FL 33154
Phone: (305) 866-6241
E-mail: fvargasreyes@bayharborislands-fl.gov

Questions of a material nature must be received prior to the cut-off date specified in the RFQ Schedule. Material changes, if any, to the scope of services or bidding procedures will only be transmitted by written addendum. (See addendum section of DEMANDSTAR Site). Consultants, please note: Proposals shall be submitted as stated in PART IV – Submittal Requirements. No part of your proposal can be submitted via FAX. No variation in price or conditions shall be permitted based upon a claim of ignorance. Submission of a proposal will be considered evidence that the Consultant has familiarized themselves with the nature and extent of the work, and the equipment, materials, and labor required. The entire proposal must be submitted per all specifications in this solicitation. The questions and answers submitted in DEMANDSTAR shall become part of any contract that is created from this RFQ.

1.6 Debarred or Suspended Bidders or Proposers

The bidder or proposer certifies, by submission of a response to this solicitation, that neither it nor its principals and sub-consultants are presently debarred or suspended by any Federal or State of Florida department or agency.

1.7 Scrutinized Companies List

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the “Cuba Amendment,” the Consultant certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2020), as may be amended or revised. The Town may terminate this Agreement at the Town’s option if the Consultant is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2020), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2020), as may be amended or revised.

By submitting a bid, SOQ or response, the company, principals, or owners certify that they are not listed on the Scrutinized Companies with Activities in Sudan List or listed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba or Syria.

2. General Terms and Conditions

2.1 Addenda, Changes, and Interpretations

It is the sole responsibility of each firm to notify the point of contact by email and request modification or clarification of any ambiguity, conflict, discrepancy, omission or other error discovered in this competitive solicitation. Requests for clarification, modification, interpretation, or changes must be received prior to the Question and Answer (Q & A) Deadline. Requests received after this date may not be addressed. Material changes, if any, to the scope of services or the solicitation process will only be transmitted by official written addendum issued by the Town and uploaded to DEMANDSTAR as a separate addendum to the RFQ. Under no circumstances shall an oral explanation given by any Town official, officer, staff, or agent be binding upon the Town and should be disregarded. All addenda are a part of the competitive solicitation documents, and each firm will be bound by such addenda. It is the responsibility of each to read and comprehend all addenda issued.

2.2 Changes and Alterations

Consultant may change or withdraw a SOQ at any time prior to SOQ submission deadline; however, no oral modifications will be allowed. Modifications shall not be allowed following the SOQ deadline.

2.3 Consultants' Costs

The Town shall not be liable for any costs incurred by consultants in responding to this RFQ, including costs incurred in connection with evaluation and award proceedings.

2.4 Mistakes

The consultant shall examine this RFQ carefully. The submission of a SOQ shall be prima facie evidence that the consultant has full knowledge of the scope, nature, and quality of the work to be performed; the detailed requirements of the specifications; and the conditions under which the work is to be performed. Ignorance of the requirements will not relieve the consultant from liability and obligations under the Contract.

2.5 Acceptance of Responses / Minor Irregularities

2.5.1 The Town reserves the right to accept or reject any or all responses, part of responses, and to waive minor irregularities or variances to specifications contained in responses which do not make the response conditional in nature, and minor irregularities in the solicitation process. A minor irregularity shall be a variation from the solicitation that does not affect the price of the contract or does not give a respondent an advantage or benefit not enjoyed by other respondents, does not adversely impact the interests of other Consultant or, does not affect the fundamental fairness of the solicitation process. The Town also reserves the right to reissue a Request for Qualifications.

2.5.2 The Town reserves the right to disqualify Consultant during any phase of the competitive solicitation process and terminate for cause any resulting contract upon evidence of collusion with intent to defraud or other illegal

practices on the part of the Consultant.

2.6 Responsiveness

In order to be considered responsive to the solicitation, the firm's response shall fully conform in all material respects to the solicitation and all of its requirements, including all form and substance.

2.7 Responsibility

In order to be considered as a responsible firm, firm shall be fully capable to meet all of the requirements of the solicitation and subsequent contract, must possess the full capability, including financial and technical, to perform as contractually required, and must be able to fully document the ability to provide good faith performance.

2.8 Minimum Qualifications

Professional Consultant must be licensed and registered as engineering Consultant with the State of Florida and maintain current Local Agency Program (LAP) Certification from the Florida Department of Transportation (FDOT). Due to the specialized nature of the work, Consultant must demonstrate substantial experience in major bridge design and have met the requirements of the LAP Certification, with a minimum of three (3) successfully completed bridge projects within the past ten years. Consultant shall demonstrate sufficient financial stability, equipment resources, and organizational capacity to successfully perform the required services under this Contract. The firm or its assigned project principals must provide evidence of successfully completing projects of similar scope and magnitude for at least one municipality comparable to the Town of Bay Harbor Islands in both size and complexity. Alternatively, Consultant may demonstrate equivalent experience through large-scale private sector projects, supported by evidence of their managerial expertise and financial capability to successfully execute the work.

Consultant shall satisfy each of the following requirements cited below. Failure to do so may result in the SOQ being deemed non-responsive

- 2.8.1**
- The qualified firm must provide the technically prequalification letter by the FDOT Professional Services Qualification Administrator with the submittal.
 - Proposer or principals must have a minimum of Ten (10) years relevant experience providing General Engineering Consulting Services, including demonstrated expertise in bridge design and construction.
 - Individual(s) assigned to the work must have a minimum of Ten (10) years' experience, with at least three (3) years specifically in bridge-related projects.
 - Project manager assigned to the work must have:
 - Minimum of Ten (10) years' experience in General Engineering Consulting Services
 - Served as project manager on at least three (3) previous projects of similar size and scope
 - Current LAP certification and demonstrated experience managing FDOT LAP projects
 - Professional Engineering license in the State of Florida
 - The qualified LAP firm must be technically prequalified in the

following types of work with FDOT:

- Group 3 Highway Design – Roadway
 - 3.1 Minor Highway Design
 - 3.2 Major Highway Design
 - 3.3 Controlled Access Highway Design
- Group 4 Highway Design Bridges
 - 4.1.1 Miscellaneous Structures
 - 4.1.2 Minor Bridge Design
 - 4.2.2 Major Bridge Design – Steel
- Group 5 Bridge Inspection
 - 5.1 Conventional Bridge Inspection
 - 5.3 Complex Bridge Inspection
 - 5.4 Bridge Load Rating
- Group 6 Traffic Engineering and Operation Studies
 - 6.1 Traffic Engineering Studies
 - 6.2 Traffic Signal Timing
 - 6.3.1 Intelligent Transportation Systems Analysis and Design
 - 6.3.2 Intelligent Transportation Systems Implementation
 - 6.3.3 Intelligent Transportation Systems Traffic Engineering Systems Communications
 - 6.3.4 Intelligent Transportation Systems Software Development
- Group 7 Traffic Operations Design
 - 7.1 Signing, Pavement Marking and Channelization
 - 7.2 Lighting
 - 7.3 Signalization
- Group 8 Survey and Mapping
 - 8.1 Control Surveying
 - 8.2 Design, Right of Way & Construction Surveying
 - 8.4 Right of Way Mapping
- Group 10 Construction Engineering Inspection
 - 10.1 Roadway Construction Engineering Inspection
 - 10.3 Construction Material Inspection
 - 10.4 Minor Bridge & Miscellaneous Structures CEI
- Group 13 Planning
 - 13.5 Subarea / Corridor Planning
 - 13.6 Land Planning/Engineering
 - 13.7 Transportation Engineering
- Group 15 Landscape Architect

2.8.2 Before awarding a contract, the Town reserves the right to require that a firm submit such evidence of his/her qualifications as the Town may deem necessary. Further, the Town may consider any evidence of the financial, technical, and other qualifications and abilities of a firm or principals, including previous experiences of same with the Town and performance evaluation for services, in making the award in the best interest of the Town.

- 2.8.3** Firm or principals shall have no record of judgments, pending lawsuits against the Town or criminal activities involving moral turpitude and not have any conflicts of interest that have not been waived by the Town Commission.
- 2.8.4** Neither Firm nor any principal, officer, or stockholder shall be in arrears or in default of any debt or contract involving the Town, (as a party to a contract, or otherwise); nor have failed to perform faithfully on any previous contract with the Town.
- 2.8.5** Consultant(s) must be appropriately licensed and registered in the State of Florida in the required field of service.

2.9 Protest Procedure

- 2.9.1** Any Proposer who is not recommended for award of a contract and who alleges a failure by the town to follow the town's procurement ordinance or any applicable law, may follow the protest procedure as found in the town's procurement ordinance within five (5) days after a notice of intent to award is posted on the town's web site.

2.10 Sub-Consultants

- 2.10.1** A Sub-Consultant is an individual or firm contracted by the Consultant or Consultant's firm to assist in the performance of services required under this RFQ. A Sub-Consultant shall be paid through the Consultant or Consultant's firm and not paid directly by the Town. Sub-consultants are permitted by the Town in the performance of the services pursuant to the Agreement. The consultant must clearly reflect in its SOQ the major Sub-Consultant(s) to be utilized in the performance of required services. The Town retains the right to accept or reject any Sub-Consultant proposed in the response of Successful Consultant(s) or prior to contract execution. Any and all liabilities regarding the use of a Sub-Consultant shall be borne solely by the successful consultant and insurance for each Sub-Consultant must be maintained in good standing and approved by the Town throughout the duration of the Contract. Neither Successful Consultant nor any of its Sub-Consultants are considered to be employees or agents of the Town. Failure to list all Sub-Consultants and provide the required information may disqualify any proposed Sub-Consultant from performing work under this RFQ.

Consultants shall include in their responses the requested Sub-Consultant information and include all relevant information required of the Consultant. In addition, within five (5) working days after the identification of the award to the successful Consultant(s), the Consultant shall provide a list confirming the Sub-Consultant(s) that the successful Consultant intends to utilize in the Contract, if applicable. The list shall include, at a minimum, the name, and location of the place of business for each Sub-Consultant, the services Sub-Consultant will provide relative to any contract that may result from this RFQ, Sub-consultants hourly rates or fees, any applicable

licenses, insurance, references, ownership, and other information required of Consultant.

2.11 Insurance Requirements

2.11.1 As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Consultant, at the Consultant's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Consultant. The Consultant shall provide the Town a certificate of insurance evidencing such coverage. The Consultant's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Consultant shall not be interpreted as limiting the Consultant's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of "A-" VII or better. All insurance policies are subject to approval by the Town's Risk Manager.

2.11.2 The coverages, limits, and endorsements required herein protect the interests of the Town, and these coverages, limits, and endorsements may not be relied upon by the Consultant for assessing the extent or determining appropriate types and limits of coverage to protect the Consultant against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the Town's review or acknowledgment, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Consultant under this Agreement.

2.11.3 The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$2,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$2,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Consultants.

The Town and the Town's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Consultant. The coverage shall contain no special limitation on the scope of protection afforded to the Town or the Town's officers, employees, and volunteers.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident

If the Consultant does not own vehicles, the Consultant shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the Town must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the Town's Risk Manager if they are in accordance with Florida Statute.

The Consultant waives, and the Consultant shall ensure that the Consultant's insurance carrier waives, all subrogation rights against the Town and the Town's officers, employees, and volunteers for all losses or damages. The Town requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Consultant must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Umbrella/Excess Liability: The Consultant shall provide umbrella/excess coverage with limits of no less than \$2,000,000 excess of Commercial General Liability, Automobile Liability and Employer's Liability

2.12.1 Insurance Certificate Requirements

- a.** The Consultant shall provide the Town with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b.** The Consultant shall provide to the Town a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c.** In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Consultant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d.** In the event the Agreement term goes beyond the expiration date of the insurance policy, the Consultant shall provide the Town with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The Town reserves the right to suspend the Agreement until this requirement is met.
- e.** The Certificate of Insurance shall indicate whether coverage is

provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.

- f. The Town shall be named as an Additional Insured on the general liability policy.
- g. The Town shall be granted a Waiver of Subrogation on the Consultant's Workers' Compensation insurance policy.
- h. On section "description of operations / locations / vehicles (attach accord 101, additional remarks schedule, if more space is required)" should read as flows:

TOWN OF BAY HARBOR ISLAND. IS INCLUDED AS ADDITIONAL INSURED

The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

Town of Harbor Islands
Procurement Services
1030 95th Street
Town of Harbor Islands, FL 33154

- 2.12.1** The Consultant has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the Town as an Additional Insured shall be at the Consultant's expense.
- 2.12.2** If the Consultant's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Consultant may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.
- 2.12.3** The Consultant's insurance coverage shall be primary insurance as applied to the Town and the Town's officers, employees, and volunteers. Any insurance or self-insurance maintained by the Town covering the Town, the Town's officers, employees, or volunteers shall be non-contributory.
- 2.12.4** Any exclusion or provision in the insurance maintained by the Consultant that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.
- 2.12.5** All required insurance policies must be maintained until the contract

work has been accepted by the Town, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Consultant must provide to the Town confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The Town reserves the right to review, at any time, coverage forms and limits of Consultant's insurance policies.

2.12.6 The Consultant shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement shall be provided to the Consultant's insurance company or companies and the Town's Risk Management office as soon as practical.

2.12.7 It is the Consultant's responsibility to ensure that any and all of the Consultant's independent Consultants and subConsultants comply with these insurance requirements. All coverages for independent Consultants and subConsultants shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Consultant.

2.12.8 ADDITIONAL COVERAGES REQUIRE

Professional Liability and/or Errors and Omissions

Coverage must be afforded for Wrongful Acts in an amount not less than \$2,000,000 each claim and \$2,000,000 aggregate.

Consultant must keep insurance in force until the third anniversary of expiration of this Agreement or the third anniversary of acceptance of work by the Town.

2.13 Contract Term

The initial contract term shall commence upon final execution of the contract by the Town and shall expire Three (3) years from that date or the day after the current contract expires, whichever is later. The Town reserves the right to extend the contract for seven (7) additional one (1) year terms providing all terms conditions and specifications remain the same, both parties agree to the extension, and such extension is approved by the Town.

In the event services are scheduled to end because of the expiration of this contract, the Consultant shall continue the service upon the request of the Town as authorized by the awarding authority. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Consultant shall be compensated for the service at the rate in effect when this extension clause is invoked by the Town.

By submitting a SOQ each firm is confirming that the firm has not been placed on the convicted vendors list as described in Florida Statute §287.133 (2) (a).

2.14 Award of Contract

A Contract (the "Agreement") will be awarded in accordance with Florida Statutes, by the Town Commission. The Town reserves the right to execute or not execute,

as applicable, a contract with the Consultant(s) that is determined to be in the Town's best interests. The draft agreement is provided herein as an attachment to this RFQ. The Town reserves the right to award a contract to more than one Consultant as is in the Town's best interest.

2.15 Unauthorized Work

The Successful Consultant(s) shall not begin work until a Contract has been awarded by the Town Commission and a notice to proceed has been issued. Consultant(s) agree and understand that the issuance of a Purchase Order and/or Task Order shall be issued and provided to the Consultant(s) following Commission award; however, receipt of a purchase order and/or task order shall not prevent the Consultant(s) from commencing the work once the Town Commission has awarded the contract and notice to proceed is issued.

2.16 Prohibition Against Contingent Fees

The engineer (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not and will not employ or retain any company or person other than a bona fide employee working solely for the engineer (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure an agreement pursuant to this competitive solicitation and that he or she has not and will not pay or agree to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the engineer (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or another consideration contingent upon or resulting from an award or making of an agreement pursuant to this competitive solicitation.

2.17 Substitution of Personnel

It is the intention of the Town that the Consultant's personnel proposed for the contract will be available for the contract term. In the event the Consultant wishes to substitute personnel, he shall propose personnel of equal or higher qualifications and all replacement personnel are subject to Town approval. In the event substitute personnel are not satisfactory to the Town and the matter cannot be resolved to the satisfaction of the Town, the Town reserves the right to cancel the Contract for cause. See Section 5.09 General Conditions.

2.18 Ownership of Work

The Town shall have full ownership and the right to copyright, otherwise limit, reproduce, modify, sell, or use all of the work or product produced under this contract without payment of any royalties or fees to the Consultant above the agreed hourly rates and related costs.

2.19 Modification of Services

2.19.1 The Town reserves the right to delete any portion of the work at any time without cause, and if such right is exercised by the Town, the total fee shall be reduced in the same ratio as the estimated cost of the work deleted bears to the estimated cost of the work originally planned. If work has already been accomplished and approved by the Town on any portion of a contract resulting from this RFQ, the Successful Proposer shall be paid for the work completed on the basis of the estimated percentage of completion of such portion to the total project cost.

2.19.2 The Town may require additional items or services of a similar nature, but not specifically listed in the contract. The Successful Proposer agrees to provide such items or services, and shall provide the Town prices on such additional items or services. If the price(s) offered are not acceptable to the Town, and the situation cannot be resolved to the satisfaction of the Town, the Town reserves the right to procure those items or services from other vendors, or to cancel the contract upon giving the Successful Proposer thirty (30) days written notice.

2.19.3 If the Successful Proposer and the Town agree on modifications or revisions to the task elements, after the Town has approved work to begin on a particular task or project, and a budget has been established for that task or project, the Successful Proposer will submit a revised budget to the Town for approval prior to proceeding with the work.

2.20 Invoices/Payment

Each invoice shall fully detail the related costs and shall specify the status of the particular task or project as of the date of the invoice with regard to the accepted schedule for that task or project. Payment will be made within forty-five (45) days after receipt of an invoice acceptable to the Town, in accordance with the Florida Local Government Prompt Payment Act. If, at any time during the contract, the Town shall not approve or accept the Consultant's work product, and agreement cannot be reached between the Town and the Consultant to resolve the problem to the Town's satisfaction, the Town shall negotiate with the Consultant on a payment for the work completed and usable to the Town.

2.21 Cone of Silence

The Cone of Silence prohibits any communication regarding a competitive bid or solicitation for including, but not limited to, a particular RFQ, RFQ, solicitation or bid, between:

- (1) A potential respondent, vendor, service provider, proposer, bidder, lobbyist, or consultant; and
- (2) The Town Council Members, Town Staff, including but not limited to, the Town Manager and his or her staff, or any member of the Town's Selection Committee or Evaluation Committee.

The Cone of Silence shall be imposed upon this RFQ upon advertisement of the RFQ. The Cone of Silence shall terminate at the beginning of the Town Council meeting at which time the Town Manager makes his or her written recommendation to the Town Council Members. However, if the Town Council refers the Town Manager's recommendation back to the Town Manager or staff for further review, the Cone of Silence shall be re-imposed until the meeting at which the Town Manager's subsequent recommendation is before the Town Commission.

The Cone of Silence shall not apply to:

- (1) Oral communications at pre-bid conferences;
- (2) Oral presentations before selection or evaluation committees:

- (3) Public presentations made to the Town Council Members during any duly noticed public meeting;
- (4) Written communications at any time with any Town employee, unless specifically prohibited by the applicable solicitation documents. The respondent, bidder or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request;
- (5) Written communications regarding a particular solicitation between a potential respondent, vendor, service provider, proposer, bidder, lobbyist or consultant and the Town's purchasing agent or Town employee designated responsible for administering the procurement process for such solicitation, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
- (6) Communications with the Town Attorney and his or her staff;

2.22 Hold Harmless and Indemnification.

All Proposers shall hold the Town, its officials, and its employees harmless and covenant not to sue the Town, its officials, and its employees in reference to the Town's decision to reject, award, or not award an RFQ, as applicable. Additionally, the selected Proposer shall indemnify, defend, and save harmless the Town, its officers, agents, and employees, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of the Proposer's performance of its Services under this RFQ, or by or in consequence of any negligence (excluding the sole negligence of the Town), in connection with the same; or by use of any improper materials or by or on account of any act or omission of the said selected Proposer, agents, servants, or employees. The selected Proposer shall indemnify, defend, and hold harmless the Town and their agents or employees from and against all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from the performance of the Services described in the RFQ, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than work itself) including the loss of use resulting wherefrom and (b) is caused in whole or in part by any negligent act or omission of the selected Proposer, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.

3.Scope of Services

3.1 Purpose

The Town is seeking the services of qualified consulting firm(s) to provide Professional Services related to a continuing contract for Engineering Consultant Services. Consultant must be registered and licensed with the State of Florida and maintain current Local Agency Program (LAP) Certification from the Florida Department of Transportation (FDOT). Additionally, Consultant must demonstrate substantial experience in major bridge design and construction projects. Town shall have the right, in its sole and absolute discretion, to require additional services that are consistent with the scope of services and those activities typically performed by engineers, and surveyors pursuant to Section 287.055 Florida Statutes, and for which the firm(s) are experience, qualified, and able to perform:

3.2 Require Qualifications

The selected firm(must possess:

- Current LAP Certification from FDOT
- Demonstrated experience in major bridge design and construction projects
- Minimum of three (3) successfully completed bridge projects within the last ten (10) years
- Professional staff with specialized bridge design expertise
- Knowledge of current FDOT and AASHTO bridge design standards
- Experience with bridge inspection and rehabilitation projects
- Familiarity with local marine conditions and requirements
 - The qualified LAP firm must be technically prequalified in the following types of work with FDOT:
 - Group 3 Highway Design – Roadway
 - 3.1 Minor Highway Design
 - 3.2 Major Highway Design
 - 3.3 Controlled Access Highway Design
 - Group 4 Highway Design Bridges
 - 4.1.1 Miscellaneous Structures
 - 4.1.2 Minor Bridge Design
 - 4.2.2 Major Bridge Design – Steel
 - Group 5 Bridge Inspection
 - 5.1 Conventional Bridge Inspection
 - 5.3 Complex Bridge Inspection
 - 5.4 Bridge Load Rating
 - Group 6 Traffic Engineering and Operation Studies
 - 6.1 Traffic Engineering Studies
 - 6.2 Traffic Signal Timing
 - 6.3.1 Intelligent Transportation Systems Analysis and Design
 - 6.3.2 Intelligent Transportation Systems Implementation

- 6.3.3 Intelligent Transportation Systems Traffic Engineering Systems Communications
- 6.3.4 Intelligent Transportation Systems Software Development
- Group 7 Traffic Operations Design
 - 7.1 Signing, Pavement Marking and Channelization
 - 7.2 Lighting
 - 7.3 Signalization
- Group 8 Survey and Mapping
 - 8.1 Control Surveying
 - 8.2 Design, Right of Way & Construction Surveying
 - 8.4 Right of Way Mapping
- Group 10 Construction Engineering Inspection
 - 10.1 Roadway Construction Engineering Inspection
 - 10.3 Construction Material Inspection
 - 10.4 Minor Bridge & Miscellaneous Structures CEI
- Group 13 Planning
 - 13.5 Subarea / Corridor Planning
 - 13.6 Land Planning/Engineering
 - 13.7 Transportation Engineering
- Group 15 Landscape Architect

3.3 Scope of Services

The Town of Bay Harbor Islands is seeking consultant in engineering and environmental disciplines. Generally, services for this projects may include full design and construction contract document development; construction specification development; contract and bidding document development; code analysis; jurisdictional review and permitting assistance; bid/award support and concurrence; negotiation support; construction/contract administration services; construction phase field support services; inspections, construction observation and project progress documentation; post-occupancy surveys and related services; surveying; photographic and video-graphic project support; GIS and CADD project support; other data and information system project support, etc. Multiple Consultant selected by the Town will provide professional services to the Town on an as-needed basis based upon work orders to be issued by the Town under the terms of their continuing contracts.

3.4 Work Standards

In providing professional services, Consultant(s) shall take all reasonable care which are industry standards or as defined in Florida Statutes or Florida Administrative Codes. Consultant(s) shall also provide all work product documentation including but not limited to; data, studies, surveys, drawings, maps, models, photographs, reports, designs, calculations, test results, etc., that shall become the property of the Town and shall be delivered to the Town upon termination of this contract or upon the request of the Town.

3.5 Tasks

The scope of services to be provided by the Consultant in the functional areas

listed above shall include, but not be limited to, the following:

- a) Prepare engineering designs, calculations, plans and specifications, contract bid documents, and cost estimates, within the functional areas of interest listed in this solicitation.
- b) Prepare base maps, preliminary layouts, estimates of probable costs, engineering analysis and alternatives as requested.
- c) Submit construction documents as needed to the Town and other required agencies having an interest or jurisdiction over the project.
- d) Review, analyze, and provide recommendations to utility budgets and capital improvement plans.
- e) Prepare feasibility and conceptual planning documents.
- f) Provide research, attendance at meetings, and preparation of presentation materials, reports and correspondence.
- g) Prepare and/or assist with the preparation of grant applications and attendance at meetings with grant officials.
- h) Provide public education/notification assistance.
- i) Participate in construction administration as required by the Town.
- j) Prepare legal descriptions, exhibits, and surveys.
- k) Provide expert witness testimony.
- l) Prepare appropriate permitting documents and obtain and/or assist the Town in obtaining permits and environmental clearances from applicable agencies.
- m) Represent the Town with regulatory agencies.
- n) Prepare periodic project status reports.
- o) Prepare and furnish bidding documents and assist the Town in the preparation of other related documents.
- p) Attend bid openings, prepare bid tabulation sheets, and assist the Town in the evaluation of bids or proposals.
- q) Issue addenda as appropriate to clarify, correct, or change the bidding documents.
- r) Participate in pre-construction conference as requested by the Town.
- s) Review and determine acceptability of construction submittals, including shop drawings, progress schedule, schedule of values, etc.
- t) Review and provide recommendations to request for information, request for changes, and claims to the Town arising during construction activities.
- u) Make periodic construction site visits for the purpose of determining general compliance with the approved drawings, plans, and specifications as requested by the Town.
- v) Review as-built drawings provided by the construction Consultant and provide written comments to the Town.
- w) Provide services related to construction management and inspections, and/or specialty inspection.
- x) Provide project management services and act as an extension of the Town's project management staff for the design, bidding, and construction

management of municipal projects.

- y) Architectural Design
- z) Landscape Architecture
- aa) ADA Analysis and Design
- bb) Sustainable Design
- cc) Structural Design

The consultant or its sub consultants shall be familiar with different agency's permitting regulations and requirements and the Town's design criteria, standards and specifications.

3.6 **Schedule**

Consultant recognizes that **TIME IS OF THE ESSENCE**. The Work on each Task Order shall commence immediately upon the Consultants receipt of an executed Task Order.

3.7 **Functional Areas of Interest**

The consultant shall identify in their response to this RFQ the functional areas for which it particularly wishes to specialize. Multiple Consultant will be selected, and multiple Consultant may be selected for more than one of the (1) functional areas below:

- a) Transportation engineering (including major bridge design and construction)
- b) Structural engineering (with emphasis on bridge structures)
- c) Environmental engineering
- d) Surveying and mapping services and Geographic Information and mapping services (GIS)
- e) Photogrammetry and remote sensing
- f) Geotechnical engineering
- g) Coastal engineering
- h) Water resources engineering
- i) Hydrology and hydraulic engineering
- j) Mechanical engineering
- k) Electrical Engineering
- l) Plan Review
- m) Architectural Design.
- n) Traffic Engineering
- o) Construction Engineering Inspection.
- p) Planing.
- q) Bridge Engineering Services including:
 - Bridge design and rehabilitation
 - Structural analysis
 - Marine structure design
 - Bridge inspection services
 - Bridge load rating analysis

- Seismic analysis
- Foundation design
- Construction phase services for bridge projects Construction engineering and inspection.

3.8 Quality Assurance/Quality Control

It is the intention of the Town that the awarded consultant is held responsible for the quality control (QC) of their work and of its sub-consultants. All sub-consultant documents and submittals shall be submitted directly to the consultant for their independent QC review. The Town shall only accept submittals for review and action from the consultant.

The consultant is responsible for the professional quality, technical accuracy and coordination of all pre- design services, designs, drawings, specifications, cost estimates and other services furnished by the consultant and their sub-consultants. It is the consultant's responsibility to independently and continually QC their plans, specifications, and all other project deliverables. Upon Town request, the consultant shall provide the Town with a marked up set of plans and specifications showing the consultant's QC review.

The mark-ups submittals shall include the names of the consultant's staff that performed the QC review for each component or functional area (e.g., structures, roadway, drainage, etc.).

3.9 Document Submittal Format

All documents generated as a result of projects will become the property of the Town of Bay Harbor Islands. All projects documents shall be provided in a digital and hard copy format meeting all Town of Bay Harbor Islands format requirements. The project drawings shall be prepared in AutoCAD, in the version current to the Town Engineering Division at the time that deliverables are due, and shall meet the requirements as set forth in the Town's CADD specifications for project drawings current at the time of award of the project. Plot files shall also be prepared and submitted which meet the stated Town standards.

4.Submittal Requirements

4.1 Instructions

- 4.1.1** Although proposals are accepted 'hard copy' The Town of Bay Harbor Islands uses DEMADSTAR (www.Demadstar.com) to administer the competitive solicitation process, including but not limited to soliciting responses, issuing addenda, posting results and issuing notification of an intended decision. There is no charge to register and download the RFQ from DEMADSTAR. Consultant are strongly encouraged to read the various vendor Guides and Tutorials available in DEMADSTAR well in advance of their intention of submitting a response to ensure familiarity with the use of DEMADSTAR. The Town shall not be responsible for an Offeror's inability to submit a response by the end date and time for any reason, including issues arising from the use of DEMADSTAR.
- 4.1.2** Careful attention must be given to all requested items contained in this RFQ. Consultants are invited to submit responses in accordance with the requirements of this RFQ. Please read entire solicitation before submitting a SOQ. Consultants must provide a response to each requirement of the RFQ. Responses should be prepared in a concise manner with an emphasis on completeness and clarity. Consultant's notes, exceptions, and comments may be rendered on an attachment, provided the same format of this RFQ text is followed.
- 4.1.3** All information submitted by Offeror shall be typewritten or provided as otherwise instructed to in the RFQ. Consultant shall use and submit any applicable or required forms provided by the Town and attach such to their response. Failure to use the forms may cause the response to be rejected and deemed non-responsive.
- 4.1.4** Responses shall be submitted by an authorized representative of the firm. Responses must be submitted in the business entities name by the President, Partner, Officer or Representative authorized to contractually bind the business entity. Responses shall include an attachment evidencing that the individual submitting the response, does in fact have the required authority stated herein.
- 4.1.5** All responses will become the property of the Town. In the event of Contract award, all documentation produced as part of the Contract shall become the exclusive property of the Town. All proposals will become the property of the Town. The Proposer's response to the RFQ is a public record pursuant to Florida law, which is subject to disclosure by the Town under the State of Florida Public Records Law, Florida Statutes Chapter 119.07 ("Public

Records Law”). The Town shall permit public access to all documents, papers, letters or other material submitted in connection with this RFQ and the Contract to be executed for this RFQ, subject to the provisions of Chapter 119.07 of the Florida Statutes. Any language contained in the Proposer’s response to the RFQ purporting to require confidentiality of any portion of the Proposer’s response to the RFQ, except to the extent that certain information is in the Town’s opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the Town which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 (“Public Records Laws”), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The Town shall be the final arbiter of whether any information contained in the Proposer’s response to the RFQ constitutes a Trade Secret. The Town’s determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the Town and the Town’s officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the Town’s treatment of records as public records. In the event of Contract award, all documentation produced as part of the Contract shall become the exclusive property of the Town

Consultant shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the Town in order to perform the service.
2. Upon request from the Town’s custodian of public records, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2018), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this contract if the Consultant does not transfer the records to the Town.
4. Upon completion of the Contract, transfer, at no cost, to the Town all public records in possession of the Consultant or keep and maintain public records required by the Town to perform the service. If the Consultant transfers all public records to the Town upon completion of this 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 this Contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town’s custodian of public records, in a format that is compatible with the information technology systems of the Town.

- 4.1.6** One (1) original and two (2) copies plus four (4) electronic (soft) copies (Flash Drive) of your SOQ, shall be delivered by the due date and time (deadline) to the address specified in Section I, 1.2 – Submission Deadline. It is the sole responsibility of the respondent to ensure their SOQs are received on or before the date and time stated, in the specified number of copies and in the format stated herein.

4.2 Contents of the Statement of Qualification

The Town deems certain documentation and information important in the determination of responsiveness and for the purpose of evaluating responses. Responses should seek to avoid information in excess of that requested, must be concise, and must specifically address the issues of this RFQ. The Town prefers that responses be no more than fifty (50) pages double-sided, be bound in a soft cover binder, and utilize recyclable and recycled-content materials as much as practical. Elaborate binders are neither necessary nor desired. Please place the labeled thumb drives in an envelope. The responses shall be organized and divided into the sections indicated herein. These are not inclusive of all the information that may be necessary to properly evaluate the response and meet the requirements of the scope of work and/or specifications. Additional documents and information should be provided as deemed appropriate by the respondent in response to specific requirements stated herein or through the RFQ.

Note: Do not include pricing - Compensation will be requested and considered only during the competitive negotiations process.

4.2.1 Table of Contents

The table of contents should outline in sequential order the major areas of the submittal, including enclosures. All pages should be consecutively numbered and correspond to the Table of Contents.

4.2.2 Executive Summary

Each Offeror must submit an executive summary that identifies the business entity, its background, main office(s), and office location that will service this contract. Identify the officers, principals, supervisory staff and key individuals who will be directly involved with the work and their office locations. The executive summary should also summarize the key elements of the SOQ.

4.2.3 Firm Qualifications and Experience

Respondents must submit and provide any other documentation that demonstrates their ability to satisfy all of the minimum qualification requirements. Indicate the firm's number of years of experience in providing the professional services as it relates the work contemplated. Indicate the firm's initiatives towards its own sustainable business practices that demonstrate a commitment to conservation. Indicate business structure, Corp., Partnership, LLC. Firm should be registered as a legal entity in the State of Florida; Minority or Woman owned Business (if applicable); company address, phone number, fax number, e-mail address, web site, contact person(s), etc. Relative size of the firm, including management,

technical and support staff; licenses and any other pertinent information shall be submitted.

4.2.4 Organizational Profile and Project Team

This section shall include a detailed profile of the organization and identify the project team. Providing this information on an organizational chart is recommended. This section shall also include resumes of the project team. Lastly this section shall include details of how each project team member will contribute to the project, in what capacity, and the level of involvement they will have. Provide a comprehensive summary of the experience and qualifications of the individual(s) who will be selected to serve as the project manager(s) for the Town.

4.2.6 Approach to Scope of Work

Provide in concise narrative form, your understanding of the Town's needs, goals and objectives as they relate to the project, and your overall approach to accomplishing the solicitation. Give an overview on your proposed vision, ideas and methodology. Also provide information on your firm's current workload and how this project will fit into your workload. Describe available facilities, technological capabilities and other available resources you offer for the project.

4.2.7 References

Provide at least three references, preferably government agencies, for projects with similar scope as listed in this RFQ. Information shall include:

- Client Name, address, contact person telephone number and e-mail addresses.
- Description of work.
- Year the project was completed.
- Total cost of the construction; estimated and actual.
- Value engineering or value-added efforts.

4.3 By submitting a SOQ, each firm is confirming that the firm has not been placed on the convicted vendors list as described in Section §287.133 (2) (a) Florida Statutes.

4.4 Before awarding a contract, the Town reserves the right to require that a firm submit such evidence of his/her qualifications as the Town may deem necessary. Further, the Town may consider any evidence of the financial, technical, and other qualifications and abilities of a firm or principals, including previous experiences of same with the Town and performance evaluation for services, in making the award in the best interest of the Town.

5.Evaluation and Award

5.1 Evaluation Procedure

- 5.1.1** Evaluation of the submittals will be conducted by an Evaluation Committee, consisting of a minimum of three members of Town Staff, or other persons selected by the Town Manager or designee. All committee members must be present at scheduled evaluation meetings. Submittals shall be evaluated based upon the information and references contained in the SOQ's as submitted. Evaluation procedures shall be regulated by F.S. § 287.055, referred to as Consultant's Competitive Negotiations Act (CCNA). Any firm(s) involved in a joint venture in its SOQ will be evaluated individually, as each firm of the joint venture would have to stand on its own merits.
- 5.1.2** The committee shall short list no less than three (3) submittals, assuming that three submittals have been received, that it deems best satisfy the weighted criteria set forth herein and attempt to select the best qualified firm(s) for the particular discipline. The committee shall then hold discussions, conduct interviews, and/or require oral presentations with all short-listed Consultant. The committee shall then re-rank the short-listed Consultant based upon the information provided in interviews and/or presentations, the materials presented, the firm's responses to the RFQ, and deliberations of the Evaluation Committee at publically advertised Evaluation Meetings. The Town may request and the firm shall provide additional information deemed necessary by the evaluation committee to conduct evaluations.
- 5.1.3** The final ranking and the Evaluation Committee's recommendation shall be reported to the Town Commission through and with the concurrence of the Town Manager, who shall request the Town Commission approve the final ranking and authorize staff to commence negotiations with the top ranked proposer(s).
- 5.1.4** If the Town manager or his/her designee is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm shall be formally terminated. Upon termination of said negotiations, negotiations shall then be undertaken with the second ranked firm, with this process being repeated until an agreement is reached which is then recommended and formally approved by the Town Commission or until the short-list is exhausted in which case a new Request for Qualifications may be undertaken.

5.2 Evaluation Criteria

- 5.2.1** Pre Florida Statute 287.055, in determining whether a firm is qualified, the

agency shall consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the Consultant; and the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified Consultant, provided such distribution does not violate the principle of selection of the most highly qualified Consultant. The agency may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations.

5.2.2 The Town uses a mathematical formula to determine the scoring for each individual responsive and responsible firm based on the weighted criteria stated herein. Each evaluation committee member will rank each firm by criteria, giving their first ranked firm as number 1, the second ranked firm a number 2, and so on. The Town shall average the ranking for each criterion, for all evaluation committee members, and then multiply that average ranking by the weighted criteria identified herein. The lowest average final ranking score will determine the recommendation by the evaluation committee to the Town Manager.

5.2.3 Weighted Criteria	Percentage
Qualifications of t h e firm: To include years of experience, licenses, Insurance, and other pertinent information.	35
Qualification of Project Team: To include personnel used for the project, project manager, Subconsultants, joint ventures.	25
Approach to Scope of Work	15
Previous Similar Projects; References	25
TOTAL	100%

5.2.4 Florida Statute 287.055 Certified Minority Business Enterprise Certification

In accordance with Florida Statute 287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties; Section 2. (d): if the Proposing firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act, **the firm must submit proof of a valid certification from the Florida Department of Management Services Office of Supplier Diversity, this firm will receive minus two (2.0) points for this criterion.** The submitted certification will be validated using the Certified

Vendor Directory from the Florida Department of Management Services
Office of Supplier Diversity website:
<https://osd.dms.myflorida.com/directories>.

5.3 Contract Award

- 5.3.1** The Town reserves the right to award multiple contract(s) to more than one Consultant(s) who will best serve the interest of the Town. The Town reserves the right, based upon its deliberations and in its opinion, to accept or reject any or all submittals. The Town also reserves the right to waive minor irregularities or variations of the submittal requirements and RFQ process.
- 5.3.2** Upon award of Contract(s) by the Town Commission, the Town Manager is authorized to execute the Contract(s) on behalf of the Town.
- 5.3.3** The Town Manager shall appoint a contract administrator or project manager for contract(s) to assure compliance with the contract and applicable law. The contract administrator or project manager shall review all pay requests or deny same as required prior to approval by the Town Manager.

AGREEMENT

between

Town of Bay Harbor

Islands

and

XXXXXXXXXXXX

for

(RFQ)

RFQ Event No. xxxx

SAMPLE AGREEMENT

AGREEMENT

THIS IS AN AGREEMENT made and entered into this ____ day of _____, 202__, by and between:

Town of Bay Harbor Islands, a Florida municipality, (hereinafter referred to as "Town")

and

_____"
a Florida corporation (hereinafter referred to as "CONSULTANT")

WHEREAS, the Town Council of the Town of Bay Harbor Islands, Florida at its meeting of _____, 202__, authorized by motion the execution of this Agreement between CONSULTANT and TOWN authorizing the performance of _____, RFQ No. _____, incorporated herein, (the "Agreement"); and

WHEREAS, the CONSULTANT is willing and able to render professional services for such project for the compensation and on the terms hereinafter set forth;

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

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions that follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are therefore agreed upon by the Parties.

- 1.1 AGREEMENT: Means this document between the TOWN and CONSULTANT dated _____, 202__, and any duly authorized and executed Amendments to the Agreement.
- 1.2 BASIC SERVICES: Services performed by CONSULTANT for the authorized scope of work for the Project phase described in this Agreement and listed in Exhibit "A," Scope of Services.
- 1.3 CONSULTANT'S PERIODIC ESTIMATE FOR PAYMENT: A statement by CONSULTANT based on observations at the site and on review of documentation submitted by the Contractor that by its issuance recommends that TOWN pay identified amounts to the Contractor for services performed by the Contractor on the Project.

- 1.4 CHANGE ORDER: A written order executed by both Parties to the CONSULTANT approved by the TOWN authorizing a revision of this Agreement between the TOWN and CONSULTANT that is directly related to the original scope of work or an adjustment in the original contract price or the contract time directly related to the original scope of work, issued on or after the effective date of this Agreement.
- 1.5 TOWN: The Town of Bay Harbor Islands, a Florida municipality.
- 1.6 TOWN MANAGER: The Town Manager of the Town of Bay Harbor Islands, Florida.
- 1.7 COUNCIL: The Town Council of the Town of Bay Harbor Islands, Florida, which is the governing body of the TOWN government.
- 1.8 CONSTRUCTION COST: The total construction cost to TOWN of all elements of the Project designed or specified by CONSULTANT.
- 1.9 CONSTRUCTION COST LIMIT: A maximum construction cost limit established by the TOWN defining the maximum budget amount to which the final construction documents should be designed so as not to exceed.
- 1.10 CONSTRUCTION DOCUMENTS: Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Project, including any bidding information.
- 1.11 CONSULTANT: KIMLEY-HORN AND ASSOCIATES, INC., the CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.12 CONTRACT ADMINISTRATOR: The (Department) Director for the Town of Bay Harbor Islands, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.
- 1.13 CONTRACTOR: One or more individuals, firms, corporations, or other entities identified as such by a written agreement with TOWN ("Contract for Construction") to perform the construction services required to complete the Project.
- 1.14 DEPARTMENT DIRECTOR: The (Department) Director for the Town of Bay Harbor Islands.
- 1.15 ERROR: A mistake in design, plans and/or specifications that incorporates into those documents an element that is incorrect and is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes mistakes in design, plans, specifications and/or shop drawings review that lead to materials and/or equipment being ordered and/or delivered where additional costs are incurred.

- 1.16 FINAL STATEMENT OF PROBABLE CONSTRUCTION COSTS: A final cost estimate prepared by CONSULTANT during the Final Design Phase of the Project, based upon the final detailed Construction Documents of the Project.
- 1.17 NOTICE TO PROCEED: A written Notice to Proceed with the Project issued by the Contract Administrator.
- 1.18 OMISSION: A scope of work missed by CONSULTANT that is necessary for the Project, including a quantity miscalculation, which was later discovered and added by Change Order and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the Contractor, but before the construction process was materially affected.
- 1.19 ORIGINAL CONTRACT PRICE: The original bid and/or contract price as awarded to a Contractor based upon CONSULTANT's final detailed Construction Documents of the Project.
- 1.20 PLANS AND SPECIFICATIONS: The documents setting forth the final design plans and specifications of the Project, including architectural, civil, structural, mechanical, electrical, communications and security systems, materials, lighting equipment, site and landscape design, and other essentials as may be appropriate, all as approved by TOWN as provided in this Agreement.
- 1.21 PRELIMINARY PLANS: The documents prepared by CONSULTANT consisting of preliminary design drawings, renderings and other documents to fix and describe the size and character of the entire Project, and the relationship of Project components to one another and existing features.
- 1.22 PROJECT: An agreed scope of work for accomplishing a specific plan or development. This may include but is not limited to, planning, architectural, engineering, and construction support services. The services to be provided by CONSULTANT shall be as defined in this Agreement and further detailed in Task Orders for individual projects or combinations of projects. The Project planning, design, and construction may occur in separate phases and Task Orders at the TOWN's discretion.
- 1.23 SPECIFICATIONS: The specifications referred to in this Agreement are the CONSTRUCTION STANDARDS AND SPECIFICATIONS, Office of the Town Engineer, Town of Bay Harbor Islands.
- 1.24 STATEMENT OF PROBABLE PROJECT COSTS: A document to be prepared by CONSULTANT that shall reflect a detailed statement of the total probable costs.

- 1.25 TASK ORDER: A document setting forth a negotiated detailed scope of services to be performed by CONSULTANT at fixed contract prices in accordance with this Agreement between the TOWN and CONSULTANT.
- 1.26 TIME OF COMPLETION: Time in which the entire work shall be completed for each Task Order.

ARTICLE 2 PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions of this Agreement which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Pursuant to Section 287.055, Florida Statutes (2023), TOWN has formed a Committee to evaluate CONSULTANT's statement of qualifications and performance data to ensure that CONSULTANT has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes (2023), and has selected CONSULTANT to perform services hereunder.

ARTICLE 3 SCOPE OF SERVICES

- 3.1 The CONSULTANT shall perform the following professional services: Professional Engineering Services as more specifically described in Exhibit "A," Scope of Services, attached hereto and incorporated herein, and shall include, but not be limited to, services as applicable and authorized by individual Task Orders for the individual projects in accordance with Article 6 herein. CONSULTANT shall provide all services set forth in Exhibit "A" including all necessary, incidental and related activities and services required by the Scope of Services and contemplated in CONSULTANT's level of effort. CONSULTANT will perform the Services in accordance with standard industry practices, with the care, knowledge and skill expected of similar engineering firms. No other warranties, express or implied are made or intended.
- 3.2 TOWN and CONSULTANT acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONSULTANT to complete the Project. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Project which is in CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator and obtain written approval by the TOWN in a timely manner before proceeding with the

work. Notice to Contract Administrator does not constitute authorization or approval by TOWN to perform the work. The TOWN shall not pay for any work that is not approved by the Contract Administrator in writing. If CONSULTANT proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by TOWN to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written TOWN approval is at CONSULTANT's sole risk.

ARTICLE 4 GENERAL PROVISIONS

- 4.1 Negotiations pertaining to the rates for professional services to be performed by CONSULTANT have been undertaken between CONSULTANT and TOWN representatives pursuant to Section 287.055, Florida Statutes (2023), and this Agreement incorporates the results of such negotiation.
- 4.2 CONSULTANT shall include TOWN's specific Task Order number as part of the heading on all correspondence, invoices and drawings. All correspondence shall be directed specifically to the Contract Administrator.

ARTICLE 5 PRIORITY OF PROVISIONS

- 5.1 The Contract Documents are intended to include all items necessary for the proper execution and completion of the work by CONSULTANT. Any labor, services, materials, supplies, equipment or documentation that may reasonably be inferred from the Contract Documents or trade usage from prevailing custom as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to TOWN. The Contract Documents are complementary, and wherever possible the provisions of the Contract Documents shall be construed in such manner as to avoid conflicts between provisions of the various Contract Documents. In the event of any inconsistency in the Contract Documents, where such inconsistency is not clarified by change order, addendum or amendment, the Contract Documents shall be construed according to the following priorities:

First priority: Approved Change Orders, Addenda or Amendments to all related documents.

Second priority: Specifications (quality) and Drawings (location and quantity) of CONSULTANT.

Third priority: This AGREEMENT.

Fourth priority: Town of Bay Harbor Islands Request for Qualifications No. RFQ .

Fifth priority: CONSULTANT's response to Town of Bay Harbor Islands Request for Qualifications No. RFQ ____.

- 5.2 Anything shown on the drawings and not mentioned in the specifications and now shown on the drawings, shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the Contract Documents, the latest, most stringent, and more technical requirement(s), including, but not limited to, issues of quantities or cost of the Work shall control.

Reference to standard specifications, manuals, rules, regulations, ordinances, laws or codes of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, rule, regulation, ordinance, law or code in effect at the time of permit submittal.

ARTICLE 6 TASK ORDERS

- 6.1 The Project will be divided into "Tasks."
- 6.2 Task Orders shall be jointly prepared by the TOWN and CONSULTANT defining the detailed scope of services to be provided for the particular Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement and all applicable TOWN code requirements.

ARTICLE 7 TERM OF AGREEMENT; TIME FOR PERFORMANCE

- 7.1 CONSULTANT shall perform the basic services described in Exhibit "A". The Project Activities and Time Schedule shall be automatically incorporated into this Agreement. Said time periods shall commence from the date of the Notice to Proceed for such services.
- 7.2 Prior to beginning the performance of any services under this Agreement, CONSULTANT must receive a Notice to Proceed. CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent phases of the Agreement. Prior to granting approval for CONSULTANT to proceed to a subsequent phase, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit itemized deliverables for the Contract Administrator's review.
- 7.3 In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review by TOWN or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, TOWN shall grant a reasonable extension of time for

completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of the CONSULTANT to notify TOWN promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced and to inform TOWN of all facts and details related to the delay.

- 7.4 In the event Contractor fails to substantially complete the Project on or before the substantial completion date specified in the project schedule with TOWN or if Contractor is granted an extension of time beyond said substantial completion date, and CONSULTANT's services are extended beyond the substantial completion date, through no fault of CONSULTANT, CONSULTANT shall be compensated in accordance with Article 7 for all services rendered by CONSULTANT beyond the substantial completion date.
- 7.5 The time for the performance of services described in the Task Orders Scope of Services and supplemental Task Orders shall be negotiated by the TOWN and CONSULTANT as the services are requested and authorized by the TOWN.
- 7.6 The term of this Agreement shall be limited to the time duration required to complete the basic services of the aforementioned project and any additional project-related Task Orders for additional services.

ARTICLE 8 COMPENSATION AND METHOD OF PAYMENT

8.1 AMOUNT AND METHOD OF COMPENSATION

8.1.1 Not-To-Exceed Amount Compensation

TOWN agrees to pay CONSULTANT as compensation for performance of all services as related to each Task Order under the terms of this Agreement a Not to Exceed Amount as agreed upon per Task Order. This compensation does not include reimbursements as described in Section 8.2. It is agreed that the method of compensation is that of "Not to Exceed Amount" which means that CONSULTANT shall perform all services set forth in each Task Order for total compensation in the amount of or less than that stated total. The hourly rate-billing schedule to be used in negotiating each Task Order is attached as Exhibit "B" to this Agreement. As described in Section 9.1, no modification, amendment, or alteration to Exhibit "B" shall be effective unless contained in a written document prepared with the same formality as this Agreement and executed by the TOWN and CONSULTANT.

A not to exceed proposal shall be accompanied by the CONSULTANT's estimate. The estimate shall detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary

expenses including reimbursables; and profit, or as required by individual Task Order.

8.2 REIMBURSABLES

8.2.1 Direct non-salary expenses, entitled Reimbursables, directly attributable to the Project will be charged at actual cost. Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by the CONSULTANT and the CONSULTANT's employees directly attributable to the Project and will be charged at actual cost, without reference to the professional service fees above. TOWN shall not withhold retainage from payments for Reimbursable Expenses. CONSULTANT shall be compensated for Reimbursables associated with a particular Task Order only up to the amount allocated for such Task Order. Any reimbursable or portion thereof which, when added to the Reimbursable related to a particular Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of the CONSULTANT unless otherwise agreed to in writing by the Contract Administrator. Travel and subsistence expenses for the CONSULTANT, his staff and sub-consultants and communication expenses, long-distance telephone, courier and express mail between CONSULTANT's and sub-consultants various offices are not reimbursable under this Agreement. Reimbursable shall include only the following listed expenses:

A. Cost of reproduction, postage, and handling of drawings and specifications which are required to deliver services set forth in this Agreement, excluding reproductions for the office use of the CONSULTANT. Reimbursable printing and photocopying expenses shall include only those prints or photocopies of original documents which are (i) exchanged among CONSULTANT, TOWN, and other third parties retained or employed by any of them or (ii) submitted to TOWN for review, approval, or further distribution. Documents, that are reproduced for CONSULTANT's internal drafts, reviews, or other purposes, are not eligible for reimbursement.

B. Identifiable testing costs and special inspections approved by the Contract Administrator.

C. All permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required for the construction Contractor.

D. Overnight Delivery/Courier Charges (when TOWN requires/requests this service).

8.2.2 Reimbursable sub-consultant expenses are limited to the items described above when the sub-consultant agreement provides for reimbursable expenses. A detailed statement of expenses must accompany any request

for reimbursement. Local travel to and from the Project site or within the Tri-County Area will not be reimbursed.

8.2.3 It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in each Task Order is a limitation upon, and describes the maximum extent of TOWN's obligation to reimburse CONSULTANT for direct, non-salary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT's obligation to incur such expenses in the performance of services hereunder. If TOWN or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursables, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by TOWN prior to incurring such expenses.

8.3 METHOD OF BILLING

8.3.1 Not-To-Exceed Amount Compensation

CONSULTANT shall submit billings, which are identified by the specific project number in a timely manner for all salary costs attributable to the Project. These billings shall identify the nature of the work performed for each phase, subtask, deliverable and item identified in the Exhibit "A" Scope of Services or Task Order, the total hours of work performed and the employee category of the individuals performing same. The statement shall show a summary of salary costs with accrual of the total and credits for portions paid previously. Subconsultant fees must be documented by copies of invoices or receipts, which describe the nature of the expenses and contain a project number or other identifier, which clearly indicates the expense, as identifiable to the Project. Except for meals and travel expenses, it shall be deemed unacceptable for CONSULTANT to modify the invoice or receipt by adding a project number or other identifier. Internal expenses must be documented by appropriate CONSULTANT's cost accounting forms with a summary of charges by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and salary costs by employee category and subconsultant fees on a task basis, so that total hours and costs by task may be determined.

8.4 METHOD OF PAYMENT

8.4.1 TOWN shall pay CONSULTANT in accordance with the Florida Prompt Payment Act. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.

8.4.2 TOWN will review CONSULTANT's invoices and, if inaccuracies or errors are discovered in said invoice, TOWN will inform CONSULTANT within ten (10)

working days by fax and/or by email of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by CONSULTANT to TOWN.

- 8.4.3 Payments are scheduled to be made by TOWN to CONSULTANT using a credit card/TOWN Procurement Card (P-Card). Payment will be made to CONSULTANT at:

(CONSULTANT's ADDRESS – include name of President etc., title, company name, address, telephone, e-mail)

ARTICLE 9 AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

- 9.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the TOWN and CONSULTANT.
- 9.2 TOWN or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Task Order. Such changes must be contained in a written amendment, executed by the Parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the Task Order including the initiation of any additional services. TOWN shall compensate CONSULTANT for such additional services as provided in Article 7.
- 9.3 In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to the Town Manager for resolution. The Town Manager's decision shall be final and binding on the Parties for amounts in the aggregate under \$100,000. In the event of a dispute in an amount over \$100,000, the Parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either Party may commence litigation to resolve the dispute in Broward County, Florida. Any resolution shall be set forth in a written document in accordance with Section 9.2 above. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

ARTICLE 10 CONSULTANT'S RESPONSIBILITIES

- 10.1 The CONSULTANT, following the TOWN's approval of the Construction Documents

and of the Final Statement of Probable Construction Costs, shall, when so directed and authorized by the TOWN, assist the TOWN in estimating construction costs, reviewing proposals, and assist in awarding contracts for construction. If requested, CONSULTANT shall review and analyze the proposals received by the TOWN and shall make a recommendation for any award based on the Town of Bay Harbor Islands Procurement Ordinance.

- 10.2 Estimates, opinions of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by CONSULTANT will represent its best judgment based on its experience and available information. The TOWN recognizes that CONSULTANT has no control over costs of labor, materials, equipment or services furnished by others or over market conditions or CONSULTANT's methods of determining prices and that any evaluation of a facility to be constructed or work to be performed is speculative. Accordingly, CONSULTANT does not guarantee that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by CONSULTANT.
- 10.3 Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by ten percent (10%) or more, CONSULTANT shall, at the TOWN's direction, redesign each Project and/or work with the TOWN to reduce the costs to within the Final Statement of Probable Construction Costs at no additional expense to the TOWN. In such a circumstance, the TOWN may at its sole discretion, exercise any one or more of the following options:
- CONSULTANT shall be required to amend at the sole cost and expense of CONSULTANT, the Construction Drawings, Technical Specifications and Supplemental Conditions to enable the project to conform to a maximum of ten percent (10%) above the Estimated Construction Costs of the Project, such amendments to be subject to the written final acceptance and approval of same by the TOWN;
 - CONSULTANT shall be required to provide at the cost and expense of CONSULTANT re-bidding services and related items (including costs associated with regulatory review and approval of revised documents) as many times as requested by the TOWN until the base bid of at least one "best value" bid falls within the factor of ten percent (10%) of the Estimated Construction Cost of the Project;
 - The TOWN may approve an increase in the Estimated Construction Cost of the Project;
 - The TOWN may reject all bids or proposals and may authorize re-bidding;
 - The TOWN may if permitted, approve a renegotiation of the Project within a reasonable time;
 - The TOWN may abandon the project and terminate CONSULTANT's work authorization and Services for the Project; or

- The TOWN may select as many deductive alternatives as may be necessary to bring the award within ten percent (10%) of the Estimated Construction Costs of the Project.

It is expressly understood and agreed that the redesigning services required to keep the Project within ten percent (10%) of the Estimated Construction Cost shall not be considered additional services and CONSULTANT agrees that it shall not seek compensation from the TOWN for such Services.

- 10.4 The CONSULTANT may be requested to provide the TOWN with a list of recommended, prospective proposers.
- 10.5 The CONSULTANT may be asked to attend all pre-bid/proposal conferences.
- 10.6 The CONSULTANT shall recommend any addenda, through the Contract Administrator, as appropriate to clarify, correct, or change proposal/bid documents.
- 10.7 If pre-qualification of proposers is required as set forth in the request for proposal, CONSULTANT shall assist the TOWN, if requested, in developing qualification criteria, review qualifications, and recommend acceptance or rejection of the proposers. If requested, CONSULTANT shall evaluate proposals and proposers, and make recommendations regarding any award by the TOWN.
- 10.8 The TOWN shall make decisions on claims regarding the interpretation of the Construction Documents, and on other matters relating to the execution and progress of the work after receiving a recommendation from CONSULTANT. CONSULTANT may also assist in approving progress payments to the Contractor based on each Project Schedule of Values and the percentage of work completed.
- 10.9 The TOWN shall maintain a record of all Change Orders which shall be categorized according to the various types, causes, etc. that it may be determined are useful or necessary for its purpose. Among those shall be Change Orders identified as architectural/engineering Errors or Omissions.
 - 10.9.1 Unless otherwise agreed by both Parties in writing, it is specifically agreed that any change to the work identified as an Error on the part of CONSULTANT shall be considered for purposes of this Agreement to be an additional cost to the TOWN which would not be incurred without the Error. Errors on the part of the CONSULTANT shall be rectified by the CONSULTANT with no additional cost to the TOWN.
 - 10.9.2 Unless otherwise agreed by both Parties in writing, it is further specifically agreed for purposes of this Agreement that fifteen percent (15%) of the cost of Change Orders for any item categorized as an Omission shall be considered an additional cost to the TOWN which would not be incurred without the Omission. So long as the total of those two numbers (Change Order costs of Errors plus fifteen percent (15%) of Omissions) remains less

than two percent (2%) of the total Construction Cost of the Project, the TOWN shall not look to CONSULTANT for reimbursement for Errors and Omissions.

10.9.3 Should the sum of the two as defined above (cost of Errors plus fifteen percent (15%) of the cost of Omissions) exceed two percent (2%) of the Construction Cost, the TOWN shall recover the full and total additional cost to the TOWN as a result of CONSULTANT's Errors and Omissions from CONSULTANT, that being defined as the cost of Errors plus fifteen percent (15%) of the cost of Omissions above two percent (2%) of the Construction Cost.

10.9.4 To obtain such recovery, the TOWN shall deduct from CONSULTANT's fee a sufficient amount to recover all such additional costs to the TOWN.

10.9.5 In executing this Agreement, CONSULTANT acknowledges acceptance of these calculations and the TOWN's right to recover the same as stated above. The recovery of additional costs to the TOWN under this paragraph shall not limit or preclude recovery for other separate and/or additional damages which the TOWN may otherwise incur.

10.9.6 The Contract Administrator's decision as to whether a Change Order is caused by an Error or caused by an Omission, taking into consideration industry standards, shall be final and binding on both Parties for amounts in the aggregate under \$100,000 per project, subject to Section 9.3. In the event of a dispute in an amount over \$100,000, the Parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such a solution within a period of sixty (60) days, then upon notice to the other, either Party may commence litigation to resolve the dispute in Broward County, Florida.

ARTICLE 11 TOWN'S RESPONSIBILITIES

11.1 TOWN shall assist CONSULTANT by placing at CONSULTANT's disposal, all information TOWN has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

11.2 TOWN shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.

11.3 TOWN shall review the itemized deliverables/documents identified per Task Order.

11.4 TOWN shall give prompt written notice to CONSULTANT whenever TOWN observes

or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of the CONSULTANT.

ARTICLE 12 MISCELLANEOUS

12.1 OWNERSHIP OF DOCUMENTS

All documents including, but not limited to, drawings, renderings, models, and specifications prepared or furnished by CONSULTANT, its dependent professional associates and consultants, pursuant to this Agreement shall be owned by the TOWN.

Drawings, specifications, designs, models, photographs, reports, surveys and other data prepared in connection with this Agreement are and shall remain the property of the TOWN whether the Project for which they are made is executed or not and are subject to reuse by the TOWN in accordance with Section 287.055(10), Florida Statutes (2023). They are not intended or represented to be suitable for reuse by the TOWN or others on extensions of this Project or on any other project without appropriate verification or adaptation. Any reuse, except for the specific purpose intended hereunder, will be at the TOWN's sole risk and without liability or legal exposure to CONSULTANT or its subconsultants. This does not, however, relieve CONSULTANT of liability or legal exposure for errors, omissions, or negligent acts made on the part of CONSULTANT in connection with the proper use of documents prepared under this Agreement. Any such verification or adaptation may entitle CONSULTANT to further compensation at rates to be agreed upon by the TOWN and CONSULTANT. This shall not limit the TOWN's reuse of preliminary or developmental plans or ideas incorporated therein, should the Project be suspended or terminated prior to completion.

12.2 TERMINATION

12.2.1 Termination for Cause. It is expressly understood and agreed that the TOWN may terminate this Agreement at any time for cause in the event that the CONSULTANT (1) violates any provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of the services or does not perform the services in a timely and satisfactory manner upon written notice to the CONSULTANT. Notice of termination shall be provided in accordance with Section 12.27. In the case of termination by the TOWN for cause, the CONSULTANT shall be first granted a 10-working day cure period after receipt of written notice from the TOWN. In the event that the Agreement is terminated, the CONSULTANT shall be entitled to be compensated for the services rendered and accepted by the TOWN from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates for

the actual time spent on the Project. In the event that the CONSULTANT abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to be terminated, the CONSULTANT shall indemnify the TOWN against any and all loss pertaining to this termination.

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by CONSULTANT shall become the property of TOWN and shall be delivered by CONSULTANT to the TOWN within five (5) days of TOWN's request. Upon payment of such sum by TOWN to CONSULTANT, TOWN shall have no further duties or obligations pursuant to or arising from this Agreement.

This Agreement may also be terminated by TOWN upon such notice as TOWN deems appropriate in the event TOWN or the Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.

Notice of termination shall be provided in accordance with Section 12.27, NOTICES, except that Contract Administrator may provide a prior verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public's health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 12.27, NOTICES.

12.2.2 Termination for Convenience. In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services performed and accepted by the TOWN to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.3 of this Agreement are provided to the TOWN. Upon being notified of TOWN's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall TOWN make payment for services that have not been performed.

12.2.3 Termination by CONSULTANT. CONSULTANT shall have the right to terminate this Agreement upon substantial breach by the TOWN of its obligation under this Agreement as to unreasonable delay in payment or non-payment of undisputed amounts. CONSULTANT shall have no right to terminate this Agreement for the convenience of the CONSULTANT.

12.3 AUDIT RIGHT AND RETENTION OF RECORDS

TOWN 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.

CONSULTANT shall preserve and make available, at reasonable times and upon prior written notice for examination and audit by TOWN all financial records, supporting documents, statistical records, and any other documents 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 minimum of three (3) years after termination of this Agreement. 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 TOWN 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 TOWN's disallowance and recovery of any payment upon such entry.

12.4 NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by TOWN, including Titles I and II of the ADA (regarding nondiscrimination or the basis of disability), and all applicable regulations, guidelines, and standards.

CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CONSULTANT shall take affirmative action to ensure that applicants are employed, and employees are treated without regard to race, age, religion, color,

gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

12.5 MINORITY PARTICIPATION

The TOWN encourages MBE/WBE participation in its projects and the purchase of goods and services. The CONSULTANT shall make a good faith effort to support and promote MBE/WBE participation throughout the project. The CONSULTANT will be required to document all such efforts and provide the TOWN with this documentation at the end of the Project, or, for longer-term projects, at the end of each TOWN fiscal year.

12.6 PUBLIC ENTITY CRIMES ACT

In accordance with the Public Crimes Act, Section 287.133, Florida Statutes (2023), as may be amended or revised, a person or affiliate who is a contractor, consultant or other provider, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the TOWN, may not submit a bid on a contract with the TOWN for the construction or repair of a public building or public work, may not submit bids on leases of real property to the TOWN, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the TOWN, and may not transact any business with the TOWN in excess of the threshold amount provided in Section 287.017, Florida Statutes (2023), as may be amended or revised, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section by CONSULTANT shall result in cancellation of the Town purchase and may result in CONSULTANT debarment.

12.7 SUBCONSULTANTS

12.7.1 CONSULTANT may subcontract certain items of work to sub-consultant. The Parties expressly agree that the CONSULTANT shall submit pertinent information regarding the proposed subconsultant, including the subconsultant's scope of work and fees, for review and approval by the TOWN prior to the subconsultants proceeding with any work.

12.7.2 CONSULTANT shall utilize the subconsultants identified in the proposal that were a material part of the selection of CONSULTANT to provide the services for this Project. CONSULTANT shall obtain written approval of the Contract

Administrator prior to changing or modifying the list of subconsultants submitted by CONSULTANT.

The list of sub-consultants submitted is as follows:

12.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party, and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 12.7.

CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to TOWN's satisfaction for the agreed compensation.

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of TOWN shall meet all professional standards of the State of Florida.

12.9 INDEMNIFICATION OF TOWN

12.9.1 CONSULTANT shall indemnify and hold harmless TOWN, its officers and employees, from liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional misconduct of CONSULTANT and persons employed or utilized by CONSULTANT in the performance of this Agreement. These indemnifications shall survive the term of this Agreement. In the event that any action or proceeding is brought against TOWN by reason of any such claim or demand, CONSULTANT shall, upon written notice from TOWN, resist such action or proceeding by counsel approved by the TOWN.

12.9.2 To the extent considered necessary by Contract Administrator and TOWN, any sums due the CONSULTANT under this Agreement may be retained by TOWN until all of the TOWN's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by TOWN.

12.10 LIMITATION OF TOWN'S LIABILITY

The TOWN desires to enter into this Agreement only if in so doing the TOWN can place a limit on the TOWN's liability for any cause of action arising out of this Agreement, so that the TOWN's liability for any breach never exceeds the sum of

\$1,000.00. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CONSULTANT expresses its willingness to enter into this Agreement with the knowledge that the CONSULTANT's recovery from the TOWN to any action or claim arising from the Agreement is limited to a maximum amount of \$1,000.00 less the amount of all funds actually paid by the TOWN to the CONSULTANT pursuant to this Agreement. Accordingly, and notwithstanding any other term or condition of this Agreement that may suggest otherwise, the CONSULTANT agrees that the TOWN shall not be liable to the CONSULTANT for damages in an amount in excess of \$1,000.00, which amount shall be reduced by the amount actually paid by the TOWN to the CONSULTANT pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the TOWN's liability as set forth in Section 768.28, Florida Statutes (2023), or to extend the TOWN's liability beyond the limits established in said Section 768.28 (2023); and no claim or award against the TOWN shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest. Notwithstanding the foregoing, the Parties agree and understand that the provisions of this Article 12.10 do not apply to monies owed, if any, for services rendered to CONSULTANT by the TOWN under the provisions of this Agreement.

12.11 INSURANCE

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, CONSULTANT shall, at its sole expense, provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the CONSULTANT. CONSULTANT shall provide the Town a certificate of insurance evidencing such coverage. CONSULTANT's insurance coverage shall be primary insurance for all applicable policies, in respect to the TOWN's interests for this Agreement. The limits of coverage under each policy maintained by CONSULTANT shall not be interpreted as limiting CONSULTANT's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the TOWN's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the TOWN, and these coverages, limits, and/or endorsements shall in no way be relied upon by CONSULTANT for assessing the extent or determining appropriate types and limits of coverage to protect CONSULTANT against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the TOWN's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$2,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$2,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The TOWN, a Florida municipality, its officials, employees, and volunteers are to be included as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of CONSULTANT. The coverage shall contain no special limitation on the scope of protection afforded to the TOWN, its officials, employees, and volunteers.

Professional Liability

Coverage must be afforded for Wrongful Acts in an amount not less than \$2,000,000 each claim and \$2,000,000 aggregate.

CONSULTANT must keep the professional liability insurance in force until the third anniversary of expiration or early termination of this Agreement or the third anniversary of acceptance of work by the TOWN, whichever is longer, which obligation shall survive expiration or early termination of this Agreement.

Umbrella/Excess Liability

The Consultant shall provide umbrella/excess coverage with limits of no less than \$2,000,000 excess of Commercial General Liability, Automobile Liability and Employer's Liability.

Business Automobile Liability

Proof of coverage must be provided for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than the State of Florida required minimums unless a different amount is required by TownOrdinance(s).

If CONSULTANT does not own vehicles, CONSULTANT shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the Town must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the TOWN's Risk Manager, if they are in accordance with Florida Statute.

CONSULTANT waives, and CONSULTANT shall ensure that CONSULTANT's insurance carrier waives, all subrogation rights against the TOWN, its officials, employees, and volunteers for all losses or damages. The Town requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

CONSULTANT must be in compliance with all applicable State and federal workers' compensation laws.

Insurance Certificate Requirements

- a) CONSULTANT shall provide the Town with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.
- b) CONSULTANT shall provide to the Town a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c) In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of CONSULTANT to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d) In the event the Agreement term or any surviving obligation of CONSULTANT following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, CONSULTANT shall provide the Town with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The Town reserves the right to suspend the Agreement until this requirement is met.
- e) The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f) The Town shall be included as an Additional Insured on all liability policies, with the exception of Workers' Compensation and Professional Liability.
- g) The Town shall be granted a Waiver of Subrogation on CONSULTANT's

Workers' Compensation insurance policy.

- h) The title of the Agreement, Bid/Contract number, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

Bay Harbor Islands SE
1030 95th Street
Bay Harbor Islands, FL 33154

CONSULTANT has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the application of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for including the Town as an Additional Insured shall be at CONSULTANT's expense.

If CONSULTANT's primary insurance policy/policies do not meet the minimum requirements as set forth in this Agreement, CONSULTANT may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

CONSULTANT's insurance coverage shall be primary insurance in respect to the TOWN's interests for this Agreement, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the Town shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by CONSULTANT that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered a breach of contract.

All required insurance policies must be maintained until the Agreement work has been accepted by the TOWN, or until this Agreement is terminated, whichever is later. Any lapse in coverage may be considered breach of contract. In addition, CONSULTANT must provide to the Town confirmation of coverage renewal via an updated certificate of insurance should any policies expire prior to the expiration of this Agreement. The Town reserves the right to review, at any time, coverage forms and limits of CONSULTANT's insurance policies.

CONSULTANT shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to CONSULTANT's insurance company or companies and the TOWN's Risk Management office as soon as practical.

It is CONSULTANT's responsibility to ensure that any and all of CONSULTANT's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of CONSULTANT. The Town reserves the right to adjust insurance limits from time to time at its discretion with notice to CONSULTANT.

12.12 REPRESENTATIVE OF TOWN AND CONSULTANT

12.12.1 The Parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSULTANT'S request, shall advise CONSULTANT in writing of one (1) or more TOWN employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

12.12.2 CONSULTANT shall inform the Contract Administrator in writing of CONSULTANT'S representative to whom matters involving the conduct of the Project shall be addressed.

12.13 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.14 CONSULTANT'S STAFF

CONSULTANT will provide the key staff identified in its proposal for the Project as long as said key staff are in CONSULTANT'S employment.

CONSULTANT will obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of any proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications.

If Contract Administrator desires to request removal of any of CONSULTANT'S staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.

12.15 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT shall be subject to the supervision of TOWN. In providing the services, CONSULTANT or its agents shall not be acting and shall

not be deemed as acting as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

12.16 THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor TOWN intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

12.17 CONFLICTS

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of TOWN or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this Section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONSULTANT is permitted to utilize subconsultants to perform any services required by this Agreement, CONSULTANT agrees to prohibit such subconsultants, by written contract, from having any conflicts as within the meaning of this Section.

12.18 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 firm, other than a bona fide employee working solely for CONSULTANT, any fee, Council, 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, the TOWN 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, Council,

percentage, gift or consideration.

12.19 WAIVER OF BREACH AND MATERIALITY

Failure by TOWN to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

TOWN and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

12.20 COMPLIANCE WITH LAWS

CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

12.21 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN or CONSULTANT elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the findings by the court become final.

12.22 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of TOWN and CONSULTANT and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

12.23 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1-12 of this Agreement shall prevail and be given effect.

12.24 APPLICABLE LAW AND VENUE AND WAIVER OF JURY TRIAL

The Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Eleventh Judicial Circuit in and for Miami Dade County, Florida. If any claims arising from, related to, or in connection with this

Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MIGHT HAVE TO A TRIAL BY JURY OF ANY ISSUES RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

12.25 SOLICITATION AND EXHIBITS

The solicitation, CONSULTANT's response to the solicitation and each Exhibit referred to in this Agreement form an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated herein by reference.

12.26 ONE ORIGINAL AGREEMENT

This Agreement shall be executed in one (1) signed Agreement, treated as an original.

12.27 NOTICES

Whenever either Party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the Party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving of notice, to-wit:

TOWN:

With a copy to: Town Manager
 Bay Harbor Islands
 1030 95th Street
 Trailer
 Bay Harbor Islands, FL 33154
 Telephone: (305)866-6241

Town Attorney
Bay Harbor Islands
1030 95th Street

Trailer 2
Bay Harbor Islands, FL 33154
Telephone: (305) 866-6241

CONSULTANT:

12.28 ATTORNEY FEES

If TOWN or CONSULTANT incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs and expenses, including but not limited to court costs, and reasonable attorney fees incurred during litigation.

12.29 PERMITS, LICENSES AND TAXES

CONSULTANT shall, at its own expense, obtain all necessary permits and licenses, pay all applicable fees, and pay all applicable sales, consumer, use and other taxes required to comply with local ordinances, state and federal law. CONSULTANT is responsible for reviewing the pertinent state statutes regarding state taxes and for complying with all requirements therein. Any change in tax laws after the execution of this Agreement will be subject to further negotiation and CONSULTANT shall be responsible for complying with all state tax requirements.

12.30 ENVIRONMENTAL, HEALTH AND SAFETY

CONSULTANT shall maintain a safe working environment during performance of the work. CONSULTANT shall comply, and shall secure compliance by its employees, agents, and sub-consultants, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of CONSULTANT. CONSULTANT shall be responsible for examining all requirements and determining whether additional or more stringent environmental, health, safety, and security provisions are required for the work. CONSULTANT agrees to utilize protective devices as required by applicable laws, regulations, and any industry or CONSULTANT's health and safety plans and regulations, and to pay the costs and expenses thereof and warrants that all such persons shall be fit and qualified to carry out the Work.

12.31 STANDARD OF CARE

CONSULTANT represents that it is qualified to perform the work, that CONSULTANT and its sub-consultants possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified consultants under similar circumstances.

12.32 TRUTH-IN-NEGOTIATION CERTIFICATE

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 at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums, by which the TOWN determines that the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments must be made within one (1) year following the end of the contract.

12.33 EVALUATION

The TOWN maintains the right to periodically review the performance of the CONSULTANT. This review will take into account the timely execution of Task Orders, the quality of the work performed, the cost to the TOWN and the good faith efforts made by the CONSULTANT to maintain MBE/WBE participation in TOWN projects. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the CONSULTANT to address and/or remedy such deficiencies.

12.34 STATUTORY COMPLIANCE

CONSULTANT shall prepare all documents and other materials for the Project in accordance with all applicable rules, laws, ordinances and governmental regulations of the State of Florida, Broward County, the Town of Bay Harbor Islands, Florida, and all governmental agencies having jurisdiction over the services to be provided by CONSULTANT under this Agreement or over any aspect or phase of the Project.

12.35 SCRUTINIZED COMPANIES

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria, as provided in Section 287.135, Florida Statutes (2024), as may be amended or revised. The Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), as may be amended or revised, and that it is not engaged in a boycott of Israel. The Town may terminate this Agreement at the TOWN's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2024), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List

or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2023), as may be amended or revised, or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2023), as may be amended or revised.

12.36 PUBLIC RECORDS

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT TOWNC LERK'S OFFICE, 1030 95th STREET, BAY HARBOR ISLANDS, FLORIDA, 33154, PHONE: (305)866-6241.

CONSULTANT shall:

1. Keep and maintain public records required by the TOWN in order to perform the service.
2. Upon request from the TOWN's custodian of public records, provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2024), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this Agreement if CONSULTANT does not transfer the records to the TOWN.
3. Upon completion of the Agreement, transfer, at no cost to the TOWN, all public records in possession of CONSULTANT or keep and maintain public records required by the TOWN to perform the service. If CONSULTANT transfers all public records to the TOWN upon completion of this Agreement, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONSULTANT keeps and maintains public records upon completion of this Agreement, CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records, in a format that is compatible with the information technology systems of the TOWN.

12.37 INTELLECTUAL PROPERTY

CONSULTANT shall protect and defend at CONSULTANT's expense, counsel being subject to the TOWN's approval, and indemnify and hold harmless the TOWN from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the CONSULTANT's or the TOWN's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the CONSULTANT uses any design, device, or materials covered by letters, patents or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

12.38 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of TOWN; and CONSULTANT disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by CONSULTANT, whether finished or unfinished, shall become the property of TOWN and shall be delivered by CONSULTANT to the TOWN's Contract Administrator within seven (7) days of termination of this Agreement by either Party. Any compensation due to CONSULTANT shall be withheld until CONSULTANT delivers all documents to the TOWN as provided herein.

12.39 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

12.40 NON-DISCRIMINATION

The CONSULTANT shall not, in any of its activities, including employment, discriminate against any individual on the basis of race, color, national origin, age, disability, religion, creed, sex, disability, sexual orientation, gender, gender identity, gender expression, marital status or any other protected classification as defined by applicable law.

12.41 E-VERIFY

As a condition precedent to the effectiveness of this Agreement, pursuant to Section 448.095, Florida Statutes (2024), as may be amended or revised, the CONSULTANT and its sub-consultants shall register with and use the E-Verify system to electronically verify the employment eligibility of newly hired employees.

1. The CONSULTANT shall require each of its sub-consultants, if any, to

provide the CONSULTANT with an affidavit stating that the sub-consultant does not employ, contract with, or subcontract with an unauthorized alien. The CONSULTANT shall maintain a copy of the sub-consultant's affidavit for the duration of this Agreement and in accordance with the public records requirements of this Agreement.

2. The TOWN, the CONSULTANT, or any sub-consultant who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Florida Statutes (2024), as may be amended or revised, shall terminate the Agreement with the person or entity.
3. The TOWN, upon good faith belief that a sub-consultant knowingly violated the provisions of Section 448.095(5), Florida Statutes (2024), as may be amended or revised, but that the CONSULTANT otherwise complied with Section 448.095(5), Florida Statutes (2024), as may be amended or revised, shall promptly notify CONSULTANT and order the CONSULTANT to immediately terminate the contract with the sub-consultant, and the CONSULTANT shall comply with such order.
4. An Agreement terminated under Sections 448.095(5)(c)1. or 2., Florida Statutes (2024), as may be amended or revised, is not a breach of contract and may not be considered as such. If the TOWN terminates this Agreement under Section 448.095(5)(c), Florida Statutes (2024), as may be amended or revised, the CONSULTANT may not be awarded a public contract for at least one year after the date on which the Agreement was terminated. The CONSULTANT is liable for any additional costs incurred by the TOWN as a result of termination of this Agreement.
5. CONSULTANT shall include in each of its subcontracts, if any, the requirements set forth in this Section, including this subparagraph, requiring any and all sub-consultants, as defined in Section 448.095(1)(e), Florida Statutes (2024), as may be amended or revised, to include all of the requirements of this Section in its subcontracts. CONSULTANT shall be responsible for compliance by any and all sub-consultants, as defined in Section 448.095(1)(e), Florida Statutes (2024), as may be amended or revised, with the requirements of Section 448.095, Florida Statutes (2024), as may be amended or revised.

12.42 ANTI-HUMAN TRAFFICKING

As a condition precedent to the effectiveness of this Agreement, the CONSULTANT shall provide the Town with an affidavit signed by an officer or a representative of the CONSULTANT under penalty of perjury attesting that the CONSULTANT does not use coercion for labor or services as defined in Section 787.06, Florida Statutes (2024), as may be amended or revised.

[THIS SPACE WAS INTENTIONALLY LEFT BLANK]

IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

TOWN

TOWN OF BAY HARBOR ISLANDS, a Florida municipal corporation

By: _____
Linsey Noel
Interim Town Manager

Date: _____

ATTEST:

By: _____
Yvonne Hamilton
Town Clerk

By: _____
Greenspoon Marder LLP
Town Attorney
By: Joseph S. Geller Esq

SAMPLE AGREEMENT

WITNESSES:

_____,
a Florida corporation/Company.

By: _____

Print Name

Print Name: _____

Title: _____

Print Name

(CORPORATE SEAL)

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 202_, by (Name) as (Title) for Name of Company), a Florida corporation/Company).

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Counciled Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced: _____

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT "B"
MAXIMUM BILLING RATES

Event No:

Event Title:

Consultant Name:

SAMPLE AGREEMENT

BID/PROPOSAL CERTIFICATION

Please Note: It is the sole responsibility of the bidder to ensure that his bid is submitted before prior to the bid opening date and time listed. All fields below must be completed. If the field does not apply to you, please note N/A in that field.

If you are a foreign corporation, you may be required to obtain a certificate of authority from the department of state, in accordance with Florida Statute §607.1501 (visit <http://www.dos.state.fl.us/>).

Company: (Legal Registration) EIN (Optional):

Address:

Town: State: Zip:

Telephone No.: FAX No.: Email:

ADDENDUM ACKNOWLEDGEMENT - Proposer acknowledges that the following addenda have been received and are included in the proposal:

<u>Addendum No.</u>	<u>Date Issued</u>	<u>Addendum No.</u>	<u>Date Issued</u>	<u>Addendum No.</u>	<u>Date Issued</u>
<input type="text"/>					
<input type="text"/>					

The below signatory hereby agrees to furnish the following article(s) or services at the price(s) and terms stated subject to all instructions, conditions, specifications addenda, legal advertisement, and conditions contained in the bid/proposal.

I have read all attachments including the specifications and fully understand what is required. By submitting this signed proposal, I will accept a contract if approved by the Town and such acceptance covers all terms, conditions, and specifications of this bid/proposal. The below signatory also hereby agrees, by virtue of submitting or attempting to submit a response, that in no event shall the Town's liability for respondent's direct, indirect, incidental, consequential, special or exemplary damages, expenses, or lost profits arising out of this competitive solicitation process, including but not limited to public advertisement, bid conferences, site visits, evaluations, oral presentations, or award proceedings exceed the amount of Five Hundred Dollars (\$500.00). This limitation shall not apply to claims arising under any provision of indemnification or the Town's protest ordinance contained in this competitive solicitation.

Submitted by:

Name (printed)

Signature

Date

Title



E-VERIFY AFFIRMATION STATEMENT

RFQ/Bid /Contract No:

Project Description:

Contractor/Proposer/Bidder acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of,

- (a) all persons employed by Contractor/Proposer/Bidder to perform employment duties within Florida during the term of the Contract, and,
- (b) all persons (including subcontractors/vendors) assigned by Contractor/Proposer/Bidder to perform work pursuant to the Contract.

The Contractor/Proposer/Bidder acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the Contract is a condition of the Contract.

Contractor/Proposer/ Bidder Company Name:

Authorized Company Person's Signature:

Authorized Company Person's Title:

Date:



ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF _____)

I, the undersigned, hereby duly sworn and deposed say that no portion of this sum herein Bid will be paid to any employees of the Town of Bay Harbor Islands or its elected officials as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: _____

Title: _____

The foregoing instrument was acknowledged before me this ____day of, 2023, by _____ [name of person], as _____[type of authority], for _____ [name of party on behalf of whom instrument was executed].

AFFIX NOTARY STAMP HERE:

Notary Public – State of Florida

Print or Type Commissioned Name

Personally Known _____ OR Produced Identification _____ Type of Identification Produced _____



**NONGOVERNMENTAL ENTITY
HUMAN TRAFFICKING AFFIDAVIT
Section 787.06(13), Florida Statutes
THIS AFFIDAVIT MUST BE SIGNED AND NOTARIZED**

I, the undersigned, am an officer or representative of _____, a Florida limited liability company, and attest that said entity does not use coercion for labor or services as defined in section 787.06, Florida Statutes. Under penalty of perjury, I hereby declare and affirm, to the best of my knowledge and belief, that the above stated facts are true and correct.

By: _____

Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

SWORN TO AND SUBSCRIBED before me by means of physical presence or online notarization this ____ day of February, 2025, by _____, as _____ of _____, a Florida limited liability company. He is personally known to me or has produced _____ (Type of Identification) as identification.

(Notary Seal)

Signature of Notary Public

Print, Type or Stamp Name of Notary

Serial Number, if any



DISPUTE DISCLOSURE FORM

Answer the following questions by placing a "X" after "Yes" or "No". If you answer "Yes", please explain in the space provided, or on a separate sheet attached to this form.

1. Has your firm or any of its officers, received a reprimand of any nature or been suspended by the Department of Professional Regulations or any other regulatory agency or professional associations within the last five (5) years?

YES _____ NO _____

2. Has your firm, or any member of your firm, been declared in default, terminated or removed from a contract or job related to the services your firm provides in the regular course of business within the last five (5) years?

YES _____ NO _____

3. Has your firm had against it or filed any requests for equitable adjustment, contract claims, Bid protests, or litigation in the past five (5) years that is related to the services your firm provides in the regular course of business?

YES _____ NO _____ If yes, state the nature of the request for equitable adjustment, contract claim, litigation, or protest, and state a brief description of the case, the outcome or status of the suit and the monetary amounts of extended contract time involved.

I hereby certify that all statements made are true and agree and understand that any misstatement or misrepresentation or falsification of facts shall be cause for forfeiture of rights for further consideration of this Bid for the Town of Bay Harbor Islands.

Firm

Date

Authorized Signature

Print or Type Name and Title



Affidavit of Compliance with Foreign Entity Laws

The undersigned, on behalf of the entity listed below (“Entity”), hereby attests under penalty of perjury as follows:

1. Entity is not owned by the government of a foreign country of concern as defined in Section 287.138, Florida Statutes. (Source: § 287.138(2)(a), Florida Statutes)
2. The government of a foreign country of concern does not have a controlling interest in Entity. (Source: § 287.138(2)(b), Florida Statutes)
3. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern. (Source: § 287.138(2)(c), Florida Statutes)
4. Entity is not owned or controlled by the government of a foreign country of concern, as defined in Section 692.201, Florida Statutes. (Source: § 288.007(2), Florida Statutes)
5. Entity is not a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, as defined in Section 692.201, Florida Statutes, or a subsidiary of such entity. (Source: § 288.007(2), Florida Statutes)
6. Entity is not a foreign principal, as defined in Section 692.201, Florida Statutes. (Source: § 692.202(5)(a)(1), Florida Statutes)
7. Entity is in compliance with all applicable requirements of Sections 692.202, 692.203, and 692.204, Florida Statutes.
8. *(Only applicable if purchasing real property)* Entity is not a foreign principal prohibited from purchasing the subject real property. Entity is either (a) not a person or entity described in Section 692.204(1)(a), Florida Statutes, or (b) authorized under Section 692.204(2), Florida Statutes, to purchase the subject property. Entity is in compliance with the requirements of Section 692.204, Florida Statutes. (Source: §§ 692.203(6)(a), 692.204(6)(a), Florida Statutes)
9. The undersigned is authorized to execute this affidavit on behalf of Entity.

Date: _____, 20__

Signed: _____

Entity: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this ____ day of _____, 20__, by _____, as _____ for _____, who is personally known to me or who has produced _____ as identification.

Notary Public Signature: _____

State of Florida at Large (Seal)

Print Name: _____

My commission expires: _____



NON-COLLUSION STATEMENT

By signing this offer, the vendor/contractor certifies that this offer is made independently and free from collusion. Vendor shall disclose below any Town of Bay Harbor Islands, FL officer or employee, or any relative of any such officer or employee who is an officer or director of, or has a material interest in, the vendor's business, who is in a position to influence this procurement. Any Town of Bay Harbor Islands, FL officer or employee who has any input into the writing of specifications or requirements, solicitation of offers, decision to award, evaluation of offers, or any other activity pertinent to this procurement is presumed, for purposes hereof, to be in a position to influence this procurement. For purposes hereof, a person has a material interest if they directly or indirectly own more than 5 percent of the total assets or capital stock of any business entity, or if they otherwise stand to personally gain if the contract is awarded to this vendor.

Town employees may not contract with the Town through any corporation or business entity in which they or their immediate family members hold a controlling financial interest (e.g. ownership of five (5) percent or more). Immediate family members (spouse, parents and children) are also prohibited from contracting with the Town subject to the same general rules. Failure of a vendor to disclose any relationship described herein shall be reason for debarment.

Name

Relationships

In the event the vendor does not indicate any names, the Town shall interpret this to mean that the vendor has indicated that no such relationships exist.