

Agmt

RESOLUTION NO. 2021 - 681

A RESOLUTION APPROVING AN AGREEMENT FOR PROFESSIONAL SERVICES IN THE AMOUNT OF \$3,986,722 BETWEEN THE CITY OF TAMPA AND CHARLES PERRY PARTNERS, INC., IN CONNECTION WITH CONTRACT 21-C-00015; SOLID WASTE DEPARTMENT MCKAY BAY WASTE-TO-ENERGY FACILITY UPGRADES DESIGN-BUILD; AUTHORIZING THE MAYOR OF THE CITY OF TAMPA TO EXECUTE SAME; PROVIDING AN EFFECTIVE DATE

WHEREAS, via the competitive selection process in accordance with Florida Statutes Section 287.055, Consultants' Competitive Negotiation Act and consistent with Federal procurement policies, as applicable, the City of Tampa ("City") selected Charles Perry Partners, Inc., ("Consultant") to provide professional services in connection with Contract 21-C-00015; Solid Waste Department McKay Bay Waste-To-Energy Facility Upgrades Design-Build, ("Project") as detailed in the Agreement for Consultant Services ("Agreement"); and

WHEREAS, the City desires to enter into an agreement with the Consultant to provide certain professional services; and

WHEREAS, it is in the best interest of the City of Tampa to enter into this Agreement.

**NOW, THEREFORE,
BE IT RESOLVED BY THE CITY COUNCIL
OF THE CITY OF TAMPA, FLORIDA:**

Section 1. That the Agreement between the City of Tampa and Charles Perry Partners, Inc., in connection with Contract 21-C-00015; Solid Waste Department McKay Bay Waste-To-Energy Facility Upgrades Design-Build, as detailed in said Agreement, a copy of which is attached hereto and made part hereof, is authorized and approved in its entirety or in substantially similar form.

Section 2. That the Mayor of the City of Tampa is authorized and empowered to execute, and the City Clerk to attest and affix the official seal of the City of Tampa to, said Agreement on behalf of the City of Tampa.

Section 3. This will provide \$3,986,722 for the McKay Bay WTE Program Management Project for use by the Solid Waste & Environmental Program Management Department with the Solid Waste Capital/Construction Fund.

Section 4. That other proper officers of the City of Tampa are authorized to do all things necessary and proper in order to carry out and make effective the provisions of this Resolution, which shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, ON AUG 26 2021

ATTEST:



~~CITY CLERK/DEPUTY CITY CLERK~~



~~CHAIRMAN/CHAIRMAN PRO-TEM CITY COUNCIL~~

PREPARED AND APPROVED AS TO
LEGAL SUFFICIENCY BY:

E/S
Marcella T. Hamilton
ASSISTANT CITY ATTORNEY

Plw21-69698

AGREEMENT FOR DESIGN-BUILD INITIAL SERVICES

THIS AGREEMENT, made and entered into at Tampa, Florida, this _____ day of _____, 2020, by and between the City of Tampa, a municipal corporation of the State of Florida, hereinafter referred to as "City", and the following entity authorized to do business in the State of Florida: Charles Perry Partners, Inc., hereinafter referred to as "Firm", with an FEIN of 45-1601307.

WITNESSETH:

WHEREAS, the City desires to engage the Firm to perform certain services pertinent to such work which shall be referred to as Contract **RFQ 21-C-00015 Design-Build Services for the McKay Bay Waste to Energy (WTE) Facility Upgrades**; 107 N. 34th Street, Tampa, FL 33605 - DB "Project" in accordance with this Agreement; and

WHEREAS, the Firm desires to provide such services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, representations and considerations to be kept, performed and paid, the parties hereto agree for themselves, their successors and assigns, as follows:

I. GENERAL SCOPE OF THIS AGREEMENT

A. The relationship of the Firm to the City shall be that of an independent professional Design-Builder for the Project; and the Firm shall provide the Initial Design-Build services required under this Agreement in accordance with acceptable architectural/engineering/construction practices and ethical standards.

B. Any additional services to be provided by the Firm shall be set out in detail by subsequent Agreement.

C. The Guaranteed Maximum Price proposal to be prepared and provided by the Firm in accordance with this Agreement shall be used as a basis for negotiating the future Agreement for Construction Services. A Design-Build Fee not to exceed (Eight) percent (8%) shall be used in the calculation of the Total Project Cost.

D. The scope of services to be provided is indicated in **Exhibit A**.

II. DATA AND SERVICES TO BE PROVIDED BY THE CITY

The City shall provide:

A. Available plans and specifications of existing construction.

B. Ground topography.

C. Environmental Surveys.

III. PERIOD OF SERVICE

A. The Firm shall begin work promptly after receipt of a fully executed copy of the Agreement. All work shall be completed within 12 Months after issuance of the Notice to Proceed.

B. The Firm's services called for under this Agreement shall be completed provided that, if the Firm's services are delayed for reasons beyond the Firm's control, the time of performance shall be adjusted appropriately.

IV. GENERAL CONSIDERATIONS

A. All original sketches, tracings, drawings, computations, details, design calculations, specifications and other documents and plans that result from the Firm's services under this Agreement shall become and remain the

property of the City upon receipt of payment by the Firm from the City for services rendered in connection with the preparation of said sketches, tracings, etc. Where such documents are required to be filed with governmental agencies, the Firm will furnish copies to the City upon request.

B. The City acknowledges that the materials cited in Paragraph IV. A. above, which are provided by the Firm, are not intended for use in connection with any project or purpose other than the Project and purpose for which such materials were prepared without prior written consent and adaptation by the Firm shall be at the City's sole risk, and the Firm shall have no responsibility or liability therefor.

C. Any use by the City of such materials in connection with a project or purpose other than that for which such materials were prepared without prior written consent and adaptation by the Firm shall be at the City's sole risk, and the Firm shall have no responsibility or liability therefore.

V. COMPENSATION

The City shall compensate the Firm in an amount not to exceed **\$3,986,722**. The Initial Design-Build design services performed under this Agreement will not exceed **\$2,953,342** in accordance with **Exhibit B**. Compensation for Potential Early Work on Elevator Repairs and DustMaster Equipment installation Allowances have been provided in **Exhibit B-1, \$666,384** and **Exhibit B-2, \$366,996** will be at actual cost plus the Design Builder's Fee.

VI. PAYMENT

Payments shall be made upon presentation of the Firm's approved invoice.

VII. RECORDS

Records for Personnel Expenses shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representative at mutually convenient times.

With respect to all matters covered by this Agreement, records will be made available for examination, audit, inspection, or copying purposes at any time during normal business hours at a location within Hillsborough County, Florida as often as the City, HUD (if applicable), representatives of the Comptroller General of the United States or other federal agency may reasonably require. Firm will permit same to be examined and excerpts or transcriptions made or duplicated from such records, and audits made of all contracts, invoices, materials, records of personnel and of employment and other data relating to all matters covered by this Agreement. The City's right of inspection and audit shall obtain likewise with reference to any audits made by any other agency, whether local, state or federal. Firm shall retain all records and supporting documentation applicable to this Agreement for five (5) years from the date of submission of the annual performance report to HUD, if applicable. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or the end of the required period, whichever is later.

VIII. PERSONNEL

The Firm represents that it has or will secure, at its own expense, all personnel required in performing the services under this Agreement. All personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Agreement. The Firm further certifies that all of its employees assigned to serve the City have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Firm who, in the opinion of the City, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the certain professional engineering services under this Agreement.

IX. SUSPENSION, CANCELLATION OR ABANDONMENT

Suspension, cancellation or abandonment of this Agreement shall be necessitated if any of the following occur: disclosure of City confidential information, procedures or activities; failure of the Firm to aggressively, adequately, timely and appropriately perform the services required by this Agreement to the satisfaction of the City, or other similar cause.

In the event the Project is suspended, cancelled or abandoned at the City's sole discretion, the Firm shall be given fifteen (15) days prior written notice of such action and shall be compensated for the professional services provided and reimbursable expenses incurred up to the date of suspension, cancellation or abandonment in an amount mutually agreed to by the City and Firm and supported by back-up documentation.

Upon suspension, cancellation or abandonment of the Project by the City, the Firm shall immediately cease work, deliver all original sketches, tracings, drawings, computations, details, design calculations, specifications and other documents and plans that result from the Firm's services under this Agreement, and shall be compensated for its services rendered up to the time of such suspension, cancellation or abandonment on a quantum meruit basis; and the City shall have no further financial obligation to the Firm.

X. TERMINATION

A. Termination for Cause.

In the event that the Firm shall for any reason or through any cause not have completed performance within the time fixed for performance under this Agreement; or any representation or warranty made under Article XII of this Agreement shall prove to be untrue in any material respect; or the Firm shall otherwise be in default under this Agreement; or the Firm has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Agreement without the City's consent or approval; or the Firm has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of Firm assets; or the Firm disclosed City confidential information, procedures or activities; or the Firm fails to adequately, timely and appropriately perform the services required by this Agreement or other similar cause.

Then the City may provide five (5) days written notice that the conduct of the Firm is such that the interests of the City are likely to be impaired or prejudiced, stating the facts upon which the opinion is based. Then the City may upon fifteen (15) days written notice, and at the end of the (15) days terminate this Agreement for cause (herein "Termination Date"). Upon that termination for cause, the Firm shall be entitled to compensation for services properly and satisfactorily performed through the date of such termination for cause. However, no allowance shall be included for termination expenses. In the event of such termination for cause, the Firm shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date; however, Firm shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All work accomplished by Firm prior to the Termination Date shall be documented. In the event the project is terminated for cause pursuant to this Article, the Firm shall deliver all original sketches, tracings, drawings, computations, details, design calculations, specifications and other documents and plans that result from the Firm's services under this Agreement. The aforementioned original sketches, tracings, drawings, computations, details, design calculations, specifications and other documents and plans shall be without restriction on future use by the City. Notwithstanding the above or any section herein to the contrary, Firm shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by Firm.

B. Termination for Convenience.

The City may reduce the scope of work or terminate work under this Agreement or amendment to this Agreement without cause; in the event of such scope reduction or termination other than for cause, the City shall compensate the Firm for services properly performed through the date of such reduction in scope or termination, which date shall be fixed in written notice from the City and which date shall be not sooner than fifteen (15) days after notice. Notwithstanding such termination or reduction in scope, the City shall be entitled to receive from the

Firm upon request any and all information related to the Project and the City shall preserve and protect all such information and assure ready access thereto by the Firm in connection with resolution of the amount due to the Firm. The City, at its own discretion, shall be entitled to direct the Firm to terminate any or all the Firm's subcontracts or subconsulting agreements. In the event the project is terminated for convenience pursuant to this Article, the Firm shall deliver all original sketches, tracings, drawings, computations, details, design calculations, specifications and other documents and plans that result from the Firm's services under this Agreement. The aforementioned original sketches, tracings, drawings, computations, details, design calculations, specifications and other documents and plans shall be without restriction on future use by the City.

XI. INSURANCE

The Firm, at its own cost and expense, shall effect and maintain at all times during the life of this Agreement insurance, in accordance with that indicated in **Exhibit C**.

XII. INTERESTS OF MEMBERS OF THE CITY

No member of the governing body of the City and no other officer, employee, or agent of the City who exercise any functions or responsibilities in connection with the carrying out of the Project to which this Agreement pertains shall have any personal interest, direct or indirect, in this Agreement.

XIII. INTEREST OF THE FIRM

The Firm covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in any project to which this Agreement pertains or any other interest which would conflict in any manner or degree with its performance of any contracted service hereunder. The Firm further covenants that in the performance of this Agreement no person having such interest shall be employed.

The Firm warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the Firm to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or Firm, other than a bona fide employee working solely for the Firm any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

The Firm shall disclose any clients that may either conflict with or affect its independent judgment when performing any work for the City of Tampa covered by this Agreement. Failure of the Firm to disclose the above professional conflict of interest may result in termination of this Agreement and may require the return of all payments, if any, made to the Firm from the City. If, in its sole discretion, the City of Tampa determines that a professional conflict of interest is deemed to exist, the Firm shall be in default of this Agreement.

XIV. COMPLIANCE WITH LAWS

A. The Firm shall comply with the applicable requirements of State laws and all Ordinances of the City of Tampa as amended from time to time.

B. If the Project involves E.P.A. Grant eligible work, the City and the Firm agree that the provisions of 40 CFR, Part 35, Appendix C-1, shall become a part of this Agreement and that such provisions shall supersede any conflicting provisions of this Agreement for work performed.

C. If the Project involves work under other Federal or State Grantors or Approving Agencies, the City and the Firm shall review and approve the applicable required provisions or any other supplemental provisions as may be included in the Agreement.

D. The Firm shall assist the City in complying with all applicable terms and conditions of the government grants under Title XIII, Subchapter C, Part I of the Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391, et seq.) and under Title I of the Housing and Community Development Act of 1974 (PL 93-383), 24 CFR Part 570 *et seq.*

E. The Firm agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standard insofar as those acts apply to the performance of this Agreement.

F. Truth-In-Negotiation Certification: The Firm certifies that the wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of the execution of the Agreement of which this Certificate is a part. The original price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the Agreement amount was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs and that such original Agreement adjustments shall be made within one (1) year following the end of the Agreement.

XV. ASSIGNABILITY

The Firm shall not assign or transfer any interest in this Agreement without consent from the City; provided, however, that the claim for money due or to become due the Firm from the City under this Agreement may be assigned to a bank or other financial institution or to a Trustee in Bankruptcy. Notice of any such assignment shall be furnished promptly to the City.

XVI. EQUAL EMPLOYMENT

During the performance of this Agreement or any related Work Order, the Firm shall:

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

B. In all solicitations or advertisements for employees placed by or on behalf of the Firm, it must state that all qualified applicants will receive considerations for employment without regard to race, color, religion, age, sex, handicap, or national origin.

XVII. EQUAL BUSINESS OPPORTUNITY PROGRAM

A. See **Exhibit D** for Tampa's Equal Business Opportunity Program Procedures.

B. The Firm shall demonstrate good faith effort toward the utilization of City of Tampa Certified Women/Minority Business subcontractors, subFirms or suppliers.

C. The City shall make available a list of Certified Women/Minority Enterprises.

D. The Firm shall report to the City its subcontractors/subFirms/suppliers solicited or utilized as required by **Exhibit D**.

E. At the time of the submission of invoices, the Firm shall submit to the City a report (Exhibit D) of all subcontractors, subFirms or suppliers utilized with their final contract amounts and any other reports or forms as may be required by the City.

XVIII. CODE OF ETHICS

In connection with this Agreement, the Firm hereby covenants and agrees that it shall comply with all applicable government laws, statutes, rules and regulations including, without limitation, the City of Tampa's Code of Ethics. Pursuant to Section 2-522 of the City of Tampa Code, the Firm acknowledges that if it fails to comply with the

City of Tampa's Code of Ethics, such a failure shall render this Agreement voidable by the City and subject the Firm to debarment from any future City contracts or agreements.

XIX. NEGATION OF AGENT OR EMPLOYEE STATUS

Firm shall perform this Agreement as an independent Firm and nothing contained herein shall in any way be construed to constitute Firm or the assistants of Firm to be representative, agent, subagent, or employee of City or any political subdivision of the State of Florida. Firm certifies Firm's understanding that City is not required to withhold any federal income tax, social security tax, state and local tax, to secure worker's compensation insurance or employer's liability insurance of any kind or to take any other action with respect to the insurance or taxes of Firm and assistants of Firm.

In no event and under no circumstances shall any provision of this Agreement make City or any political subdivision of the State of Florida liable to any person or entity that contracts with or that provides goods or services to Firm in connection with the Services the Firm has agreed to perform hereunder or otherwise, or for any debts or claims of any nature accruing to any person or entity against Firm; and there is no contractual relationship, either express or implied, between City or any political subdivision of the State of Florida any person or any political subdivision of the State of Florida any person or entity supplying any work, labor, services, goods or materials to Firm as a result of the provisions of the Services provided by Firm hereunder or otherwise.

XX. SEVERABILITY

If any item or provision to this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

XXI. CHOICE OF LAW

The laws of the State of Florida (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its interpretation, construction, performance and enforcement.

XXII. DESIGNATION OF FORUM

Any part bringing a legal action or proceeding against any other party arising out of or relating to this Agreement may bring the legal action or proceeding in the United States District Court for the Middle District of Florida, Tampa Division or in any court of the State of Florida sitting in Tampa.

XXIII. AUTHORIZATION

Each party represents to the other that such has authority under all applicable laws to enter into an agreement containing each covenants and provisions as are contained herein, that all of the procedural requirements imposed by law upon each part for the approval and authorization of this Agreement have been properly completed, and that the persons who have executed the Agreement on behalf of each party are authorized and empowered to execute said Agreement.

XXIV. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement between the parties and there are no promises or understandings other than those stated herein. Exhibits to this Agreement shall be deemed to be incorporated by reference as though set forth in full herein. In the event of a conflict or inconsistency between this Agreement and the provisions in the incorporated Exhibits, and unless otherwise specified herein, then this Agreement will prevail.

XXV. INDEMNIFICATION

To the fullest extent permitted by law, Firm shall indemnify and hold harmless City from liabilities, damages, losses and costs, including reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Firm and persons employed or utilized by Firm in its performance hereunder. The Firm shall not be required to defend, indemnify or hold harmless the City for any acts, omissions, or negligence of the City, the City's employees, agents, or separate contractors.

XXVI. ESTOPPEL/WAIVER

No waiver of any provisions of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and any such waiver shall only be applicable to the specific instance in which it relates and shall not be deemed to be a continuing waiver.

The failure of the City to enforce any term or condition of this Agreement shall not constitute a waiver or estoppel of any subsequent violation of this Agreement.

XXVII. AUDIT REQUIREMENTS.

In the event, that during the period of this Agreement, the Firm expends more than \$750,000 in federal funds in an operating year from this and other federal grants, the Firm shall, at its own cost and expense, cause to be carried out an independent audit. The audit shall be completed and a copy furnished to the City, within the earlier of thirty (30) calendar days after receipt of the auditor's report(s) or nine (9) months after the end of the audit period, unless a longer period is agreed to in advance by the City. For purposes of this Agreement, an operating and/or audit year is the equivalent to the Firm's fiscal year. The determination of when Grant Funds are expended is based on when the activity related to the expenditure occurs.

The audit shall be conducted in compliance with the Office of Management and Budget: Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as applicable, which are made a part of this Agreement by reference thereto. In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not expended in accordance with the conditions of this Agreement, the Firm shall be held liable for reimbursement to the City of all funds not expended in accordance with these applicable regulations and Agreement provisions within thirty (30) calendar days after the City has notified the Firm of such non-compliance. Said reimbursement shall not preclude the City from taking any other action as provided herein.

If expenditure does not exceed \$750,000 during an operating year, the Firm shall provide the City with its annual financial statement within ninety (90) days of the end of its operating year. Said financial statement shall be prepared by an actively licensed certified public accountant.

State Single Audit: Each nonstate entity shall comply with all applicable requirements of section 215.97, F.S., and Audit Requirements. A State single audit is required if an nonstate entity expends \$750,000 or more of State financial assistance in any fiscal year of such nonstate entity in accordance with the requirements of the Florida Single Audit Act.

XXVIII. DEFAULT

In accordance with 24 CFR 85.43, a default shall consist of any use of Grant Funds for a purpose other than as authorized by this Agreement, noncompliance with any provision in all Articles herein, any material breach of this Agreement, failure to comply with the audit requirements as provided herein, or failure to expend Grant Funds in a timely or proper manner. A cancellation for default pursuant to this Article shall not impair or limit the City's remedy for the Firm's breach of warranty to the extent of work performed, not for errors or omissions in the professional engineering services prior to cancellation.

XXIX. BUDGET APPROPRIATIONS

The City is subject to Section 166.241, Florida Statutes, and is not authorized to contract for expenditures in any fiscal year except in pursuance of budgeted appropriates. With respect to this Agreement, the City has budgeted

and appropriated sufficient monies to fund the City's obligations under this Agreement. The obligations of the City hereunder shall not constitute a general indebtedness of the City within the meaning of the Florida Constitution.

XXX. SCRUTINIZED COMPANIES

Section 287.135, Florida Statutes, prohibits agencies or local governmental entities from contracting for goods or services of any amount with companies that are on the Scrutinized Companies that Boycott Israel List or are engaged in a boycott of Israel, and of \$1 million or more with companies that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations in Cuba or Syria. Specifically, Section 287.135(2), Florida Statutes, states: "A company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of: (a) Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a boycott of Israel; or (b) One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company: 1. Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or 2. Is engaged in business operations in Cuba or Syria."

Upon submitting its bid or proposal, a bidder/proposer: (i) certifies the company is not in violation of Section 287.135, Florida Statutes, and shall not be in violation at the time the company enters into or renews any resulting contract; and (ii) agrees any such resulting contract shall be deemed to contain a provision that allows the City, at its option, to terminate such contract for cause if the company is found to have submitted a false certification, been placed on one or any of the foregoing Lists, been engaged in a boycott of Israel, or been engaged in business operations in Cuba or Syria.

XXXI. PUBLIC RECORDS

A. Exempt Plans. FIRM pursuant to this Agreement (and as part of the solicitation process that resulted in award of this Agreement) may hold, come into possession of, and/or generate certain building plans, blueprints, schematic drawings, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, facility, or other structure owned or operated by the City or an agency (singularly or collectively "Exempt Plans"), which pursuant to Section 119.071(3), Florida Statutes, are exempt from Section 119.07(1), Florida Statutes and Section 24(a), Art. I of the Florida State Constitution. FIRM certifies it has read and is familiar the exemptions and obligations of Section 119.071(3), Florida Statutes; further that FIRM is and shall remain in compliance with same, including without limitation maintaining the exempt status of such Exempt Plans, for so long as any Exempt Plans are held by or otherwise in its possession. This section shall survive the expiration of earlier termination of this Agreement.

B. Data Collection. Pursuant to Section 119.071(5)(a)2a, Florida Statutes, social security numbers shall only be collected from FIRM by the CITY should such number be needed for identification, verification, and/or tax reporting purposes. To the extent FIRM collects an individual's social security number in the course of acting on behalf of the CITY pursuant to the terms and conditions this Agreement, FIRM shall follow the requirements of Florida's Public Records Law.

C. Access. The City of Tampa is a public agency subject to Chapter 119, Florida Statutes. In accordance with Florida Statutes, 119.0701, FIRM agrees to comply with Florida's Public Records Law, including the following:

1. FIRM shall keep and maintain public records required by the CITY to perform the services under this Agreement;

2. Upon request by the CITY, provide the CITY with copies of the requested records, having redacted records in total on in part that are exempt from disclosure by law or allow the records to be inspected or copied within a reasonable time (with provision of a copy of such records to the CITY) on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

3. Ensure that records, in part or in total, that are exempt or that are confidential and exempt from disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion (or earlier termination) of the Agreement if FIRM does not transfer the records to the CITY;

4. Upon completion (or earlier termination) of the Agreement, FIRM shall within 30 days after such event either transfer to the CITY, at no cost, all public records in possession of the FIRM or keep and maintain the public records in compliance with Chapter 119, Florida Statutes. If FIRM transfers all public records to the CITY upon completion (or earlier termination) of the Agreement, FIRM shall destroy any duplicate records that are exempt or confidential and exempt from public records disclosure requirements. If FIRM keeps and maintains public records upon completion (or earlier termination) of the Agreement, FIRM shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the agency.

The failure of FIRM to comply with Chapter 119, Florida Statutes, and/or the provisions set forth in this Article shall be grounds for immediate unilateral termination of the Agreement by the CITY; the CITY shall also have the option to withhold compensation due FIRM until records are received as provided herein.

IF FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 813-274-8598, JIM.GREINER@TAMPAGOV.NET, AND CONTRACT ADMINISTRATION DEPARTMENT, TAMPA MUNICIPAL OFFICE BUILDING, 4TH FLOOR, 306 E. JACKSON ST. TAMPA, FLORIDA 33602.

XXXII. FIRM EMPLOYEES

PURSUANT TO §558.0035, FLORIDA STATUTES, CONSULTANT'S INDIVIDUAL EMPLOYEES AND/OR AGENTS MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THEIR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT.

XXXIII. E-VERIFY

Pursuant to §448.095, Fla. Stat., Firm certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the US employment eligibility of all of Firm's employees hired by the Firm during the term of this Agreement and/or while performing work or providing services for the City of Tampa. Firm shall require that all subcontractors performing work or providing services on behalf of Firm for the City of Tampa also comply with the requirements of §448.095, Fla. Stat and utilize the E-Verify system to verify US employment eligibility of all employees hired by subcontractor. The Firm shall require for the subcontractor to provide to Firm an affidavit stating that the subcontractor does not employ, contract with or

XXXIV. EARLY CONSTRUCTION PHASE WORK

A. CONSTRUCTION PHASE SERVICES

i. The Firm shall construct the Project in accordance with the Project Construction Documents to be developed by Firm and approved by the City which will be included as part of **Exhibit B (inclusive of Exhibits B-1 and B-2)** and incorporated herein by reference.

ii. The scope of the Firm's Early Construction Phase Work shall include those services set forth herein and such other work as reasonably may be required in order for the Firm to complete the construction of the Project pursuant to the terms of the Contract Documents and the Project Construction Documents.

iii. The Firm shall perform all work in accordance with the period of service as listed under Article III, subject to adjustment as hereinafter provided.

iv. The Firm shall secure all licenses, permits and governmental approvals necessary or required for the construction of the Project and the performance of the work.

v. The Firm shall provide all materials, equipment, supervision, inspection, testing, labor, tools and specialty items necessary to execute and complete the performance of the work unless otherwise specified as City's responsibility herein.

vi. Notwithstanding any requirements herein for City's review, inspection or approval, the parties acknowledge and agree that the Firm shall be solely responsible and liable for the proper performance of the work as provided for herein.

vii. Notices and Compliance with Law. The City is familiar with the zoning and land use restrictions applicable to the Project and has provided this information to the Firm. The Firm shall be responsible for giving all notices and for complying with all laws, ordinances, rules, regulations and lawful orders of any public authorities having jurisdiction over the Project with respect to the performance of the work and the construction of the Project including, without limitation, all building codes and regulations. The GMP and completion dates are based upon the laws, ordinances and regulations, which are in effect on the date of this Agreement. Any changes in laws or codes thereafter that require additional work shall be the subject of an amendment to this Agreement.

viii. Truth-In-Negotiation Certification. The Firm certifies that the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of the execution of this Agreement of which this Certificate is a part. The original price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the Agreement amount was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs and that such original Agreement adjustments shall be made within one (1) year following the end of the Agreement.

ix. Utilities. Based upon reasonable inquiries with the known utility providers in the area, the Firm shall locate all known existing utilities above, upon, or under the Project site. The Firm shall contact the owner of all known Utilities to determine the location of and necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. The Firm shall schedule and coordinate its work around any such relocation or temporary service interruption. The Firm shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the work. Additional compensation may be due should existing utilities impacting the work be discovered, which are not identified by utility providers or shown on the Construction Documents.

x. Firm's Representative. The Firm designates Randall K. Fitkin, Vice President as its Representative whose address is 10150 Highland Manor Drive, Suite 135, Tampa, FL 33610, to represent and act for the Firm (Firm Representative). All notices, determinations, instructions and other communications given to the Firm's Representative shall be binding upon the Firm. The City shall be entitled to rely upon the Firm's Representative authority as set forth within this Agreement.

xi. Record Contract Documents. The Firm shall maintain at its primary local office one record set of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Work Change Directives and Field Orders, as well as all written interpretations and clarifications issued by the City's Representative, in good order and annotated to show all changes made during construction. The record Contract Documents shall be continuously updated by the Firm throughout the prosecution of the work to accurately reflect all field changes that are made to adapt the work to field conditions, changes resulting from Change Orders, Work

Change Directives and Field Orders, and all concealed and buried installations of piping, conduit and utility services which are installed by the Firm pursuant to the Contract Documents. A working copy of the Contract Documents and a permit set will be kept at the Project site. Upon completion of the work, the record Contract Documents, samples and shop drawings shall be delivered to the City's Representative by the Firm. In addition, the Firm shall deliver to the City's Representative all warranties, maintenance manuals, training manuals and any other data related to the operation and maintenance of the facility in accordance with the Contract Documents.

xii. Emergencies. In the event of an emergency affecting the safety or protection of persons or the work or property at the Project site or adjacent thereto, the Firm without special instruction or authorization from the City or the City's Representative, is obligated to act to prevent threatened damage, injury or loss. The Firm shall give the City's Representative prompt written notice after the occurrence of the emergency.

xiii. Use of Premises. The Firm shall confine all construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights of way, permits and easements, and shall not unreasonably encumber the Project site with construction equipment or other material or equipment. The Firm shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the work. The Firm shall notify the City as soon as the Firm is aware that it may be necessary for the work to affect adjacent property, without limitation. It is the City's responsibility to obtain the consent of adjacent property owners for such work.

xiv. Safety. The Firm shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

xv. Project Meetings. The Firm shall at all times work closely with the City's Representative as designated herein and shall keep the City fully advised as to the status of the work on the Project. Prior to the commencement of Early Construction Phase Work, the Firm shall attend a pre-construction conference with the City and the City's Representative and others as appropriate to discuss the Project Schedule, procedures for handling shop drawings and other submittal, and for processing Applications for Payment, and to establish a working understanding among the parties as to the work. During the prosecution of the work, the Firm shall attend any and all meeting convened by the City or the City's Representative as directed by the City. The Firm may bring selected subcontractors and suppliers to such meetings when appropriate.

xvi. Sales Tax. With the exception of direct purchases by the City, all sales tax will be included in the compensation paid to the Firm by the City and shall be paid by the Firm.

xvii. City Direct Purchase Plan. Notwithstanding any provision in the Agreement to the contrary, the City has elected, at its sole and absolute discretion, to purchase materials and supplies for use in connection with the Project in accordance with the following procedure and provisions:

(a) Invoices for materials purchased pursuant to the terms hereof shall be sent directly to the City and the City shall directly pay the vendor or material man providing such materials, and a copy of each invoice shall be provided to the Firm for review and concurrence of payment applicability;

(b) Title to any materials purchased pursuant to the terms hereof shall vest in the City upon acceptance by the City and the Firm;

(c) The City shall bear all risk of loss for any materials purchased pursuant to the terms hereof commencing upon issuance of the purchase order by the City and terminating when the materials are accepted at the project site by the City and the Firm. Upon delivery of such equipment and material at the project site and prior to unloading or removal of packaging material, the Firm shall inspect the shipment and acknowledge receipt and acceptability of such shipment in writing to the City and the Firm shall immediately assume responsibility for the protection, risk of loss, storage, security, installation, performance, cleaning and maintenance in accordance with the terms of this Agreement. The Firm shall be further responsible to perform all work required to place each item of equipment in operating condition to the satisfaction of the City, including installation, coordinating the training, start-up and testing of the testing of the equipment as required under the terms of this Agreement;

(d) The City shall obtain such insurance as the City deems reasonably prudent, at the City's sole cost and expense, to insure the City for the full replacement costs of any materials purchased by the City pursuant to the terms hereof until such materials are accepted at the project site by the City and the Firm;

(e) The Firm shall remain responsible for the selection of vendors, the coordination of delivery dates, and the suitability of any materials for use in connection with the Project which are purchased pursuant to the terms hereof, during construction and for one year from the date of the Guaranteed Completion Date; provided, however, that the City shall remain responsible for payment to the applicable vendors;

xviii. Material Safety Data Sheet. If any chemicals, materials, or products containing toxic substances, as defined by Chapter 442, Florida Statutes, are contained in the products used on site or incorporated into the construction by the Firm or any of its subcontractors, the Firm shall provide to the City's Representative, a Material Safety Data Sheet at the time of each delivery or new use of a product.

xix. The Firm shall comply with all laws, ordinances and regulations, Federal, State and City, applicable to the work.

If the Project involves E.P.A. Grant eligible work, the City and the Firm agree that the applicable provisions of 40 CFR, Part 35, including Appendix C-1, shall become a part of this Agreement.

If the Project involves work under other Federal or State Grantors or Approving Agencies, the City and the Firm shall review and approve the applicable required provisions or any other supplemental provisions as may be included in the Agreement.

The Firm shall assist the City in complying with all applicable terms and conditions of the government grants under Title XIII, Subchapter C, Part I of the Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391, et seq.) and under Title I of the Housing and Community Development Act of 1974 (PL 93-383), 24 CFR Part 570 *et seq.*

The Firm agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standard insofar as those acts apply to the performance of this Agreement.

xx. The Firm shall not employ the services of any person or persons now in the employment of the City, or who are employed by the City during the term of this Agreement.

xxi. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Agreement.

xxii. The Firm shall sign, as approved, any subcontracts submitted to the City and invoices submitted by subcontractors in connection with this Project under the terms of this Agreement.

xxiii. The Firm warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Firm, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Firm, any fee, commission upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement, without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

xxiv. Pursuant to Section 287.133, Florida Statutes, the following statement is incorporated into this Agreement and the Firm represents and warrants to the City that the Firm is not in violation of the following statutory provision: "A person or affiliate 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 a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, any may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

xxv. The Firm shall become familiar with and prepare for the normal weather conditions existing in Hillsborough County, Florida. Normal weather conditions are expected to impact the Work in numerous ways, including, but not limited to, delays during and after periods of rainfall, temporary flooding and ponding, wet ground, high winds and debris. The Firm's GMP and schedule, and any subsequent approved revisions thereto, shall sufficiently anticipate and include unfavorable weather.

xxvi. Preservation of Property. The Firm shall preserve from damage all property along the line of the Work, or which is in the vicinity of or is in anywise affected by the Work, the removal or destruction of which is not called for by the Plans. This applies, but is not limited, to the public utilities, trees, lawn areas, building monuments, fences, pipe and underground structures, public streets (except natural wear and tear of streets resulting from legitimate use thereof by the Firm), and wherever such property is damaged due to the activities of the Firm, it shall be immediately restored to its original condition by the Firm and at his own expense. In case of failure on the part of the Firm to restore such property, or make good such damage or injury, the City may, upon forty-eight (48) hour written notice, proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary, and the cost thereof will be deducted from any monies due or which may become due the Firm under this Agreement. Nothing in this clause shall prevent the Firm from receiving proper compensation for the removal, damage, or replacement of any public or private property not shown on the Plans, when this is made necessary by alteration of grade or alignment authorized by the City, provided that such property has not been damaged through fault of the Firm, his employees or agents.

xxvii. Boundaries. The Firm shall confine his equipment, apparatus, the storage of materials, supplies and apparatus of his workmen to the limits indicated on the plans, by law, ordinances, permits or direction of the City.

xxviii. Environmental Considerations. The Firm, in the performance of the work under this Firm, shall comply with all Local, State and Federal laws, statutes, ordinances, rules and

regulations applicable to protection of the environment; and, in the event he violates any of the provisions of same, he shall be answerable to the Local, State and Federal agencies designated by law to protect the environment. In the event the City receives, from any of the environmental agencies, a citation which is occasioned by an act or omission of the Contractor or his subcontractor or any officers, employees or agents of either, it is understood and agreed that the Firm shall automatically become a party-respondent under said citation; and the City immediately shall notify the Firm and provide him with a copy of said citation. The Firm shall comply with the requirements of the citation and correct the offending condition(s) within the time stated in said citation and further shall be held fully responsible for all fines and/or penalties.

xxix. Working Hours. All work under this Agreement shall be performed during regular working hours, which are Monday through Friday, 7:00 a.m. to 4:00 p.m. No work shall be performed on official City holidays or during hours other than regular working hours without prior approval of the City.

B. COMPENSATION

i. Generally. The Firm's compensation for all work to be performed by the Firm for this Early Phase Construction Work is in the maximum amount of **\$666,384** and **\$366,996** as provided in the allowance set forth in Exhibits B-1 and B-2, respectively (hereinafter the "Allowance"). If the City elects or is required under this Agreement to make changes in the design or construction of the Project as hereinafter provided, the Agreement will be amended as provided for herein.

ii. Accounting Records. The Firm shall keep full and detailed accounts and exercise such controls as may be reasonably necessary for proper financial management under this Agreement. The City, City's accountants and state and federal governmental agencies (if applicable) shall be afforded reasonable access to the Firm's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Firm shall preserve these for a minimum period of three (3) years after final payment, or for such longer period as may be required by law.

With respect to all matters covered by this Agreement, records will be made available for examination, audit, inspection, or copying purposes at any time during normal business hours at a location within Hillsborough County, Florida as often as the City, Grantor, representatives of the Comptroller General of the United States or other federal agency may reasonably require. The Firm will permit same to be examined and excerpts or transcriptions made or duplicated from such records, and audits made of all contracts, invoices, materials, records of personnel and of employment and other data relating to all matters covered by this Agreement. The City's right of inspection and audit shall obtain likewise with reference to any audits made by any other agency, whether local, state or federal. The Firm shall retain all records and supporting documentation applicable to this Agreement for five (5) years from the date of submission of the annual performance report to Grantor. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or the end of the required period, whichever is later.

C. PAYMENT

i. Payment of the Cost of Construction. Subject to the rights of the City hereunder, the City shall pay the Cost of Early Phase Construction Work in the following manner and under the following conditions:

a. As a condition precedent to payment, the Firm shall furnish to the City such schedules of quantities and costs, progress schedules, reports, invoices, delivery tickets, estimates,

records, or other data as the City may reasonably request concerning work performed or to be performed and the materials furnished under the Agreement.

b. Subject to the City's retainage rights and other rights provided elsewhere, the Firm shall pay no later than the 5th business day following payment to the Firm, (a) for all transportation and utility services, (b) for all materials, tools, and equipment delivered at the site of the Project, (c) to each of its subcontractors, the respective amounts allowed the Firm on account of the work performed by its subcontractors, to the extent of each subcontractor's interest therein; and (d) all other costs of construction as described herein for which payment has been received by the Firm. The Firm shall provide the City on a timely basis, but in no case more than 30 days, with proof of such payments and releases upon request by the City. Such proof shall accompany requests for partial payment as described in paragraph c.

c. On or about the first of each month, the Firm shall make and certify an invoice, on forms approved by the City, for the work done, and may apply for partial payment therefor. The Firm shall revise the invoices as the City may reasonably direct. When satisfactory progress has been made and it has been shown that the Cost of Early Phase Construction Work completed since the last payment exceeds one percent (1%) of the total Allowance, the City shall issue a certificate in the amount of the Cost of Early Phase Construction Work it reasonably determines is due under the Contract Documents. The City shall then issue a voucher to the Firm in accordance with the following schedule:

(a) In the amount of ninety-five percent (95%) of the Cost of Construction of the work completed as certified until construction complete.

(b) If the Firm has performed satisfactorily and the work is substantially complete (operational or beneficial occupancy), the withheld amount shall be reduced, to an amount equal to 200% of the cost of completing the work required by this Agreement which cost shall be reasonably estimated by the City.

(c) In addition to the Conditions set forth in Clauses (a)., and (b) above, payments shall always be less any sums that may be retained or deducted by the City under the terms of any of the Agreement.

(d) Payment on invoices submitted on or about the first of the month shall be paid on or about the 25th of the month.

(e) The delivered cost of equipment and non-perishable materials suitably stored at the site of the Project (as well as those stored off-site in a bonded warehouse or such other location as may be required, and/or approved, by the City and only if expressly approved in writing by the City's Representatives) and tested for adequacy (excluding material testing) may be included by the Firm in its application for partial payment; provided, however, that the Firm shall furnish evidence satisfactory to the City that the Firm is the unconditional owner and in possession of such materials or equipment. Subject to the provisions noted above with respect to retainage reduction, the amount to be paid will be 95 percent of the invoice cost to the Firm which cost shall be supported by receipted bills. Such payment shall not relieve the Firm from full responsibility for the completion of the work and for protection of such materials and equipment until incorporated in the Project in a permanent manner as required by the Agreement.

(f) Prior to payment to the Firm hereunder, the City may request and if requested, the Firm shall deliver to the City a written, verified statement on forms acceptable to the City showing in detail all amounts then due and unpaid by such Firm to all subcontractors, sub-consultants, laborers, workmen, and mechanics, employed by it under the Agreement for the performance of the Project, for daily or weekly wages, or to other persons for materials, equipment, or supplies delivered at

the Project site during the period covered by the payment under consideration, including applicable lien releases.

ii. The City may withhold from the Firm as much as any approved payments to it as may, in the reasonable opinion of the City, be necessary to secure: (a) claims of any persons supplying labor or materials to the Firm then due and unpaid; (b) loss due to defective work not remedied; or (c) liability, damage, or loss due to injury to persons or damages to the Project or property of other contractors, subcontractors, or others, caused by the act or neglect to act of the Firm or of any of its subcontractors. The City shall have the right, to apply any such amounts so withheld in such manner as the City may reasonably deem proper to satisfy such claims or to secure such protection. Such application of such money shall be deemed payments for the account of the Firm.

iii. Upon determination of satisfactory completion of the work (or portion thereof) under this Agreement by the City, the Firm shall prepare the final invoice showing the total Cost of Early Phase Construction Work of the completed work and submit it to the City for review. This invoice shall be prepared within 30 days after the date of substantial completion or as soon thereafter as the necessary measurements and computations can be made. All prior certificates and estimates, being approximate only, are subject to correction in the final invoice and payment.

iv. When the final invoice (or a portion thereof) has been approved and certified by the City, it shall be promptly submitted to the Mayor and City Council. The final certificate shall state that the work has been completed and that the amount is based on the final invoice remaining due to the Firm. The City shall then accept the work as fully completed and shall, not later than 30 days after the final acceptance of the Project, pay the Firm the entire amount so found due thereunder after deduction of all previous payments and all percentages and amounts to be kept and retained under provisions of this Agreement; provided, however, the City and Firm hereby agree that as a condition precedent to receiving final payment from the City, the Firm shall submit to the City: (a) a sworn affidavit executed by the Firm which contains a complete list of all unpaid bills for labor, services, materials, and subcontractors and any existing or pending suits relating to the Project (if any); and (b) a consent of surety that issued the Public Construction Bond for the Project. If a claim should remain unsatisfied after all payments are made, the Firm shall refund to the City all monies which the City may be compelled to pay in discharging such claim(s) including incidental costs and fees, including without limitation, attorneys' fees and costs whether incurred at trial or on appeal. The City shall not make any payments in discharging such claims, and shall not seek a refund for any such monies that the City may be compelled to pay, without providing to the Firm a reasonable opportunity to discharge such claims itself.

v. The acceptance by the Firm, or by anyone claiming by or through it, of the final payment shall operate as and shall be a release to the City and every officer and agent thereof from any and all claims and liability to the Firm for anything done or furnished in connection with the work or Project, except those expressly identified in writing by the Firm at the time it submits its final payment application to the City. No payment, however, final or otherwise, shall operate to release the Firm or its sureties from any obligations under this Agreement or a Performance Bond and a Payment Bond.

vi. For clarification, the term, "final acceptance" shall mean acceptance of the work as evidenced by an official resolution of the City. Such acceptance shall be deemed to have taken place only if and when an approving resolution has been adopted by the City Council. The final acceptance shall be signed only after the City has assured itself by tests, inspection, or otherwise, that all of the provisions of the Agreement have been carried out to its satisfaction.

D. BOND

Upon execution of this Agreement, the Firm shall deliver to the City a fully executed Public Construction Bond, on the form attached hereto, in an amount equal to the Allowance. The Public Construction Bond shall be issued by a surety acceptable to the City, whose acceptance shall not be unreasonably withheld. The surety for such bond shall be duly authorized to do business in the State of Florida, and the bond shall be issued or countersigned by a local resident producing agent for such surety who is a resident of the State of Florida, regularly commissioned and licensed in said state; and satisfactory evidence of the authority of the person or persons executing such bond to execute the bond shall be submitted with the bond. The Public Construction Bond shall serve as security for the faithful performance of this Agreement, including the maintenance and guarantee provisions, and for the payment of all persons performing labor and furnishing materials in connection with the Agreement. The premiums for Public Construction Bond shall be reimbursable as Costs of the Construction. The surety company shall have a rating of not less than B+ Class VI as evaluated in the most recently circulated Best's Key Rating Guide Property-Liability. Pursuant to Section 255.05, Florida Statutes, the Firm shall record both the Public Construction Bond in the Public Records of Hillsborough County, Florida, before commencing any work under this Agreement on the Project.

E. THE FIRM'S REPRESENTATIONS, COVENANTS AND WARRANTIES

i. The Firm warrants to the City that materials and equipment furnished under this Agreement will be of good quality and new, unless otherwise required or permitted by the Contract Documents, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of the Contract Documents.

ii. Further, the Firm warrants the work against any defects in workmanship or materials for a period of one (1) year following the date of the Guaranteed Completion Date of the Project, or portion thereof, or for such longer periods of time as may be set forth with respect to certain warranties required by this Agreement. Under this warranty, the Firm hereby agrees to make good, without delay at its own expense, any failure of any part of the work due to faulty materials or manufacture, construction, or installation, or the failure of any equipment to perform in accordance with the requirements of the Contract Documents, and further shall make good any damage to any part of the Project caused by such failure. In addition, all warranties in excess of one year, either as required by the Contract Documents or as otherwise provided, will be transferred to the City by the Firm.

iii. The Firm shall secure required certificates of inspection, testing or approval and deliver them to the City.

iv. The Firm shall assign all written equipment and vendor warranties and equipment manuals and deliver them to the City at the time of the Guaranteed Completion date.

v. The Firm shall direct the checkout of utilities and operations of systems and equipment for readiness, and assists in their initial start-up and testing.

vi. The Firm agrees that the Public Construction Bond required hereunder shall fully cover all warranties contained herein and that all warranties, express or implied, inure to the benefit of the City and are enforceable by the City.

vii. No Reliance. The Firm acknowledges, understands and agrees that the Project Construction Documents, and each component thereof, do not constitute technical specifications and do

not in any way reflect all of the design, permitting, regulatory and construction requirements of the Project.

viii. Assumption of Risks by Firm. The Firm has entered into this Agreement with the full understanding and knowledge that there is no guarantee that a Notice to Proceed will be issued by the City. The Firm agrees that the City shall not be liable for any damages associated with the City's withholding of the Notice to Proceed.

ix. Except as otherwise provided in this Agreement, the Firm shall have a duty to anticipate and provide adequate contingencies for risks associated with the Work for the Project. The Firm shall take into consideration and factor into its schedule and Allowance, all site conditions and difficulties involved in the completion of the Work, the variations in permitting time frames, and the time frames available to City for reviewing deliverables, schedules, and payment invoices.

F. THE CITY'S REPRESENTATIVE

i. City's Representative. The "City's Representative" for purposes of this Agreement shall be the Director of the Contract Administration Department whose address is 306 E. Jackson Street, Tampa, Florida 33602. The Director of the Contract Administration Department may designate other persons to carry out his duties hereunder. Such designations shall be in writing in accordance with the Notice provisions of this Agreement.

a. The Director of the Contract Administration Department or his representative, in addition to those matters elsewhere herein expressly made subject to his determination, direction, or approval, shall have the power, subject to such express provisions and limitations herein contained as are not in conflict herewith, and subject to review by the Mayor and City Council:

(a) To monitor the work provided for under this Agreement; and

(b) To determine how the work of this Project shall be coordinated with the work of other contractors engaged simultaneously at this Project; and

(c) To make minor changes in the work as he deems necessary, provided such changes do not result in an increase in the time or cost to the City or to the Firm.

The power of the City's Representative shall not be limited to the foregoing enumeration, for it is the intent of this Agreement that all of the work shall be subject to his determinations and approval, except where the determination or approval of someone other than the City's Representative is expressly called for herein and except as subject to review by the Mayor and City Council.

The City's Representative or his designee in addition to those matters previously stated shall also have the power:

(a) To review any and all questions in relation to the Contract Documents (including this Agreement) and its performance, except as herein otherwise specifically provided; and his determination upon such review shall be final and conclusive upon the Firm, subject to the Firm's right to appeal any such determination in accordance with the procedures set forth herein.

(b) With the approval of the Mayor and City Council, to authorize modifications or changes in the Contract so as to require: (1) the performance of extra work, or (2) the omission of work whenever he deems it in the interest of the City to do so, or both.

(c) To suspend the whole or any part of the work provided for under this Agreement whenever, in his judgment, such suspension is required: (a) in the interest of the City generally; or (b) to coordinate the work of the various contractors engaged on this Project, without compensation to the Firm for such suspension other than extending the time for the completion of the Project, as much as it may have been, in the opinion of the City, delayed by such suspension unless otherwise provided for herein. In the event the suspension is more than seven (7) days, the Firm will be entitled to said extension of time along with demobilization and remobilization expenses, and amounts due for materials ordered, only.

(d) If, before the final acceptance of all the work contemplated herein, it shall be deemed necessary to take over, use, occupy, or operate any part of the completed or partly completed work, subject to receipt of approvals from all affected insurance companies for the City and the Firm, the Director of the Department shall have the right to do so; and the Firm shall not, in any way, interfere with or object to the use, occupation, or operation of such work by the City after receipt of notice in writing from the City that such work or part thereof will be used by the City on and after the date specified in such notice. Such taking over, use, occupancy or operation of any part of the completed or partially completed work shall not constitute final acceptance or approval of any such part of the work nor shall it constitute substantial completion of the work for purposes of this Agreement unless the requirements of the provisions of this Agreement concerning Completion and Inspection are otherwise satisfied. Nothing herein shall be deemed a waiver of the Firm's right to an extension of time or an increase in its compensation hereunder if such early occupancy or use by the City interferes with or delays the Firm's work hereunder.

ii. The City shall not, nor shall any department, officer, agent, or employee thereof, be bound, precluded, or stopped by any determination, decision, acceptance, return, certificate, or payment made or given under or in connection with the Contract by any officer, agent or employee of the City at any time either before or after final completion and acceptance of the work any payment thereof: (a) from showing the true and correct classification, amount, quality, or character of the work done or that any determination, decision, acceptance, return certificate or payment is untrue, incorrect or improperly made in any particular, or that the Project or any part thereof does not in fact conform to the requirements of the Contract, and (b) from demanding and recovering from the Firm any overpayments made to it or such damages as the City may sustain by reason of the Firm's failure to comply with the requirements of the Contract, or both.

iii. Neither the inspection, nor any order, measurements or certificate of the City or its employees, officers, or agents, nor any order of the City for payment of money, nor payments for or acceptance of the whole or any part of the Project, nor any extension of time, nor any changes in the Contract, or any possession of the Project by the City shall operate as a waiver of any provisions of the Contract; nor shall any power herein provided nor any waiver of any breach of the Contract be held as a waiver of any other subsequent breach.

Any remedy provided in this Agreement shall be taken and construed as cumulative, namely, in addition to each and every other suit, action, or legal proceeding. Either party shall be entitled as a right to an injunction against any breach of the provisions of the Agreement.

iv. Evidence of Funding. Prior to commencement of work by the Firm, the City shall deliver to the Firm a certified copy of a resolution adopted by City Council: (a) authorizing this Agreement or such amendments to this Agreement as may be required prior to commencement of Construction Services, and (b) identifying the funds for payment.

v. Material Testing. The Firm shall furnish material testing, inspections and reports as required by law or the Contract Documents, the cost of which is included in the Allowance, except the

City shall provide density, asphalt and concrete testing. Provided, however, if any re-testing of a material is required due to such material failing the initial testing, such re-testing shall be at the Firm's expense, which expense may be included as part of the Cost of Early Phase Construction Work.

vi. Notification of Faults or Defect. If the City observes or otherwise becomes aware of a fault or defect in the work or nonconformity with the design or Contract Documents, the City shall give prompt written notice thereof to the Firm.

vii. Timely Provision of Information and Decisions. The City shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.

viii. Communication with Contractors. The City shall communicate with the Firm's consultants and subcontractors only through the Firm.

ix. Legal Description and Land Survey. Prior to commencement of the Early Phase of Construction Services, the City shall provide the Firm with a survey of the Project site.

x. Hazardous Material.

a. A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. The Firm shall not be obligated to commence or continue work until any known or suspected Hazardous Material discovered at the Project site has been removed, rendered or determined to be harmless by the City as certified by an independent testing laboratory and approved by the appropriate government agency.

b. If after the commencement of the work, a known or suspected Hazardous Material is discovered at the Project site, the Firm shall be entitled to immediately stop work in the affected area and shall report the condition to the City and, if required, the government agency with jurisdiction.

c. The Firm shall not be required to perform any work relating to or in the area of known or suspected Hazardous Material without written mutual agreement of the Firm and the City.

d. The City shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures shall be the sole responsibility of the City, and shall be performed in a manner minimizing any adverse effect upon the work of the Firm. The Firm shall resume work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless.

e. If the Firm incurs additional costs and/or is delayed due to the presence of Hazardous Material, the Firm and the City agree to adjust the Contract time and/or compensation by an amendment to this Agreement.

G. CONTRACT TIME

i. The period for performance shall be in accordance with Article III..

ii. The Firm must commence the Construction within thirty (30) days subsequent of the date of the Notice to Proceed by the City or receipt of Building Permit, whichever comes later, unless otherwise provided by the City. Time being of the essence of this Contract, the Firm shall thereafter prosecute the work diligently, using such means and methods as will secure its substantial completion not later than the completion date in Article III or on the date as may be extended as provided by amendment herein.

iii. Extension of Time. If such an application is made, the Firm shall be entitled to an extension of time for delay in completion of the services should the Firm be delayed in the commencement, prosecution of completion of any part of said services by any act or delay of the City, or by acts or omissions of other contractors on this Project, or by a riot, insurrection, war, pestilence, acts of public authorities, fire, lightning, hurricanes, earthquakes, tornadoes, floods, extremely abnormal and excessive inclement weather as indicated by the records of the local weather bureau for a five (5) year period preceding the date of the Agreement, or by strikes, or other causes, which causes of delay mentioned in this Agreement, in the reasonable opinion of the City, are beyond the expectation and control of the Firm.

The Firm shall, however, be entitled to an extension of time for such causes only for the number of days of delay which the City may reasonably determine to be due solely to the extent such causes and only to the extent that such occurrences actually delay the completion of the Project.

The determination made by the City on an application for the extension of time shall be subject to the Firm's right to dispute extensions of time granted by the City pursuant to Article 16 hereof.

Delays caused by failure of the Firm's material men, manufacturers, and dealers to furnish approved working drawing, materials, fixtures, equipment, appliances, or other fittings on time or failure of subcontractors to perform their services shall not constitute a basis of extension of time.

iv. Liquidated Damages. It is mutually agreed between the parties that time is the essence of this Agreement and that there will be on the part of the City considerable monetary damage in the event the Firm should fail to achieve Substantial Completion of the work by the completion date, as said date may be adjusted pursuant to the terms hereof. In such event, the amount of liquidated damages per day shall be \$500/day. This amount shall, in no event, be considered as a penalty or otherwise than as the liquidated and adjusted damages to the City because of the delay; and the Firm and its Surety agree that the stated sum per day for each such day of delay shall be deducted and retained out of the monies which may become due hereunder and, if not so deductible, the Firm and its Surety shall be liable therefor.

H. CHANGES IN THE WORK

i. General. The City shall have the right at any time during the progress of the work to increase or decrease the scope of work. Upon being notified of a change, the Firm shall submit to the City within fifteen (15) calendar days an itemized estimate of any costs and/or time of performance increases or savings it foresees as the result of the requested change.

ii. Changes to Work. An amendment to this Agreement, shall be issued and executed promptly after an agreement is reached between the Firm and the City concerning the requested change. The Firm shall promptly perform changes authorized by a duly executed amendment to the Agreement. The Contract time and compensation shall be adjusted in the amendment in the manner as the City and the Firm shall mutually agree. If the City and the Firm are unable to mutually agree on the adjustment to the Contract time and/or compensation, it shall be adjusted pursuant to the procedures contained in Sections iii and iv. below.

iii. Disagreement as to Change Orders or Work Change Directive. If the City and the Firm are unable to agree on an amendment for the requested change, the Firm shall, nevertheless, promptly perform the change as directed by the City.

iv. Computation of Changes to Allowance. In the event the City and the Firm are unable to mutually agree on a change to the Contract time and/or compensation resulting from a change, the amount of the adjustment shall be as reasonably directed by the City. The City shall issue an amendment based upon such determination and the Firm shall be entitled to payment in at least the amount so determined by the City. If the Firm disagrees with the City's adjustment determination, the Firm may make a claim for the difference pursuant to the procedures set forth in the provisions for Claims and Disputes set forth herein.

v. Verification of the Firm's Costs. The City shall have the right to conduct a review of the Firm's books and records to verify the accuracy of any claim submitted to the City by the Firm with respect to any amendment.

vi. Minor Changes in Work. The City's Representative shall have authority to order minor changes in the work not involving an adjustment to the Contract compensation and/or time and not inconsistent with the intent of the Contract Documents. Such changes may be effected by "Field Order" or by other written order. Such changes shall be binding upon the Firm.

vii. Concealed Conditions. If concealed or unknown conditions (including, without limitation, Hazardous Materials), that affect the performance of the work and vary from those indicated in plans, drawings, surveys, reports or any other documents provided by the City, are encountered below ground or in an existing structure other than the work, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in work of the character provided for in this Project, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. The Contract time and/or compensation shall be equitably adjusted for such concealed or unknown conditions by amendment. It shall be the obligation of the Firm to fully investigate the Project site and provide sufficient contingency amounts for Project site conditions which are foreseeable and which may differ from those suggested by inspections, reports or other information provided by the City.

viii. Disputed Work. If the Firm is of the opinion that any services required, necessitated, or ordered violates the terms and provisions of the Agreement, it must promptly notify the City, in writing, of its contentions with respect thereto and request a final determination thereof. If the City determines that the service in question is a service covered in the Agreement and not an extra service or that the service complained of is proper and that no adjustment in the Contract time or compensation is required, it shall direct the Firm to proceed, and the Firm shall promptly comply. In order, however, to reserve its right to claim compensation or time for such service, the Firm must within fifteen (15) calendar days after receiving notice of the City's determination and direction, notify the City in writing that the service is being performed or that the determination and direction is being complied with under protest. Failure of the Firm to notify shall be deemed as a waiver of claim for extra compensation and time.

I. INSPECTION/MONITORING/TESTING

i. The City's Access to Work. The City and its respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project (including, without limitation, the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency and the U.S. Department of Labor) shall have reasonable access at all times to the work contemplated in the Contract Document, whether the work is being performed on or off Project site, for their observation, inspection and testing. The Firm shall provide reasonably safe conditions for such access. The Firm shall provide the City with timely notice of readiness of the work for all required inspections, tests or approvals.

ii. Responsibility for Inspections, Tests or Approvals. If the Contract Documents, or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project require any portion of the work to be specifically inspected, tested or approved, such inspection, testing and approval shall constitute a condition precedent to the right of the Firm to receive the money therefore until the work has been inspected, tested or approved. The Firm shall cooperate with and assist the City in securing the required certificates of inspection, testing or approval. All inspections, tests or approvals coordinated by the Firm shall be performed in a manner and by organizations engaged by the Firm and reasonably acceptable to the City. The City is solely responsible for all threshold inspections.

iii. Covered Work. If any work that is to be inspected, tested or approved is covered without concurrence from the City, such work must, if requested by the City, be uncovered for observation. Such uncovering shall be at the Firm's expense unless the Firm has given the City timely notice of the Firm's intention to cover same and the City has not acted with reasonable promptness to respond to such notice. If any work is covered contrary to written directions from the City, such work must, if required by the City, be uncovered for the City's observation and be replaced at the Firm's sole expense.

iv. Inspecting Covered Work. If the City considers it necessary or advisable that any covered work performed by the Firm be observed by the City or inspected or tested by others, the Firm, at the written request of the City, shall uncover, expose or otherwise make available for observation, inspection or tests, as the City may reasonably require, that portion of the work in question, furnishing all necessary labor, material and equipment. If it is found that such work is defective, the Firm shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection, testing, correction of the defect and of satisfactory reconstruction thereof. If, however, such work is not found to be defective, the Contract time and compensation shall be adjusted by Change Order or Work Directive Change as appropriate due to such uncovering, exposure, observation, inspection, testing and reconstruction.

J. DEFECTIVE WORK

Any Work performed by the Firm not conforming to the requirements of the Contract Documents shall be deemed defective work. If required by the City, the Firm shall as directed by the City, either correct all defective work whether or not fabricated, installed or completed, or, if the defective work has been rejected by the City, remove it from the site and replace it with non-defective work, without increase to the Allowance.

K. PROTECTION

i. During performance and until substantial completion, the Firm shall be under an absolute obligation to protect the finished and unfinished Project against any damage, loss, or injury. The Firm shall take proper precaution to protect the finished portion of the Project from loss or damage, pending substantial completion of all the work included in the entire Agreement. Such loss or damage shall be at the risk of and borne by the Firm, whether arising from acts or omissions of the Firm or others, excluding the acts or omissions of the City and anyone for whom the City is liable. In the event of any such loss or damage, the Firm shall forthwith repair, replace, and make good the Work without extension of time therefore, except as may be otherwise provided herein.

ii. The provisions of this section shall not be deemed to create any new right of action in favor of third parties against the Firm or the City.

L. CLAIMS AND DISPUTES

i. The City and the Firm shall attempt to mutually resolve any claims or disputes arising out of or related to this Agreement and the performance of the work hereunder. All claims or disputes arising out

of or related to this Agreement or the performance of work hereunder must be made in writing by the complaining party within the time frame established in this Agreement for such claims or disputes, and delivered in accordance with the notice provisions of this Agreement. If no such time frame is established in this Agreement, notice from the complaining party shall be made in writing within thirty (30) calendar days of the first occurrence of the event giving rise to the claim or dispute. If either party fails to give written notice of a claim or dispute as required herein, such party shall be deemed to have waived the claim or dispute; provided, however, if the claim or dispute is of a continuing nature and written notice is given while the claim or disputed matter is still occurring but after the time period required in this Agreement, the party shall be deemed to have waived the claim or dispute only as to those matters which accrued prior to the date such written notice is actually given.

ii. In the event that any dispute or claim arising out of or related to this Agreement or the performance of work hereunder cannot be amicably resolved by the parties, then such dispute(s) shall be subject to litigation in a court of competent jurisdiction; provided, however, the parties may, by mutual written agreement, first submit such dispute(s) to non-binding mediation or other mutually agreed upon dispute resolution procedures.

iii. In connection with any litigation arising out of or related to this Agreement or any work performed hereunder, the venue for such litigation shall be Hillsborough County, Florida. Further, the prevailing party in any such litigation shall be entitled to recover from the non-prevailing party the prevailing party's reasonable attorney's fees and costs, including those incurred on appeal.

M. **DEFAULT AND TERMINATION**

i. It is mutually agreed that the following shall constitute a default by the Firm under this Contract specifically in regard to Early Construction Phase Work, subject to the notice and cure provisions herein:

(a) In accordance with 24 CFR 85.43, a default shall consist of any use of Grant Funds for a purpose other than as authorized by this Agreement, compliance with any provision in all Articles herein, any material breach of the Agreement, failure to comply with the audit requirements as provided herein, or failure to expend Grant Funds in a timely or proper manner.

(b) If the Firm fails to begin the Early Construction Phase Services within thirty (30) days of receipt of the Notice to Proceed; or

(c) If at any time during the progress of the work, the Firm is not prosecuting the work with reasonable speed, or is delaying the work unreasonably and unnecessarily; or

(d) If the force of workmen or quality or quantity of material furnished is not sufficient to insure completion of the Project within the Contract time and in accordance with the Contract Documents; or

(e) If the Firm shall wrongfully fail to make prompt payments for materials or labor to subcontractors for work performed; or

(f) If legal proceedings have been instituted against the Firm by others than the City in such manner as to interfere with the progress of the work provided for in the Contract Documents and which may subject the City to peril of litigation or outside claims; or

(g) If a receiver or trustee shall be appointed for the Firm or the Firm's property; or

(h) If the Contract or any right, monies, or claim there under shall be assigned by the Firm, otherwise than as herein specified; or

(i) If the Firm shall materially fail in any manner of substance to observe the provisions of this Agreement; or

(j) If any of the work, machinery, or equipment shall be defective, and shall not be replaced as herein provided; or

(k) If the Project shall be abandoned by the Firm prior to substantial completion; or

(l) If the Firm shall be adjudged a bankrupt or make an assignment for the benefit of creditors.

ii. Termination by the City.

a. If the Firm commits a default as set forth in Section Mi. or persistently fails or neglects to carry out the work in accordance with the Contract Documents, the City may terminate this Agreement, as provided for in subparagraph ii,b.

b. The City shall notify the Firm in writing of the Firm's default(s). If the City reasonably determines that the Firm has not remedied or cured the default(s) within seven (7) calendar days following receipt by the Firm of said written notice, or in the event the default is not monetary and cannot be remedied within said seven (7) day period that the Firm has not commenced the cure and is not diligently proceeding to complete the cure within seven (7) calendar days following receipt of written notice by the Firm, then the City may then give a second written notice and thereafter the City may, without prejudice to any other right or remedy it may be entitled to hereunder or by law, terminate the Firm's right to proceed under the Agreement, and take possession of the Work and any materials, tools, equipment, and appliances of the Firm, take assignments of any of the Firm's subcontracts and purchase orders, and complete the work or have the work completed by other third parties other than the City. In addition, the City shall retain all rights and remedies at law or in equity related to the default of the Firm.

iii. Termination by the Firm

a. If the City fails to make payments when due in accordance with the terms of this Agreement, through no fault of the Firm or any of its subcontractors, consultants, sub-contractors, sub-consultants, agents or employees or any other person performing any of the Work under a contract with the Firm, or the City otherwise materially breaches this Agreement, the Firm shall give written notice to the City of the Firm's intention to terminate this Agreement. If the City fails to make such payment within seven (7) calendar days after its receipt of such notice, or the City otherwise fails to cure its breach within the said seven (7) calendar day period, or in the event the default is not monetary and cannot be remedied within said seven (7) day period that the City has not commenced the cure and is not diligently proceeding to complete the cure within seven (7) calendar days following receipt of written notice by the City, then the Firm may stop the work and may give a second written notice of its decision to terminate to the City and thereafter the Firm may, without prejudice to any other remedy, terminate this Agreement and recover from the City payment for work executed and for proven loss with respect to materials, equipment, tools, construction equipment and machinery, including reasonable overhead, loss profit and damages.

b. The Firm may terminate this Agreement if the work is stopped for: (a) a period of sixty (60) calendar days through no fault of the Firm or a subcontractor, consultant, sub-consultant, sub-subcontractor, or their agents or employees or any other persons performing portions of the work under a

contract with the Firm, and if the stoppage of work is due to the issuance of an order of a court or other public authority having jurisdiction, an act of government, such as a declaration of national emergency making material unavailable; or (b) repeated suspensions, delays or interruptions by the City constituting in aggregate of more than 90 calendar days in any 365 calendar day period. If one of the preceding reasons exists, the Firm may, upon seven (7) calendar days written notice to the City, terminate this Agreement and recover from the City payment for work executed and for proven loss with respect to materials, equipment, tools, construction equipment and machinery, including reasonable overhead, loss profit and damages.

c. In the event the project is terminated for cause pursuant to this Article, the Firm, shall deliver all original sketches, tracings, drawings, computations, details, design calculations, specifications and other documents and plans that result from the Firm's services under this Agreement.

N. COMPLETION AND INSPECTION

i. Substantial Completion. The Early Construction Phase work shall be substantially completed when the City's Representative determines that the work is substantially complete and can be utilized by the City for its intended use or the City takes occupancy of the Project, whichever occurs first. When Substantial Completion of the work has been achieved, the City's Representative and the Firm shall make an inspection of the work within seven (7) calendar days to determine the extent of completion. If the City's Representative considers the work substantially complete, the City's Representative will prepare and deliver to the Firm a "Punch List" of items to be completed or corrected by the Firm before final payment. The City shall have the right to exclude the Firm from the site after the date of Substantial Completion, but the City shall allow the Firm reasonable access to complete or correct items on the Punch List.

ii. Final Progress Payment. At the date of Substantial Completion, the Firm may apply for and the City, if the Firm has satisfied the requirements of Section Ni and any other requirements of the Contract Documents relating to retainage, shall pay the Firm the amount retained, less 200% of the reasonable values on the Punch List. Final payment of such withheld sums shall be made upon correction or completion of such Work.

iii. Final Inspection and Acceptance. Upon receipt by the City of written notice from the Firm that the work is ready for final inspection and acceptance and upon receipt of a Final Application for Payment, the City's Representative will promptly make such inspection and, if it finds the work acceptable and fully performed in compliance with the Contract Documents, the City will promptly issue a final Certificate for Payment, stating that, on the basis of its observations and inspections, the work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be owed the Firm is due and payable. Neither the final payment nor the retainage shall become due and payable until the Firm submits: (1) the Final Release and 2) Consent of Surety to final payment Affidavit in the forms attached hereto.

O. OTHER WORK

i. General. The City may perform other work related to the Project at the site by the City's own forces, have other work performed by utility owners or let other direct contracts. If the Firm believes that such performance will involve additional expense to the Firm or require additional time, the Firm shall notify the City for an adjustment to the Contract time and/or compensation as appropriate.

ii. Access to Site. The Firm shall afford each utility owner and other contractor who is a party to such a direct contract with the City (or the City, if the City is performing the additional work with the City's employees) safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall connect and coordinate its work with

R. Patent Fees and Royalties. The Firm shall pay all license fees and royalties and assume all costs associated with any invention, design, process, or device which is subject of patent rights or copyrights held by others and is necessary for completion of the Work required by this Agreement, Contract Documents or Project Construction Documents.

S. Time of Essence. Time is of the essence for both parties hereto with respect to their performance hereunder.

IN WITNESS WHEREOF, the City has caused these presents to be executed in its name by its Mayor, and attested and its official Seal to be hereunto affixed by its City Clerk, and the Firm has hereunto set its hand and Seal in TRIPLICATE, the day and year first written above.

CHARLES PERRY PARTNERS, INC.

CITY OF TAMPA, FLORIDA

By: _____
Jason Morgan, Executive Vice President
Authorized Officer or Individual

By: _____
Jane Castor, Mayor

ATTEST:
(SEAL)

By: _____
Shirley Foxx-Knowles, City Clerk

Approved as to Legal Sufficiency and authorized
by Resolution No. _____

Marcella M. Hamilton, Assistant Attorney

PUBLIC CONSTRUCTION BOND

Bond No. (enter bond number) _____

Name of Contractor: _____

Principal Business Address of Contractor: _____

Telephone Number of Contractor: _____

Name of Surety (if more than one list each): _____

Principal Business Address of Surety: _____

Telephone Number of Surety: _____

Owner is The City of Tampa, Florida

Principal Business Address of Owner: _____ 306 E Jackson St, Tampa, FL 33602

_____ Contract Administration Department (280A4N)

Telephone Number of Owner: _____ 813/274-8456

Contract Number Assigned by City to contract which is the subject of this bond: _____

Legal Description or Address of Property Improved or Contract Number is: _____

General Description of Work and Services: _____

KNOW ALL MEN BY THESE PRESENTS That we, _____

(Name of Contractor)

as Principal, hereinafter called CONTRACTOR, of the State of _____, and

(Name of Surety)
a corporation organized and existing under and by virtue of the laws of the State of _____, and regularly authorized to do business in the State of Florida, as SURETY, are held and firmly bound unto the City of Tampa, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter called Owner, in the penal sum of _____ Dollars and _____ Cents (\$ _____), lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated _____, _____, 20____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference, in the time and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1) (Section 713.01), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.
5. Contractor and Surety acknowledge that the Work for which this bond has been issued may be one of several such contract documents for a group of projects. This bond does not secure covenants to pay for or to perform design services survey or program management services. The Owner/Obligee is expected to reasonably account for damages that are caused to Owner with respect to Principal's (Contractor's) default in performance of the scope of the Work incorporated by reference into the bond, and notwithstanding any contractual or common law remedy permitted to Owner as against Contractor, the obligation of Surety for any damages under this bond shall be determined by the cost of completion of the Work less the contract balance unpaid upon default of Contractor for the Work plus liquidated damages at the rate of \$500.00 per day for delays by the Contractor and/or Surety in reaching substantial completion.
6. The notice requirements for claimants and conditions for entitlement to payment set forth in Section 255.05, Fla. Stat. and the limitations period to actions upon Section 255.05, Fla. Stat. bonds apply to claimants seeking payment from surety under this bond. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05, Florida Statutes.
7. The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the contract documents or other Work to be performed hereunder, or the specifications referred to therein shall in any way affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to Work or to the specifications.

8. The above SURETY states that it has read all of the Contract Documents made by the CONTRACTOR with the CITY, hereto attached, and the terms and conditions of the contract and work, and is familiar therewith and in particular those portions of the Agreement concerning the guaranty of such CONTRACTOR for a period of one year following the date of the final acceptance of the completed work under the Contract by the CITY, all of which this BOND includes.

DATED ON _____, 20__

(Name of Principal)

(Name of Surety)

(Principal Business Address)

(Surety Address)

By _____

By _____
(As Attorney in Fact)*

Title _____

Telephone Number of Surety

Telephone Number of Principal

Approved as to legal sufficiency:

Countersignature:

By _____
Assistant City Attorney

(Name of Local Agency)

(Address of Resident Agent)

By _____

Title _____

Telephone Number of Local Agency

*(As Attorney in Fact) attach Power of Attorney and Current Certificate with Original Signature

AFFIDAVIT OF CONTRACTOR IN CONNECTION
WITH FINAL PAYMENT

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority, duly licensed and authorized under the laws of the State of _____ to administer oaths and take acknowledgements, personally appeared

to me known to be the individual described in and who executed this Affidavit, who being by me first duly sworn deposes and says:

That _____ is the _____ of _____, the Contractor under Contract with the City of Tampa for construction of **Contract** _____; _____, and _____ certifies:

That all bills for labor, service, materials, equipment, supplies, and/or subcontractors in connection with the work performed by _____ and its subcontractors under and pursuant to the provisions of said Contract, dated _____, have been paid except as herein below listed:

<u>List of Exceptions</u>	<u>Amount Owed</u>
A.	\$
B.	\$
C.	\$
D.	\$

and that there are no suits pending or threatened to be brought in connection with the work done or labor and/or materials furnished under said Contract except as herein below listed:

List of Pending Suits

A.
B.
C.
D.

(If there are no exceptions, please write "NONE" in the areas(s) above. The attached "Consent of Surety" form must be executed before the City will process Final Payment.); and

That the City of Tampa is hereby released from any claim which might arise out of said Contract; and

That this Affidavit is made and submitted to the City of Tampa pursuant to the provisions contained in the Contract in order that the Contractor may receive Final Payment.

BY: _____

Sworn to and subscribed before me

this _____ day of

_____ A.D., 20____

My Commission Expires:

CONSENT OF SURETY

The _____, Surety on **Contract** _____ ; _____, between the City of Tampa and _____, being aware of amounts as delineated in the Affidavits executed by _____, the _____ of _____, owing on said Project, hereby consents to and approves the final payment by the City of the stipulated balance due on the aforesaid Contract to _____, with the understanding that the Surety will extend the obligation of the Payment Bond and Performance Bond for the payment of any and all legitimate claims in connection with said Project which may be made against _____, or against the City of Tampa until such time as the outstanding claims have been paid, settled or compromised; and said Surety will hold the City harmless from any claims, disputes, or litigation which may ensue because the City is making final payment to said Contractor.

(SEAL)

Attorney-in-Fact for

Sworn to and subscribed before me this

_____ day of _____ A.D., 20_____

Notary Public, State of

My Commission Expires:

Scope of Work:

The scope shall include, but not be limited to the following:

- **Comprehensive Design Services**
- **Survey Services**
- **Coordination of Upgrades/Repairs to the Multiple Projects Identified Herein**
- **City of Tampa and All Required Regulatory Permitting**
- **One Guaranteed Maximum Price (GMP) Proposal**

SECTION 1: Basis of Design (Projects A – J)

A. McKay Bay Main-Transformer Auxiliary-Equipment Upgrade and Replacement-Plan (Project)

1.1 Preliminary Budget

\$1,250,000 (Project total budget to be determined as part of the design and pre-construction effort.)

1.2 Design Builder Responsibility

- a. Develop the design, construction documents and schedule to work with the operators of the facility to provide a complete GMP to include all associated exhibits design/construction scopes, preliminary pricing, and qualifications addressing this project scope.
- b. Provide for one GMP to most efficiently coordinate lead-times, maximize downtime efficiencies, and generally phase work in least disruptive sequence to Solid Waste operations that remain active during construction.

1.3 Basis of Design

a. End-user Replacement Plan Introduction: This project provides for the replacement of the main 69kV transformer at the McKay Bay WTE Facility. This includes necessary parts/procurement, contractors, and unexpected discovery work. This includes new style and controls (Note - very long lead time on procurement). Additional Information: The existing main transformer is over 35 years old and there is no on-site spare. Failure would result in a complete facility shutdown. Timing will be required to coincide with a facility cold iron outage. Lead time is estimated at 2 years to design and manufacture a completely new transformer.

*NOTE: The Main Transformer Replacement-Plan is to include a cost and timeline proposal for main transformer replacement - the following Additional Information is for work to be completed currently:

- b. **Main-Transformer Auxiliary-Equipment: Repair/replace with comparable or better:**
 1. High voltage switch gear with breakers
 2. All high voltage feeders and breakers on turbine island MCC
 3. All metering relays, transformers, and protective devices on each side of the main transformer

1.4 Existing Conditions

Design build services shall include but not be limited to survey and verification of all existing conditions including environmental compliance, utility coordination, regulatory permitting, and ultimate construction of all site amenities necessary to provide the needed upgrades, repairs, and/or replacements in equipment, buildings, and site infrastructure.

B. McKay Bay Scalper Building Repairs (Project)**1.1 Preliminary Budget**

\$300,000 (project scope and total budget to be determined as part of the design and pre-construction effort).

1.2 Design Builder Responsibility

- a. Develop the design, construction documents and schedule to work with the operators of the facility to provide a complete GMP to include all associated exhibits design/construction scopes, preliminary pricing, and qualifications addressing this project scope.
- b. Provide for one GMP to most efficiently coordinate lead-times, maximize downtime efficiencies, and generally phase work in least disruptive sequence to Solid Waste operations that remain active during construction.

1.3 Basis of Design

a. End-user Introduction: This project provides for the refurbishment of the scalper building and equipment at the McKay Bay WTE Facility. This includes necessary parts/procurement, contractors, and unexpected discovery work. This project includes additional pre-engineering for updated Fly Ash Conditioner, replacing feed hoppers, piping, and controls, and other construction access.

Additional Information: Properly operating pug mills are essential to limit ash dusting, which is an environmental and personnel/safety hazard. Completion of a new fly ash conditioner design should lower personnel cleaning requirements in this area

b. Repair/replace with comparable or better:

1. Fly Ash Conditioner: (End-user Comments) Before we do any work on the scalper building structure, we need to replace our ash mixers...DustMASTER has a proprietary mixing system ideal for WTE fly ash. This system is in use at several other WTE facilities in Florida with very beneficial results. The current system and style of design of the mixers has been causing significant operations issues and potential environmental issues. The DustMaster proprietary system reduces the airborne ash escaping the mixing system. When the ash escapes, it accumulates on other surrounding equipment and the interior of the building and is highly corrosive. Significant amounts of escaped ash could be hazardous to employees or environment. Reducing the ash escaping the mixing system will improve housekeeping in the scalper building and scalper building and equipment longevity. No other mixing system provides this specific technology and proven performance and reliability.
2. Upgrade/Repair Feed Hoppers and Piping, Controls
3. Decking and structural steel replacement where needed
4. Replace all piping, hangers and electrical circuits.
5. Upgrade all electrical boxes to NEMA 4 enclosures
6. Sandblasting and painting - remove all paint currently on steel and re-paint.

1.4 Existing Conditions

Design build services shall include but not be limited to survey and verification of all existing conditions including environmental compliance, utility coordination, regulatory permitting, and ultimate construction of all site amenities necessary to provide the needed upgrades, repairs, and/or replacements in equipment, buildings, and site infrastructure.

C. McKay Bay Ash Floors and Bunker Repairs (Project)**1.1 Preliminary Budget**

\$400,000 (project total budget to be determined as part of the design and pre-construction effort).

1.2 Design Builder Responsibility

- a. Develop the design, construction documents and schedule to work with the operators of the facility to provide a complete GMP to include all associated exhibits design/construction scopes, preliminary pricing, and qualifications addressing this project scope.
- b. Provide for one GMP to most efficiently coordinate lead-times, maximize downtime efficiencies, and generally phase work in least disruptive sequence to Solid Waste operations that remain active during construction.

1.3 Basis of Design

a. End-user Introduction: This project provides for repairs to the ash building concrete floors, bunkers, walls, and sacrificial wear surfaces at the McKay Bay WTE Facility. This includes rebar replacement, wear rail replacement, sacrificial concrete replacement, bunker and building wall repairs and protective plating, and all other necessary concrete testing and supplies.

Additional Information: Current ash building concrete floors and walls are showing damage and wear and require repairs and replacements. Repairs will cause considerable downtime and need to be coincided with a turbine or cold iron outage to minimize impact to facility operations.

b. Repair/replace with comparable or better:

1. Improve U-drain system in the ash building for collecting and trapping ash.
2. Modify ash building wall/wastewater containment for easier access from inside the ash building

c. Exhibits:

1. TBA

1.4 Existing Conditions

Design build services shall include but not be limited to survey and verification of all existing conditions including environmental compliance, utility coordination, regulatory permitting, and ultimate construction of all site amenities necessary to provide the needed upgrades, repairs, and/or replacements in equipment, buildings, and site infrastructure.

D. McKay Bay Pump and Equipment Improvements (Project)**1.1 Preliminary Budget**

\$563,000 (project total budget to be determined as part of the design and pre-construction effort).

1.2 Design Builder Responsibility

- a. Develop the design, construction documents and schedule to work with the operators of the facility to provide a complete GMP to include all associated exhibits design/construction scopes, preliminary pricing, and qualifications addressing this project scope.
- b. Provide for one GMP to most efficiently coordinate lead-times, maximize downtime efficiencies, and generally phase work in least disruptive sequence to Solid Waste operations that remain active during construction.

1.3 Basis of Design

a. End-user Introduction: This project provides for refurbishment of various pumps and equipment around the McKay Bay WTE Facility. This includes necessary parts/procurement, contractors, and unexpected discovery work. This includes four boiler ram feeders table rebuilds, fabric filter double dump valve replacements, circulating water pump replacement, sump pump replacements, carbon and lime dust collector replacements, turbine-area pump replacements, and other spare parts, misc. tools, and equipment.

Additional Information: There are many aging small pumps around the facility that are due for replacement. In most cases replacement will be tied to a boiler or cold iron outage to minimize facility downtime.

b. Repair/replace with comparable or better:

1. Fabric filter screw conveyors. Need to upgrade or change of current system
2. Expeller replacement
3. Vibratory conveyors
4. Feed pump rebuilds and ARC valve replacements

1.4 Existing Conditions

Design build services shall include but not be limited to survey and verification of all existing conditions including environmental compliance, utility coordination, regulatory permitting, and ultimate construction of all site amenities necessary to provide the needed upgrades, repairs, and/or replacements in equipment, buildings, and site infrastructure.

E. McKay Bay Refuse Crane Replacement (Project)**1.1 Preliminary Budget**

\$3,000,000 (project total budget to be determined as part of the design and pre-construction effort).

1.2 Design Builder Responsibility

- a. Develop the design, construction documents and schedule to work with the operators of the facility to provide a complete GMP to include all associated exhibits design/construction scopes, preliminary pricing, and qualifications addressing this project scope.
- b. Provide for one GMP to most efficiently coordinate lead-times, maximize downtime efficiencies, and generally phase work in least disruptive sequence to Solid Waste operations that remain active during construction.

1.3 Basis of Design

a. End-user Introduction: This project provides for the removal and replacement of the refuse crane, bridge, rails, and trolley at the McKay Bay WTE Facility. This includes necessary parts/procurement, contractors, and unexpected discovery work. This project includes additional pre-engineering for design upgrades and new technology, controls upgrades and replacement, and other construction access.

Additional Information: The facility cranes have had significant recent availability issues due to their age and condition. Upgrades are necessary to the controllers and festoons. Timing should be coordinated with the T/G outage or a facility cold iron outage to minimize downtime disruptions.

...this project is going to have to be done in stages and we should be able to do some of these items online without a major cold iron. But I do feel that some of these replacements will have to be done offline.

b. Repair/replace with comparable or better:

1. Access and work platforms outside the runway rails
2. Safety tie off devices and horizontal lifelines
3. Rail stops
4. Rail
5. Festoon Cables (bridge side / trolley side)
6. Trolleys
7. Variable Frequency Drive
8. Upgrade Controls

1.4 Existing Conditions

Design build services shall include but not be limited to survey and verification of all existing conditions including environmental compliance, utility coordination, regulatory permitting, and ultimate construction of all site amenities necessary to provide the needed upgrades, repairs, and/or replacements in equipment, buildings, and site infrastructure.

EXHIBIT A

RFQ: 21-C-00015

McKay Bay Waste-to-Energy (WTE) Facility Upgrades: Design-Build, Design Criteria Package

F. McKay Bay Turbine Overhaul (Project)

1.1 Preliminary Budget

\$3,600,000 (project total budget to be determined as part of the design and pre-construction effort).

1.2 Design Builder Responsibility

- a. Develop the design, construction documents and schedule to work with the operators of the facility to provide a complete GMP to include all associated exhibits design/construction scopes, preliminary pricing, and qualifications addressing this project scope.
- b. Provide for one GMP to most efficiently coordinate lead-times, maximize downtime efficiencies, and generally phase work in least disruptive sequence to Solid Waste operations that remain active during construction.

1.3 Basis of Design

a. End-user Introduction: This project provides for the Turbine/Generator overhaul and rebuild at the McKay Bay WTE Facility. This includes necessary parts/procurement, contractors, and unexpected discovery work for the normal 5-7 year T/G overhaul schedule. This project includes additional efforts for starter and rotor generator rewinds, turbine blade replacements or rebuilds, T/G controller and lube oil replacement and upgrades, and other necessary valve and steam line refurbishment.

Additional Information: McKay Bay WTE Facility's T/G is over 35 years old and due for a substantial overhaul. The overhaul will cause significant downtime and is planned to coincide with other major projects to minimize disruption. Timing is a key constraint. During the outage, pieces of the turbine and generator will be required to be shipped off site for overhaul, as these are precision machines and all work cannot be done on site.

Additional spare parts and some tools are required to be purchased for use during this overhaul. As this is an extremely technical project with multiple interlacing scopes, the plan is to sole-source to the current experienced vendor to complete the work and manage scope creep

b. Repair/replace with comparable or better:

1. Rebuild and replace all control valves
2. Strip insulation on TG island, inspect and replace piping as necessary and reinsulate
3. Replace/recondition lube oil pumps
4. Upgrade or replace lube oil conditioner
5. Replace all steam traps
6. Recondition all NRVs, actuators, valves, solenoids, etc

EXHIBIT A

RFQ: 21-C-00015

McKay Bay Waste-to-Energy (WTE) Facility Upgrades: Design-Build, Design Criteria Package

G. McKay Bay Cooling Tower and Condensate Replacement (Project)

1.1 Preliminary Budget

\$4,200,000 (project total budget to be determined as part of the design and pre-construction effort).

1.2 Design Builder Responsibility

- a. Develop the design, construction documents and schedule to work with the operators of the facility to provide a complete GMP to include all associated exhibits design/construction scopes, preliminary pricing, and qualifications addressing this project scope.
- b. Provide for one GMP to most efficiently coordinate lead-times, maximize downtime efficiencies, and generally phase work in least disruptive sequence to Solid Waste operations that remain active during construction.

1.3 Basis of Design

a. End-user Introduction: This project provides for replacement and repairs to the cooling tower, circulating water, and condensate systems at the McKay Bay WTE Facility. This includes necessary parts/procurement, contractors, and unexpected discovery work. This includes a new rebuilt cooling tower with updated design, retube or upgrade the condensate system and pump to better support the plant demands.

*Also -replace condensers, rebuild circulating water and condensate pumps, line circulating water piping, and other updates.

Additional Information: The existing cooling tower is over 35 years old and a wood tower. The existing circulating water and condensate systems are the same age and have shown significant wear and issues. Timing of this work will result in significant facility downtime and must coincide with the major T/G outage to minimize facility disruption. Cooling tower and new circulating water piping will require detailed engineering, but due to long lead times, procurement of major pieces will need to occur separately from CCNA processes.

b. Cooling Water System: Replacement of the cooling water system. This is the system that supplies water to and from the cooling tower. It should be all one bi project. The current system is underground and is 35 years old. We would like to abandon the current underground piping and install new above ground piping for the cooling water system.

*Also - replace the circulating lines rather than lining them.

1.4 Existing Conditions

Design build services shall include but not be limited to survey and verification of all existing conditions including environmental compliance, utility coordination, regulatory permitting, and ultimate construction of all site amenities necessary to provide the needed upgrades, repairs, and/or replacements in equipment, buildings, and site infrastructure.

EXHIBIT A

RFQ: 21-C-00015

McKay Bay Waste-to-Energy (WTE) Facility Upgrades: Design-Build, Design Criteria Package

H. McKay Bay Stack Repairs (Project)

1.1 Preliminary Budget

\$500,000 (project total budget to be determined as part of the design and pre-construction effort).

1.2 Design Builder Responsibility

- a. Develop the design, construction documents and schedule to work with the operators of the facility to provide a complete GMP to include all associated exhibits design/construction scopes, preliminary pricing, and qualifications addressing this project scope.
- b. Provide for one GMP to most efficiently coordinate lead-times, maximize downtime efficiencies, and generally phase work in least disruptive sequence to Solid Waste operations that remain active during construction.

1.3 Basis of Design

a. End-user Introduction: This project provides for repairs to the stack and flues at the McKay Bay WTE Facility. This includes necessary parts/procurement, contractors, and unexpected discovery work. This includes new design to protect dead air space from corrosion.

Additional Information: Considerable corrosion has occurred in the past on the dead air space in the stack flues for all four boiler flues. The flues have been overlay patched to prolong structural stability but will eventually require permanent repairs. While portions could be done on a boiler basis, timing would work better when coincided with a cold iron outage.

b. Repair/replace with comparable or better:

1. Ducting and expansion joints to ID fans
2. Upgrade stack lights for ease of maintenance
3. Replace/upgrade fall protection equipment
4. Additional minor repairs to the stack, TBD.

1.4 Existing Conditions

Design build services shall include but not be limited to survey and verification of all existing conditions including environmental compliance, utility coordination, regulatory permitting, and ultimate construction of all site amenities necessary to provide the needed upgrades, repairs, and/or replacements in equipment, buildings, and site infrastructure.

EXHIBIT A

RFQ: 21-C-00015

McKay Bay Waste-to-Energy (WTE) Facility Upgrades: Design-Build, Design Criteria Package

I. McKay Bay WTE ABB DCS Upgrade (Project)

1.1 Preliminary Budget

\$350,000 (project total budget to be determined as part of the design and pre-construction effort).

1.2 Design Builder Responsibility

- a. Develop the design, construction documents and schedule to work with the operators of the facility to provide a complete GMP to include all associated exhibits design/construction scopes, preliminary pricing, and qualifications addressing this project scope.
- b. Provide for one GMP to most efficiently coordinate lead-times, maximize downtime efficiencies, and generally phase work in least disruptive sequence to Solid Waste operations that remain active during construction.

1.3 Basis of Design

1. **Exhibit I-01: ABB Incinerator, Conductor NT to S+ 3.2/2.2 Upgrade & PLC Replacement Proposal**

1.4 Existing Conditions

Design build services shall include but not be limited to survey and verification of all existing conditions including environmental compliance, utility coordination, regulatory permitting, and ultimate construction of all site amenities necessary to provide the needed upgrades, repairs, and/or replacements in equipment, buildings, and site infrastructure.

EXHIBIT A

RFQ: 21-C-00015

McKay Bay Waste-to-Energy (WTE) Facility Upgrades: Design-Build, Design Criteria Package

J. McKay Bay WTE Auxiliary Burner System Replacement (Project)

1.1 Preliminary Budget

\$750,000(project total budget to be determined as part of the design and pre-construction effort).

1.2 Design Builder Responsibility

- a. Develop the design, construction documents and schedule to work with the operators of the facility to provide a complete GMP to include all associated exhibits design/construction scopes, preliminary pricing, and qualifications addressing this project scope.
- b. Provide for one GMP to most efficiently coordinate lead-times, maximize downtime efficiencies, and generally phase work in least disruptive sequence to Solid Waste operations that remain active during construction.

1.3 Basis of Design

d. End-user Introduction: The burner replacement is a large project that will span over a 3 to a 4 year period.

1.4 Basis of Design

- a. **Exhibit J-01:** PSCE. Auxiliary Burner System Proposal

1.5 Existing Conditions

Design build services shall include but not be limited to survey and verification of all existing conditions including environmental compliance, utility coordination, regulatory permitting, and ultimate construction of all site amenities necessary to provide the needed upgrades, repairs, and/or replacements in equipment, buildings, and site infrastructure.

EXHIBIT A

RFQ: 21-C-00015

McKay Bay Waste-to-Energy (WTE) Facility Upgrades: Design-Build, Design Criteria Package

SUMMARY

Preliminary Estimated Project Budget Before Design Investigation

A.	McKay Bay Main Transformer Replacement	\$ 1,250,000
B.	McKay Bay Scalper Building Repairs	\$ 300,000
C.	McKay Bay Ash Floors and Bunker Repairs	\$ 400,000
D.	McKay Bay Pump and Equipment Improvements	\$ 563,000
E.	McKay Bay Refuse Crane Replacement	\$ 3,000,000
F.	McKay Bay Turbine Overhaul	\$ 3,600,000
G.	McKay Bay Cooling Tower and Condensate Replacement	\$ 4,200,000
H.	McKay Bay Stack Repairs	\$ 500,000
I.	McKay Bay General-Facility Upgrades	\$ 350,000
J.	McKay Bay Auxiliary Burner System Replacement	_____
	Total Preliminary Budget	\$14,963,000

EXHIBIT B

City of Tampa
 RFQ: 21-C-00015
 McKay Bay Waste-to-Energy (WTE) Facility Upgrades
 Tampa Florida
 Monday, August 9, 2021



Design Build Proposed Fees R2

	Description	Quantity	Unit	Unit Price	Budget Amount
<i>Design Builder</i>	Design Coordination, Estimating Services	1	LS	\$ 447,682.00	\$ 447,682
<i>Specialty Engineer</i>	Environmental Engineer	1	LS	\$66,960	\$ 66,960
	Environmental Permitting Processing (Permit Cost by Owner)	1	LS	\$15,000	\$ 15,000
	WTE Engineer Permitting Assistance	Included	Included		
<i>Architect</i>	Architectural Fees	1	LS	\$ 504,189.00	\$ 504,189
	Structural Design - Concrete/Masonry Patch & Repair	1	LS	\$ 180,000.00	\$ 180,000
	Misc. Expenses	1	Allow	\$ 5,000.00	\$ 5,000
<i>MEP</i>	Mechanical Design	1	LS	\$ 1,193,700.00	\$ 1,193,700
	Electrical & Low Voltage System	Included			
	Plumbing / Fire Systems	Included			
<i>Energy Contractor</i>	Discovery Trip for Scope Development (TeIC)	1	Allow	\$ 198,991.00	\$ 198,991
	Inspection trip (900 hrs of Scaffolding Erection) includes 3 days with 3 people to inspect	Included			
	2 Planning Trips with 2 people	Included			
	Assistance with Schedule Development for WTE Components	Included			
<i>Miscellaneous</i>	*Will be Billed by the Hour + Expenses				
	Drone Photography	1	Allow	\$ 5,000.00	\$ 5,000
	Digital Scanning and Record Document Creation in Equipment Replacement Areas Only	1	Allow	\$ 38,000.00	\$ 38,000
	Steel Cleaning for Analysis & Equipment for Steel Review	1	Allow	\$ 50,000.00	\$ 50,000
	WMBE Subcontractor Solicitation	1	Allow	\$ 15,000.00	\$ 15,000
	Subtotal			\$	2,719,522
	Contingency (Contingency Authorization by Owner Required)			\$	200,060
	Subtotal			\$	2,919,582
	Professional & General Liability Insurance			\$	33,760
	Total Design Budget			\$	2,953,342

POTENTIAL EARLY WORK FUNDING					
Item	Description	Quantity	Unit	Unit Price	Budget Amount
B-1	Budget 1 - Elevator Repair Budget (Design Cost Included Above) - See Exhibit B-1 R1	1	Allow	666384	\$ 666,384
B-2	Budget 2 - Dustmaster Equipment Installation (Design Cost Included Above. Dustmaster Equipment Supplied By The Owner) - See Exhibit B-2 R1	1	Allow	366996	\$ 366,996
Potential Early Work Budget Items B-1 & B-2 Total					\$ 1,033,380

Initial Contract Total with Potential Early Work Funding \$ 3,986,722

EXHIBIT B-1

Waste Energy Project
Elevator Removal and Install
Tampa, FL
 Monday, August 9, 2021



Program Estimate R2

System	Description	Quantity	Unit	Unit Price	Budget Amount		Comments
<i>Existing Conditions</i>	Selective Demolition	1	LS	\$ 10,000.00	\$ 10,000	Allowance	Misc. Elevator Comp.
<i>General Work Items</i>	Masonry Re-Work / Re-Tooth Doors	0	LVL	\$ -	\$ -		Not Required Per COT
	Concrete Patch & Repair	0	LS	\$ -	\$ -		Not Required Per COT
	Elevator Steel (Misc. Repairs)	1	LS	\$ 5,000.00	\$ 5,000	Allowance	Minor Repairs
	Joint Sealants	0	LS	\$ -	\$ -	Allowance	Not Required Per COT
	Finish Flooring	0	SF	\$ -	\$ -	Allowance	Not Required Per COT
	Painting	0	LVL	\$ -	\$ -	Allowance	Not Required Per COT
	Elevator Cab, Equipment	5	LVL	\$ 70,000.00	\$ 350,000	Allowance	Repair Budget Est.
<i>Mechanical</i>	Fire Protection				Not Applicable		
	Plumbing Work	0	LS	\$ 10,000.00	\$ -	Allowance	Sump Pump Work
	HVAC				Not Applicable		
<i>Electrical & Systems</i>	Electrical Safe Off and Demo	1	LS	\$ 2,000.00	\$ 2,000	Allowance	
	Electrical Power & Distribution	1	LS	\$ 7,000.00	\$ 7,000	Allowance	Existing Circuit
	Fire Alarm	1	LS	\$ 4,000.00	\$ 4,000	Allowance	Device Relocation
	Low Voltage Systems	1	LS	\$ 1,000.00	\$ 1,000	Allowance	Phone Work.
<i>General Construction</i>	Permit	1	LS	\$ 7,330.23	\$ 7,330	Allowance	
	Staff Costs - General Conditions	3	MO	\$ 50,000.00	\$ 150,000	Allowance	
	General Requirements	3	MO	\$ 1,500.00	\$ 4,500	Allowance	
	Subtotal				\$ 540,830		
10.0%	Contingency				\$ 54,083		
	Subtotal				\$ 594,913		
	Builders Risk Insurance				\$ 3,998		
	General Liability Insurance				\$ 5,664		
	Subcontractor Default Insurance				\$ 5,117		
	Bond				\$ 7,330		
	Subtotal				\$ 617,023		
8.00%	Fee				\$ 49,362		
Total Budget Item B-1					\$ 666,384		

EXHIBIT B-2

Waste Energy Project
DustMASTER Work During Design Phase
Tampa, FL
 Monday, August 9, 2021



Program Estimate R2

System	Description	Quantity	Unit	Unit Price	Budget Amount	Comments
<i>Existing Conditions</i>	Selective Demolition				W/ Trades Below	
<i>General Work Items</i>	Concrete / Masonry Restoration	1	LS	\$ 5,000.00	\$ 5,000	Allowance
	Steel Supports / Framing	1	LS	\$ 5,000.00	\$ 5,000	Allowance
	Equipment Disposal	1	LS	\$ 15,000.00	\$ 15,000	Allowance
	DustMASTER Equipment Installation (Equipment by the Owner)	1	LS	\$ 131,030.00	\$ 131,030	TelC Budget
<i>Mechanical</i>	Fire Protection				Not Applicable	
	Plumbing Work				Not Applicable	
	HVAC				Not Applicable	
<i>Electrical & Systems</i>	Electrical Safe Off and Demo				W/ Trades Equip	
	Electrical Power & Distribution	1	LS	\$ 20,000.00	\$ 20,000	Allowance
	Fire Alarm Low Voltage Systems	1	LS	\$ 15,000.00	\$ 15,000	Allowance
<i>General Construction</i>	Permit	1	LS	\$ 4,036.95	\$ 4,037	Allowance
	Staff Costs - General Conditions	2	MO	\$ 50,000.00	\$ 100,000	Allowance
	General Requirements	2	MO	\$ 1,500.00	\$ 3,000	Allowance
	Subtotal				\$ 298,067	
10.0%	Contingency				\$ 29,807	
	Subtotal				\$ 327,874	
	Builders Risk Insurance				\$ 2,202	
	General Liability Insurance				\$ 3,119	
	Subcontractor Default Insurance				\$ 2,579	
	Bond				\$ 4,037	
	Subtotal				\$ 339,811	
8.00%	Fee				\$ 27,185	
Total Budget Item B-2					\$ 366,996	

CITY OF TAMPA INSURANCE REQUIREMENTS

Prior to commencing any work or services or taking occupancy under that certain written agreement or award (for purposes of this document, Agreement) between the City of Tampa, Florida (City) and Firm/Awardee/Contractor/Consultant/Lessee/non-City party, etc. (for purposes of this document, Firm) to which this document is attached and incorporated as an Exhibit or otherwise, and continuing during the term of said Agreement (or longer if the Agreement and/or this document so requires), Firm shall provide, pay for, and maintain insurance against claims for injuries to persons (including death) or damages to property which may arise from or in connection with the performance of the Agreement (including without limitation occupancy and/or use of certain property/premises) by Firm, its agents, representatives, employees, suppliers, subcontractors, or subcontractors (which term includes sub-consultants, as applicable) of any tier subject to the terms and conditions of this document. Firm's maintenance of insurance coverage as required herein is a material element of the Agreement and the failure to maintain or renew coverage or provide evidence of same (defined to include without limitation Firm's affirmative duty to provide from time to time upon City's request certificates of insurance, complete and certified copies of Firm's insurance policies, forms, and endorsements, information on the amount of claims payments or reserves chargeable to the aggregate amount of coverage(s) whether during the term of the Agreement or after as may be requested by the City in response to an issue or potential claim arising out of or related to the Agreement to which Firm's insurance obligations hereunder may apply or possibly help mitigate) may be treated as a material breach of the Agreement. Should at any time Firm not maintain the insurance coverages required, City at its sole option (but without any obligation or waiver of its rights) may (i) terminate the Agreement or (ii) purchase such coverages as City deems necessary to protect the itself (charging firm for same) and at City's option suspending Firm's performance until such coverage is in place. If Firm does not reimburse City for such costs within 10 days after demand, in addition to any other rights, City shall also have the right to offset such costs from amounts due Firm under any agreement with the City. All provisions intended to survive or to be performed subsequent to the expiration or termination of the Agreement shall survive, including without limitation Firm's obligation to maintain or renew coverage, provide evidence of coverage and certified copies of policies, etc. upon City's request and/or in response to a potential claim, litigation, etc.

The City reserves the right from time to time to modify or waive any or all of these insurance requirements (or to reject policies) based on the specific nature of goods/services to be provided, nature of the risk, prior experience, insurer, coverage, financial condition, failure to operate legally, or other special circumstances. If Firm maintains broader coverage and/or higher limits than the minimums shown herein, the City requires and shall be entitled to such broader coverage and/or higher limits maintained by Firm. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City. No representation is made that the minimum insurance requirements are sufficient to cover Firm's interests, liabilities, or obligations. Required insurance shall not limit Firm's liability.

Firm acknowledges and agrees Firm and not the City is the party in the best position to determine applicability (e.g. "IF APPLICABLE"), confirm, and/or verify its insurance coverage. Acceptance by the City, or by any of its employees, representatives, agents, etc. of certificates or other documentation of insurance or policies pursuant to the terms of this document and the Agreement evidencing insurance coverages and limits does not constitute approval or agreement that the insurance requirements have been met or that coverages or policies are in compliance. Furthermore, receipt, acceptance, and/or approval of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its employees, representatives, agents, etc., which indicate less coverage than required does not constitute a waiver of Firm's obligation to fulfill these insurance requirements.

MINIMUM SCOPE AND LIMIT OF INSURANCE¹

A. Commercial General Liability (CGL) Insurance on the most current Insurance Services Office (ISO) Form CG 00 01 or its equivalent on an "occurrence" basis (Modified Occurrence or Claims Made forms are not acceptable without prior written consent of the City). Coverage must be provided to cover liability contemplated by the Agreement including without limitation premises and operations, independent contractors, contractual liability, products and completed operations, property damage, bodily, personal and advertising injury, contractual liability, explosion, collapse, underground coverages, personal injury liability, death, employees-as-insureds. Products and completed operations liability coverage maintained for at least 3 years after completion of work. Limits shall not be less than \$1M per occurrence and \$2M general aggregate for Agreements valued at \$2M or less; if valued over \$2M, a general aggregate limit that equals or exceeds the Agreement's value. If a general aggregate limit applies, it shall apply separately to the project/location (ISO CG 2S 03 or 2S 04 or equivalent). (ALWAYS APPLICABLE)

B. Automobile Liability (AL) Insurance in accordance with Florida law, as to the ownership, maintenance, and use of all owned, non-owned, leased, or hired vehicles. AL insurance shall not be less than: (a) \$500,000 combined single limit each occurrence, bodily injury and property damage for Agreements valued at \$100,000 or less or (b) \$1M combined single limit each occurrence, bodily injury and property damage for Agreements valued over \$100,000. If transportation of hazardous material involved, the MCS-90 endorsement (or equivalent) (ALWAYS APPLICABLE)

C. Worker's Compensation (WC) & Employer's Liability Insurance for all employees engaged under the Agreement. Worker's Compensation as required by Florida law. Employer's Liability with minimum limits of (a) \$500,000 bodily injury by accident and each accident, bodily injury by disease policy limit, and bodily injury by disease each employee for Agreements valued at \$100,000 and under or (b) \$1M bodily injury by accident and each accident, bodily injury by disease policy limit, and bodily injury by disease each for all other Agreements. (ALWAYS APPLICABLE)

D. Excess(Umbrella) Liability Insurance for Agreements valued at \$2M or more, at least \$4M per occurrence in excess of underlying limits and no more restrictive than underlying coverage for all work performed by Firm. May also compensate for a deficiency in CGL, AL, or WC. (ALWAYS APPLICABLE)

E. Builder's Risk Insurance for property loss exposure associated with construction/renovation/additions to buildings or structures, including materials or fixtures to be incorporated. Must be "All Risk" form with limits of no less than the project's completed value, have no coinsurance penalties, eliminate the "occupancy clause", cover Firm (together with its contractors, subcontractors of every tier, and suppliers), and name City as a Loss Payee. (IF APPLICABLE)

F. Installation Floater coverage for property (usually highly valued equipment or materials such as compressors, generators, etc.) during its installation. Coverage must be "All Risk" including installation and transit for no less than 100% of the installed replacement cost value. (IF APPLICABLE)

G. Architects & Engineers Liability/ Professional Liability (E&O)/ Contractors Professional Liability (CPL)/ Medical Malpractice Insurance where Agreement involves Florida-regulated professional services (e.g. architect, engineer, design-builder, CM, accountant, appraiser, investment banker, medical professional) at any tier, whether employed or independent, vicarious design liability exposure (e.g. construction means & methods, design supervision), value engineering, constructability assessments/reviews, BIM process, and/or performance specifications. Limits of at least \$1M per occurrence and \$2M aggregate, deletion of design/ build liability exclusions, as applicable, and maintained for at least 3 years after completion of work/services and City's acceptance of same. (IF APPLICABLE)

H. Railroad Protective Liability (RPL) Insurance for construction within 50ft of operated railroad track(s) or where affects any railroad bridge, trestle, tunnel, track(s) roadbed, or over/under pass. Subject to involved railroad's approval prior to commencement of work. (IF APPLICABLE)

I. Pollution and/or Asbestos Legal Liability Insurance where Agreement involves asbestos and/or environmental hazards/contamination risks (defined broadly, e.g. lead, mold, bacteria, fuel storage, underground work, cleanup (owned or non-owned sites), pollutant generation/transportation, marine/natural resource damage, contamination claim, restitution, business interruption, mold, fungus, lead-based paint, 3rd party claims/removal, etc.), with limits of at least \$1M per occurrence and \$2M aggregate, maintained for at least 3 years after Agreement completion. (IF APPLICABLE)

J. Cyber Liability Insurance where Agreement involves portals allowing access to obtain, use, or store data, managed dedicated servers, cloud hosting services, software/hardware, programming, and/or other IT services

¹M indicates million(s); for example \$1M is \$1,000,000

and products are involved. Limits of not less than \$2M per occurrence and \$2M aggregate. Coverage sufficiently broad to respond to duties and obligations undertaken by Firm, and shall include, but not be limited to, claims involving infringement of intellectual property/copyright, trademark, trade dress, invasion of privacy violations, damage to or destruction of electronic information, information theft, release of confidential and/or private information, alteration of electronic information, extortion, virus transmission, and network security. Coverage, as applicable and with sufficient limits to respond, for breach response costs, regulatory fines and penalties, credit monitoring expenses. (IF APPLICABLE)

K. Drone/UAV Liability Insurance where Agreements involves unmanned aerial vehicles/drones. Coverage to include products and completed operations, property damage, bodily injury with limits no less than \$1M per occurrence, and \$2M aggregate. may be provided by CGL endorsement subject to City's prior written approval. (IF APPLICABLE)

L. Longshore & Harbor Workers' Compensation Act/Jones Act for work being conducted near, above, or on "navigable waters" for not less than the above Employer's Liability Insurance limit. (IF APPLICABLE)

M. Garagekeeper/Hangerkeeper/Marina Operator Legal Liability Insurance and/or Hull/P&I Insurance where parking lot, valet, dealership, garage services, towing, etc. and/or operation of a hangar, marina, or air

plane/ship repairer, providing safe berth, air/watercraft storage/docking (on land/ in water), fueling, tours, charters, ferries, dredges, tugs, mooring, towing, boat/aircraft equipment/repair/alteration/maintenance, etc.; coverage against liability for damage to vehicles air/watercraft, their machinery in Firm's care, custody, or control both private & commercial. Limits at least equal to greater of \$1M, value of max number of vehicles that may be in Firm's custody, or of most costly object in Firm's custody. (IF APPLICABLE)

N. Property Insurance and Interruption of Business (IOB) Insurance where premises, building, structure, or improved real property is leased, licensed, or otherwise occupied by Firm. Property Insurance against all risks of loss to any occupant/tenant improvements at full replacement cost with no coinsurance penalty, including fire, water, leak damage, and flood, as applicable, vandalism and malicious mischief/endorsements. IOB by which minimum monthly rent will be paid to City for up to 1 year if premises are destroyed, rendered inaccessible or untenable, including disruption of utilities, water, or telecommunications. (IF APPLICABLE)

(i). Liquor Liability/Host Liquor Liability where Firm directly or indirectly provides alcoholic beverages, limits of at least \$1M per occurrence and \$1M aggregate. (IF APPLICABLE)

P. Educators Legal Liability Insurance where day care, after school program, recreational activities, etc. limits per G above. (IF APPLICABLE)

ADDITIONAL REQUIREMENTS

ACCEPTABILITY OF INSURERS - Insurance is to be placed with insurers admitted in the State of Florida and who have a current A.M. Best rating of no less than A-:VII or, if not rated by A.M. Best, as otherwise approved by the City in advance and in writing.

ADDITIONAL INSURED - City, its elected officials, departments, officers, officials, employees, and volunteers together with, as applicable, any associated lender of the City shall be covered as additional insureds on all liability coverage (e.g. CGL, AL, and Excess (Umbrella) Liability) as to liability arising out of work or operations performed by or on behalf of Firm including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of Firm. Coverage can be provided in the form of an endorsement to Firm's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 10 20, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 if later revisions used).

CANCELLATION/NON-RENEWAL - Each insurance policy shall provide that at least 30 days written notice must be given to City of any cancellation, intent to non-renew, or material reduction in coverage (except aggregate liability limits) and at least 10 days' notice for non-payment of premium. Firm shall also have an independent duty to notify City in like manner, within 5 business days of Firm's receipt from its insurer of any notices of same. If any policy's aggregate limit is reduced, Firm shall directly take steps to have it reinstated. Notice and proof of renewal/continued coverage/certifications, etc. shall be sent to the City's notice (or Award contact) address as stated in the Agreement with a copy to the following:

[R] Contract Administration Department, 306 E Jackson St, Tampa, FL 33602 D Purchasing Department, 306 E Jackson Street, Tampa, FL 33602

D Other:

CERTIFICATE OF INSURANCE (COI) - to be provided to City by insurance carrier prior to Firm beginning any work/services or taking occupancy and, if the insurance expires prior to completion of the work or services or Agreement term (as may be extended), a renewal COI at least 30 days before expiration to the above address(es). COIs shall specifically identify the Agreement and its subject (project, lease, etc.), shall be sufficiently comprehensive to insure City (named as additional insured) and Firm and to certify that coverage extends to subcontractors' acts or omissions, and as to permit the City to determine the required coverages are in place without the responsibility of examining individual policies. **Certificate Holder must be The City of Tampa, Florida.**

CLAIMS MADE - If any liability insurance is issued on a claims made form, Firm agrees to maintain such coverage uninterrupted for at least 3 years following completion and acceptance of the work either through purchase of an extended reporting provision or purchase of successive renewals. The Retroactive Date must be shown and be a date not later than the earlier of the Agreement date or the date performance/occupancy began thereunder.

DEDUCTIBLES/ SELF-INSURED RETENTIONS (SIR) - must be disclosed to City and, if over \$500,000, approved by the City in advance and in writing, including at City's option being guaranteed, reduced, or eliminated (additionally if a SIR provides a financial guarantee guaranteeing payment of losses and related investigations, claim administration, and defense expenses). Firm shall be fully responsible for any deductible or SIR (without limiting the foregoing a policy with a SIR shall provide or be endorsed to provide that the SIR may be satisfied by either the City or named insured). In the event of loss which would have been covered but for a deductible or SIR, City may withhold from any payment due Firm, under any agreement with the City, an amount equal to same to cover such loss should full recovery not be obtained under the policy.

PERFORMANCE - All insurance policies shall be fully performable in Hillsborough County, Florida (the County), and construed in accordance with Florida law. Further, all insurance policies must expressly state that the insurance company will accept service of process in the County and that the exclusive venue for any action concerning any matter under those policies shall be in the appropriate state court of the County.

PRIMARY POLICIES - Firm's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as to the City, its elected officials, departments, officers, employees, and volunteers. Any insurance or self-insurance maintained by the City, its elected officials, departments, officers, employees, and volunteers shall be excess of the Firm's insurance and shall not contribute with it.

SUBCONTRACTORS/INDEPENDENT ASSOCIATES/CONSULTANTS/SUBTENANTS/SUBLICENSEE - Firm shall require and verify that all such entities maintain insurance meeting all requirements stated herein with the City as an additional insured by endorsement (ISO FORM CG 20 38, or broader) or otherwise include such entities within Firm's insurance policies. Upon City's request, Firm shall furnish complete and certified copies of copies of such entities' insurance policies, forms, and endorsements.

SUBCONTRACTOR DEFAULT INSURANCE CONTROLLED INSURANCE PROGRAM WRAP-UP - Use requires express prior written consent of City Risk Manager

UNAVAILABILITY - To the fullest extent permitted by law, if Firm is out of business or otherwise unavailable at the time a claim is presented to City, Firm hereby assigns to the City all of its right, title and interest (but not any liabilities or obligations) under any applicable policies of insurance.

WAIVER OF SUBROGATION - With regard to any policy of insurance that would pay third party losses, Firm hereby grants City a waiver of any right to subrogation which any insurer of Firm may acquire against the City by virtue of the payment of any loss under such insurance. Firm agrees to obtain any endorsement that may be necessary to affect such waiver, but this provision shall apply to such policies regardless.

WAIVER/RELEASE AGREEMENT - Where Firm has a defined group of persons who might be exposed to harm (e.g. participants in an athletic event/program, volunteers) any waiver or release agreement used by Firm whereby such persons (and their parent/guardian as applicable) discharge Firm from claims and liabilities, shall include the City, its elected officials, departments, officers, officials, employees, and volunteers to the same extent as Firm.

EXHIBIT D



Failure to Complete, Sign and Submit Both Forms 10 & 20 SHALL render the Bid or Proposal Non-Responsive

**Page 1 of 4 – DMI Solicited/Utilized Schedules
City of Tampa – Schedule of All Solicited Sub-(Contractors/Consultants/Suppliers)
(FORM MBD-10)**

Contract No.: 21-C-00015 Contract Name: McKay Bay Waste-to-Energy (WTE) Facility Upgrades Design-Build
 Company Name: Charles Perry Partners, Inc. Address: 10150 Highland Manor Drive, Suite 135 Tampa, FL 33610
 Federal ID: 45-1601307 Phone: (813) 979-9577 Fax: (813) 979-9578 Email: jason.morgan@cpipi.com

Check applicable box(es). Detailed Instructions for completing this form are on page 2 of 4.

No Firms were contacted or solicited for this contract.

No Firms were contacted because:

See attached list of additional Firms solicited and all supplemental information (List must comply to this form)

Note: Form MBD-10 must list ALL subcontractors solicited including Non-minority/small businesses

NIGP Code Categories: Buildings = 909, General = 912, Heavy = 913, Trades = 914, Architects = 906, Engineers & Surveyors = 925, Supplier = 912-77

S = SLBE W=WMBE O = Neither	Company Name Address Phone, Fax, Email	Type of Ownership (F=Female M=Male) BF BM = African Am. HF HM = Hispanic AF AM = Asian Am. NF NM = Native Am. CF CM = Caucasian	Trade or Services NIGP Code (listed above)	Contact Method L=Letter F=Fax E=Email P=Phone	Quote or Response Received Y/N
W / S	Howard & Associates Architects, P.A. 3300 Henderson Blvd # 202, Tampa, FL 33609 (813) 872-8881, harry.howard@haa-architects.com	BM	906	P	Y - on D-B team
W	VoltAir Consulting Engineers 6005 Benjamin Rd Suite A, Tampa, FL 33634 (813) 867-4899, jdavis@voltair.com	BM	925	P	Y - on D-B team
W / S	Master Consulting Engineers, Inc. 5523 West Cypress Street, Suite 200 Tampa, FL 33607 (813) 287-3600, jim.mehlretter@mcengineers.com	HF	925	P	Y - on D-B team
O	Ducere Construction Services 8200 NW 15th Pl, Suite C Gainesville, FL (404) 565-0631, markesia@ducereconstruction.com	BF	912	P	Y - on D-B team

It is hereby certified that the information provided is an accurate and true account of contacts and solicitations for sub-contracting opportunities on this contract.

Signed: _____ Name/Title: Jason Morgan, Principal / Executive VP Date: 07/12/21

**Failure to Complete, Sign and Submit Both Forms 10 & 20 SHALL render the Bid or Proposal Non-Responsive
Forms must be included with Bid / Proposal**

EXHIBIT D



Failure to Complete, Sign and Submit Both Forms 10 & 20 SHALL render the Bid or Proposal Non-Responsive

**Page 3 of 4 – DMI Solicited/Utilized Schedules
City of Tampa – Schedule of All To-Be-Utilized Sub-(Contractors/Consultants/Suppliers)
(FORM MBD-20)**

Contract No.: 21-C-00015 Contract Name: McKay Bay Waste-to-Energy (WTE) Facility Upgrades Design-Build
 Company Name: Charles Perry Partners, Inc. Address: 10150 Highland Manor Drive, Suite 135 Tampa, FL 33610
 Federal ID: 45-1601307 Phone: (813) 979-9577 Fax: (813) 979-9578 Email: jason.morgan@cpqi.com

- Check applicable box(es). Detailed Instructions for completing this form are on page 4 of 4.
 See attached list of additional Firms Utilized and all supplemental information (List must comply to this form)
 Note: Form MBD-20 must list ALL subcontractors To-Be-Utilized including Non-minority/small businesses
 No Subcontracting/consulting (of any kind) will be performed on this contract.
 No Firms are listed to be utilized because: _____

NIGP Code General Categories: Buildings = 909, General = 912, Heavy = 913, Trades = 914, Architects = 906, Engineers & Surveyors = 925, Supplier = 912-77

Enter "S" for firms Certified as Small Local Business Enterprises, "W" for firms Certified as Women/Minority Business Enterprise, "O" for Other Non-Certified

S = SLBE W=WMBE O =Neither	Company Name Address Phone, Fax, Email	Type of Ownership (F=Female M=Male) BF BM = African Am. HF HM = Hispanic Am. AF AM = Asian Am. NF NM = Native Am. CF CM = Caucasian	Trade, Services, or Materials NIGP Code Listed above	\$ Amount of Quote, Letter of Intent (LOI) if available	Percent of Scope or Contract %
W/S	Howard & Associates Architects, P.A. 3300 Henderson Blvd # 202, Tampa, FL 33609 (813) 872-8881, harry.howard@haa-architects.com	BM	906	\$504,189	27% (design)
W	VoltAir Consulting Engineers 6005 Benjamin Rd Suite A, Tampa, FL 33634 (813) 867-4899, jdavis@voltair.com	BM	925	\$1,193,700	64% (design)
W/S	Master Consulting Engineers, Inc. 5523 West Cypress Street, Ste 200 Tampa, FL 33607 (813) 287-3600, jim.mehltretter@mcengineers.com	HF	925	\$180,000	10% (design)
O	Ducere Construction Services 8200 NW 15th Pl, Suite C Gainesville, FL (404) 565-0631, markesia@ducereconstruction.com	BF	912	\$15,000	0% (Sub Dev.)

Total ALL Subcontract / Supplier Utilization \$ 1,877,889 (design fees - subcontractor utilization will be determined upon GMP)
 Total SLBE Utilization \$ 684,189 (design fees - subcontractor utilization will be determined upon GMP)
 Total WMBE Utilization \$ 1,887,889 (design fees - subcontractor utilization will be determined upon GMP)
 Percent SLBE Utilization of Total Bid/Proposal Amt. 36 % Percent WMBE Utilization of Total Bid/Proposal Amt. 64 %

It is hereby certified that the following information is a true and accurate account of utilization for sub-contracting opportunities on this Contract.

Signed: _____ Name/Title: Jason Morgan, Principal / Executive VP Date: 07/12/21
Failure to Complete, Sign and Submit Both Forms 10 & 20 SHALL render the Bid or Proposal Non-Responsive
Forms must be included with Bid / Proposal



City of Tampa
Jane Castor, Mayor

Brad L. Baird, P.E.
Deputy Administrator of Infrastructure
107 North Franklin Street
Tampa, Florida 33602

Email: Brad.Baird@tampagov.net
Office (813) 274-7883

Date: August 17, 2021

To: The Honorable Orlando Gudes, Chairman, and Members of Tampa City Council

Through: John Bennett, Chief of Staff *JB*

Through: Jean W. Duncan, P.E., Administrator, Infrastructure and Mobility *Jean W. Duncan*

From: Brad L. Baird, P.E., Deputy Administrator of Infrastructure *Brad L. Baird*

Subject: City Council Session on August 26, 2021, Under Staff Reports and Unfinished Business, SIRE Item ID #69698: A resolution approving an agreement for professional services in the amount of \$3,986,722 between the City of Tampa and Charles Perry Partners, Inc., in connection with Contract 21-C-00015; Solid Waste Department McKay Bay Waste-To-Energy Facility Upgrades Design-Build; authorizing the Mayor of the City of Tampa to execute same; providing an effective date.

This memorandum is to provide the following information regarding the above SIRE item.

- 1. Contract Title:** 21-C-00015; Solid Waste Department McKay Bay Waste-To-Energy Facility Upgrades Design-Build
- 2. Vendor:** Charles Perry Partners, Inc.
- 3. Purpose:** This project will provide for the coordination of multiple upgrades and repairs of the McKay Bay Waste-To-Energy Facility. This work shall include but not limited to: Upgrading and replacement of the main transformer equipment, scalper building repairs, ash floor and bunker repairs, pump and equipment improvements, refuse crane replacement, turbine overhaul, cooling towers and condensate line replacements, stack repairs, auxiliary burner system replacement along with control upgrades. This Initial Services Agreement provides for the design, development of construction documents, and pre-construction services necessary to develop a Guaranteed Maximum Price (GMP) for the construction of the McKay Bay Waste-To-Energy (WTE) Facility Upgrades.
- 4. Equal Business Opportunity Statement:** EBO subconsultant participation on Phase I – Design Services totals 47.5% of which 43% = BBE (Black Business Enterprise) and 4.5% HBE (Hispanic Business Enterprise)

5. Fiscal Impact: This will provide \$3,986,722 for the McKay Bay Waste-To-Energy Facility Upgrades Design-Build Project for use by the Solid Waste & Environmental Program Management Department within the Solid Waste Capital/Construction Fund.

Thank you.

cc: Dennis R. Rogero, Jr., Chief Financial Officer, Revenue and Finance Department
Michael Perry, Budget Officer, Revenue and Finance Department
Gina K. Grimes, City Attorney, Legal Department
Jan McLean, Senior Assistant City Attorney II, Legal Department
Sal Ruggiero, Deputy Administrator of Infrastructure Services
Mark Wilfalk., Director, Solid Waste & Environmental Program Department
Chuck Conklin, Director, McKay Bay Waste-to-Energy Facility
Michael W. Chucran, P.E., Director, Contract Administration Department
Gregory K. Spearman, Director, Purchasing Department
Gregory Hart, Manager, Equal Business Opportunity Division
Martin Shelby, City Council Attorney
Shirley Foxx-Knowles, City Clerk