

PEACE RIVER MANASOTA REGIONAL WATER SUPPLY AUTHORITY

Hon. Mike Moran
Sarasota County

Hon. Elton A. Langford
DeSoto County

Hon. Bill Truex
Charlotte County

Hon. George Kruse
Manatee County

Mike Coates, P.G., Executive Director

Request for Statements of Qualifications – Professional Services for the Peace River Brackish Groundwater Facility Project Addendum 1 March 8, 2023

Responses to Question:

1. Question: After review of the Conflicts of Interest section in the Sample Agreement, the Consultant would like to clarify that it currently does work for the Authority as a subconsultant on other projects, and plans to continue pursuing other projects as a Prime Consultant for the Authority. In order to comply with the requirements of this section, the Consultant respectfully requests that the Authority please remove the last sentence from Section 5.14 "No Conflicts of Interest" which states that Consultant cannot be a prime consultant or subconsultant on other projects for the Authority during the term of this Agreement or for 90 days after the Agreement terminates. The Consultant sees no reason as to why it should be precluded from serving the Authority on multiple ongoing projects, so long as the Authority continues to put these projects out for any firms to bid on?

Response: The following sentence will be deleted from Section 5.14 of the Agreement, "Consultant will not participate as a prime consultant or a subconsultant on projects for the Authority during the term of this Agreement and for 90 days after this Agreement ends." The first sentence of Section 5.14 will remain in place.

2. Question: Would the Authority please remove any mention of a Fiduciary Duty or Fiduciary Relationship, or our acceptance of a relationship of "trust and confidence"? A licensed Design Professional cannot be a fiduciary to its client as it cannot be required to put a client's interests above the interests and safety of the public. Additionally, accepting this type of relationship would require the Consultant to accept a standard of care that exceeds the industry Standard of Care provided by licensed Design Professionals performing similar services in the area where the Project is located.

Response: Section 5.12, of the Agreement entitled Fiduciary Relationship will be removed and replaced with the following: "**5.12 Standard of Care.** Consultant shall perform the Services in a professional manner in accordance with applicable professional

standards consistent with that level of care and skill ordinarily exercised by other competent professionals with expertise in the type of services required in this Agreement practicing under similar conditions at the same time and locality of the Project.

3. Question: As currently worded, we believe that the indemnity provision Section 12 on page 9 of the Sample Agreement for Professional Services is not in compliance with FL Statute 725.08. Will you agree to reword the indemnification to conform with the statute, and include the following edits in red?

“Consultant shall indemnify and hold harmless the Authority, its officers, and employees, from and against any and all liabilities, damages, losses and costs (including but not limited to reasonable attorney fees) ~~arising out of or~~ to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Consultant or any of ~~the its~~ Subconsultants or any other person or organization employed by or utilized by Consultant in the performance of Services under this Agreement. This indemnification shall also include all liability, damages, losses, and costs (including but not limited to reasonable attorney fees) arising out of or to the extent caused by any infringement of patents or copyrights incident to providing the Services required hereunder.”

Response: Section 12, entitled Indemnification, will be removed and replaced with the following: **“Indemnification.** Consultant shall indemnify and hold harmless the Authority, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys’ fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the contract.”

4. Question: Respondent requests the Authority’s consideration of one change to the standard agreement language. Please revise Section “5.12 Fiduciary Relationship” to read as follows:

“5.12 Relationship. Consultant shall not knowingly take any action that would conflict with the interest of the Authority. Consultant shall deal with Authority in a fair and trustworthy manner. “

Reason for this request is that the implication of a “Fiduciary Relationship” could impose obligations that go beyond the standard of care and could create a conflict of interest with an engineer’s duty of safety to the general public.

Response: See response to Question 2 above.

5. Question: Can we move the organizational chart to the beginning of Section 2, instead of at the end of Section 3?

Response: Respondents should provide all information requested in the Information Package issued by the Authority on February 10, 2023. That document requires Respondents to provide an Organizational Chart within Section 3 of their response.

with addendum revisions – March 8, 2023

Agreement for Professional Services for the Peace River Brackish Groundwater Facility Project

This Agreement for Professional Services for the Peace River Brackish Groundwater Facility Project is made by and between Peace River Manasota Regional Water Supply Authority, an interlocal government agency of the State of Florida existing under Sections 163.01 and 373.713, Florida Statutes (the “Authority”), and _____ (“Consultant”), a corporation in the State of _____ and authorized to do business in the State of Florida.

Background

- A. The Authority desires to retain Consultant to provide professional design services, engineering, inspection and geological services for feasibility, siting, capacity, design, permitting and construction management for the Brackish Groundwater Facility Project as described in Request for Statements of Qualifications for Professional Design and Engineering Services for the Brackish Groundwater Facility Project issued on February 10, 2023 (“SOQ”) and the Scope of Services (“Project”).
- B. The Authority has selected Consultant in accordance with the Authority’s procurement policy, and applicable provisions of Law.
- C. Consultant desires to provide the professional services required by the Authority as hereinafter defined;

Terms and Conditions

- 1. **Background, Exhibits, and Documents.** The background provided above and the following exhibits which are attached, are part of this Agreement. The Information Package and Consultant’s submittals provided in response to the Request for Statements of Qualification for this Project are also part of this Agreement as well as any Work Orders executed by the parties.

Exhibit A – Scope of Services

Exhibit B – Consultant’s 2023 SOQ for Professional Design and Engineering Services for the Brackish Groundwater Facility Project

Exhibit C – Authority Resolution 2018-01 Resolution Establishing Per Diem and Travel Expenses

Exhibit D – Consultant’s Certificate of Insurance

- 2. **Definitions.** The following terms as used in this Agreement shall have the following meanings:
 - 1.1. Agreement – This written document, as it may be amended from time to time and all incorporated documents.

- 1.2. Law – All laws, statutes, rules, regulations, ordinances, codes and/or orders applicable to the Services.
 - 1.3. Services – The services described in **Exhibit A**, as well as all obligations, duties and responsibilities required of Consultant under this Agreement. The term “Services” also includes all Additional Services which are subsequently authorized in writing by the Authority.
 - 1.4. Additional Services – Subject to paragraph 10 of this Agreement, any services that are authorized by the Authority in a written amendment after this Agreement is executed.
 - 1.5. Subconsultant – All contractors, subcontractors, consultants, subconsultants, suppliers, experts and other entities retained by Consultant to perform or provide any portion of the Services required hereunder.
2. **Effective Date and Term.** This Agreement will become effective on the last date all the parties have executed it, as demonstrated by the date under the signatures on the signature page and will remain effective for _____ years unless it is sooner terminated in accordance with the procedures set forth in this Agreement.
3. **Compensation.**
- 3.1. **Compensation for Services and Expenses.** For the timely and proper performance of the Services, the Authority shall pay Consultant the compensation set forth in **Exhibit B**. The Authority shall reimburse Consultant for expenses (other than expenses which are included in lump sum payment items) consistent with Section 112.061, Florida Statutes and **Exhibit C**, provided Consultant submits appropriate documentation substantiating the expense and certifies that such claimed expense is true and correct as to every material matter. Consultant shall honor a claim for refund by the Authority if the reimbursement is more than the limits imposed in Section 112.061, Florida Statutes.
 - 3.2. **Accuracy of Rates and Unit Costs.** Consultant hereby certifies that the wage rates and other unit costs supporting the compensation are accurate, complete, and current upon the Effective Date of this Agreement. The Authority will adjust any compensation to be paid under this Agreement, both as set forth in **Exhibit B** or for any Additional Services authorized in writing by the Authority, to exclude any significant sums the Authority determines were increased due to inaccurate, incomplete, or noncurrent wage rates or other unit costs. The Authority may make any such adjustment to compensation within one year of the expiration or termination of this Agreement.
4. **Consultant’s Representations and Warranties.** Consultant represents and warrants to the Authority as follows:
- 4.1. **Conducting Business in Florida.** Consultant is duly authorized to conduct business in the State of Florida.

- 4.2. **Authority.** Consultant has the full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided for herein, all of which have been duly authorized by all proper and necessary actions of the governing entity of Consultant.
- 4.3. **Accuracy of SOQ Response.** All information provided by Consultant in response to the Request for Statements of Qualifications for the Project was true and accurate when Consultant submitted it to the Authority and has not materially changed as of the Effective Date of this Agreement.
- 4.4. **Understanding of Agreement.** Consultant has familiarized itself with and understands this Agreement, the Project, the Services, the Law, the site, and all local conditions that may affect Consultant's performance of this Agreement, including Consultant's compensation and the performance or furnishing of the Services.
- 4.5. **Discrepancies.** Consultant has reviewed all available information and data shown or indicated in this Agreement and has given the Authority written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered and the Authority's written resolution thereof, if any, is acceptable to Consultant.
- 4.6. **Expertise.** Consultant has special expertise in the type of professional services to be provided under this Agreement and Consultant acknowledges that such representations were a material inducement to the Authority to enter into this Agreement with Consultant.
- 4.7. **Valid Agreement.** This Agreement is a valid, binding, and enforceable obligation of Consultant, and does not violate any law, rule, regulation, contract, or agreement otherwise enforceable by or against Consultant except as it may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the rights of creditors generally.
- 4.8. **Scrutinized Companies.** Consultant is in compliance with Section 287.135, Florida Statutes. As required by Subsection 287.135(5), Florida Statutes, Consultant certifies that it is not on any of the following lists: 1) Scrutinized Companies with Activities in Sudan, 2) Scrutinized Companies with Activities in the Iran Petroleum Energy Sector, or 3) Scrutinized Companies that Boycott Israel.
- 4.9. **Public Entity Crimes.** Consultant is in compliance with Section 287.132, Florida Statutes. The Public Entity Crimes statement required by Subsections 287.133(2) and (3), Florida Statutes provided with Consultant's response to the SOQ is true and accurate on the Effective Date of this Agreement.
- 4.10. **Discriminatory Vendor List.** Consultant is in compliance with subsection 287.134(2)(a), Florida Statutes. Consultant is not on the discriminatory vendor list maintained by the Florida Department of Management Services under section 287.134,

Florida Statutes.

- 4.11. **E-Verify.** Consultant is in compliance with Section 488.095, Florida Statutes. As required by Subsection 488.095(2)(a), Florida Statutes, Consultant has registered with and uses the E-Verify System to verify the work authorization status of all newly hired employees. The E-Verify Statement Consultant submitted with its response to the SOQ remains true and correct.
- 4.12. **No Contingent Fees.** As required by Section 287.055(6), Florida Statutes, Consultant warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) 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 architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. If Consultant breaches or violates this provision, the Authority has the right to terminate this Agreement without liability and, at its discretion, to deduct from Consultant's compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

5. Consultant's Responsibilities.

- 5.1. **Performance of Services.** Consultant shall perform the Services upon the terms and conditions set forth in this Agreement and upon any terms required under any government funding agreement. The Project will be completed through a series of sequential Work Orders, all developed in accordance with this Agreement. Consultant shall develop each Work Order, which will include the intended purpose, objectives, services needed in a task-level breakdown, schedule, deliverables, and estimated costs.
- 5.2. **Changes.** Consultant shall immediately notify the Authority if anything changes regarding Consultant's representations and warranties contained in this Agreement.
- 5.3. **Resources.** Consultant shall secure and maintain an adequate and competent staff of professionals and all facilities and equipment required to perform the Services.
- 5.4. **Key Personnel.** Consultant must not remove any key personnel or Subconsultants assigned to the Project without the prior written approval of the Authority. All key personnel shall be available to the Project on a full-time basis, except as otherwise expressly approved in writing by the Authority. Such key personnel are as follows:

- 5.5. **Objectionable Employees.** If at any time during the term of this Agreement the

Authority notifies Consultant in writing that any of Consultant's employees or the employees of any Subconsultant are objectionable to the Authority, Consultant shall remove or have the Subconsultant remove the objectionable employee from the Project and not reemploy the objectionable employee on any portion of the Services.

- 5.6. Consultant's Representative.** Consultant shall designate in writing a single representative with the authority to transmit instructions, receive information, interpret, and deliver Consultant's policy and decisions related to the Services and bind Consultant with respect to any matter arising out of or relating to this Agreement.
- 5.7. Information Related to the Services.** Consultant shall obtain and review all information and data which relates to the Services or which Consultant may reasonably anticipate may affect cost, scheduling, progress, performance or furnishing of the Services, including, but not limited to, information and data related to the Project work of others under separate contracts, to the extent that such work may interface with the Services hereunder.
- 5.8. Status Reports and Inspections.** Consultant shall routinely and continuously advise the Authority of the status of the Project, and the Services of Consultant. The Authority and its authorized representatives have the right to visit the site and Consultant's office at any reasonable time Consultant to inspect the Services or any of the drawings or documents of Consultant. Consultant shall maintain documents obtained or generated under this Agreement and make them available upon request by the Authority during the term of this Agreement and for three years after its termination. In addition to the documents and reports contemplated in **Exhibit A**, Consultant shall, at no cost to the Authority, deliver to the Authority copies of all other Project documents and or reports under Consultant's possession or control that the Authority may request from time to time.
- 5.9. Coordination with Others.** Consultant shall cooperate with other engineers, consultants, construction contractors and suppliers retained by the Authority and assist the Authority with the coordination of those various projects, work, and engineering and consulting services. Consultant shall review all information and attend all meetings as shall be reasonably necessary to accomplish the coordination of those various projects, work, and engineering and consulting services, and eliminate any problems where the projects, work or services interface with the Project or Services.
- 5.10. Laws.** Consultant shall secure all licenses or permits required by Law for the performance of the Services and shall comply with all Laws in effect at the time of the execution of this Agreement and the time of performance of the Services.
- 5.11. No Discrimination.** Consultant shall comply with Title VII of the Civil Rights Act of 1964, as amended, and the Florida Civil Rights Act of 1992. Consultant shall not discriminate in any form or manner against its employees or applicants for employment on the basis of race, color, national origin, religion, sex, age, handicap, or marital status. Further, Consultant shall comply with all applicable rules, regulations or executive

orders promulgated to give effect to the Civil Rights Act of 1964, as amended.

5.12. Standard of Care. Consultant shall perform the Services in a professional manner in accordance with applicable professional standards consistent with that level of care and skill ordinarily exercised by other competent professionals with expertise in the type of services required in this Agreement practicing under similar conditions at the same time and locality of the Project.

5.13. Notice of Claims. Consultant shall immediately notify the Authority if it becomes aware of any circumstances which may reasonably give rise to any claim against the Authority for Services performed under or related to the Services performed under this Agreement.

5.14. No Conflicts of Interest. Consultant is not under contract and will not contract for or accept employment for the performance of any work or services with an individual, business, corporation, or government unit that would create a conflict of interest in the performance of its obligations under this Agreement.

6. Authority's Responsibilities.

6.1. Applications for Payment. The Authority shall review and consider, in a reasonably prompt and thorough fashion, all applications for payments, reports, schedules, estimates, drawings, proposals or other documents presented to the Authority by Consultant and shall inform Consultant of the Authority's decisions or otherwise take appropriate action within a reasonable time to not unreasonably delay the Services of Consultant.

6.2. Authority's Representative. The Authority shall designate in writing a single representative with authority to transmit instructions, receive information and interpret and deliver the Authority's policy and decisions pertinent to the Services.

6.3. Existing information. Upon Consultant's specific request, the Authority shall cooperate in providing to Consultant, all existing and available studies, reports, surveys, and other information and data regarding the Project to the extent such items are in the Authority's possession and the Authority has actual knowledge of their existence and location. Despite any other provision of this Agreement, the Authority does not represent or warrant the accuracy or completeness of any such items, unless it is expressly noted otherwise in writing on such item.

7. Change of Plan.

7.1. Authority's Right. The Authority has the absolute right to terminate, suspend, or amend the Services or the Project at any time and for any reason, and such action on its part shall not be deemed a default or breach of this Agreement. Any such termination, suspension, or amendment shall be in writing.

7.2. Remedies. If the Services or Project is entirely or partly suspended for one or more

periods of time Consultant will have no claim for compensation for the suspended period(s). Upon resumption of the Services or Project, Consultant shall resume the Services until the Services are completed in accordance with this Agreement, and the time for completion of the Services which were suspended shall be extended for the period of the suspension. If the cumulative total of such suspensions, excluding periods of suspension during the design phase, is 270 days or less, the extension of time shall be Consultant's sole remedy. If the cumulative total of such suspensions is more than 270 days, Consultant's sole remedy shall be to terminate this Agreement according to the provisions of paragraph 8.

8. Termination of Agreement.

- 8.1. Termination for Convenience.** The Authority has the right to terminate this Agreement, in whole or in part without cause upon written notice to Consultant. In such event, Consultant's sole and exclusive recovery against the Authority will be limited to that portion of Consultant's compensation earned to the date of termination, together with any costs reasonably incurred by Consultant that are directly attributable to the termination. The Consultant shall not be entitled to any further recovery against the Authority, including, but not limited to, anticipated fees or profits on Services not required to be performed. The Authority in its sole discretion shall determine that portion of the compensation earned for any incomplete Services based upon the ratio of such part of the Services completed relative to the entire Services. Termination without cause shall be effective upon delivery of written notice to Consultant.
- 8.2. Termination for Cause.** Consultant shall be considered in material default of this Agreement and the Authority may terminate this Agreement, in whole or in part, for any of the following reasons: (a) failure to begin Services within the time specified in a Work Order, or (b) failure to timely and properly perform the Services required hereunder or as directed by the Authority, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by Consultant or by any of Consultant's principals, partners, officers or directors, or (d) failure to obey any Law, or (e) failure or refusal to allow public access to all public record documents or other materials made or received by Consultant in conjunction with this Agreement, unless exempt under Florida law, or (f) any other material breach of this Agreement. In any such event, the Authority may terminate this Agreement, in whole or in part, by giving Consultant written notice. In the event of any such termination for cause, the Authority is not obligated to make any further payments to Consultant hereunder until such time as the Authority has determined all costs, expenses, losses and damages which the Authority may have incurred as a result of such default by Consultant, whereupon the Authority shall be entitled to set off all costs, expenses, losses and damages so incurred by the Authority against any amounts due Consultant hereunder. Termination for cause will be effective upon 14 days written notice to Consultant.
- 8.3. Violation by Authority.** If the Authority violates any provision of this Agreement, and if the violation continues for 60 days after Consultant has delivered written notice of the violation, then Consultant may, without prejudice to any other right or remedy, terminate

or cancel this Agreement by giving the Authority 14 days written notice of termination. In the event of any such termination by Consultant, Consultant's sole and exclusive remedies against the Authority will be limited to those set forth in paragraph 8.1 above.

8.4. Notice and Cure. Despite the provisions of paragraphs 8.2 and 8.3, this Agreement will not terminate for cause if the party receiving the notice begins, within seven days of receipt, to correct its failure and proceeds diligently to cure such failure within thirty 30 days of receipt of the notice; provided, however, that if and to the extent such cause for termination cannot reasonably be cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues to diligently cure the same, then the cure period may be further extended by the party that provided the notice.

8.5. Remedies if no Default. If, after termination of this Agreement as provided for in paragraph 8.2 above, it is determined for any reason that Consultant was not in default, or that its default was excusable or that the Authority otherwise was not entitled to the remedy against Consultant provided for in paragraph 8.2, then such termination for cause shall be deemed to be a termination for convenience as described in paragraph 8.1 and Consultant's sole and exclusive rights and remedies against the Authority shall be the same as and limited to those afforded Consultant under paragraph 8.1 above.

8.6. Delivery of material after termination. Within 10 days after any termination of this Agreement, Consultant shall deliver to the Authority all papers, drawings, models, and other material prepared by and for Consultant with respect to the Project and Services.

9. Waiver.

9.1. Acceptance of Final Payment. Consultant's acceptance of final payment constitutes a full waiver of all claims by Consultant against the Authority arising out of and relating to this Agreement or otherwise related to the Project, except those previously made in writing and identified by Consultant as unsettled at the time it submits its invoice for final payment. Neither the acceptance of the Services nor any payment by the Authority shall be deemed to be an acceptance of defective or incomplete Services or waiver of any of the Authority's rights against Consultant.

9.2. Non-enforcement. Non-enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.

10. Additional Services.

10.1. Notice to Authority. If Consultant is of the opinion that any services the Authority directs it to perform are beyond the Scope of the Services under this Agreement, Consultant shall, within seven business days of such direction, notify the Authority in writing of its opinion. The Authority shall, within 10 business days after receipt of such notification, determine whether such service is beyond the scope of this Agreement and constitutes Additional Services. If the Authority determines that such service does

constitute Additional Services, it will provide extra compensation to Consultant based upon the rates and terms provided in **Exhibit B**.

- 10.2. Project Schedule.** If, in the opinion of the Authority, the progress of the Services during any period is substantially less than the amount which is necessary to meet the Project schedule, the Authority may require Consultant to take whatever action is necessary, in the opinion of the Authority, to put the Services back on schedule. Such action shall not constitute Additional Services unless the delays were caused by circumstances beyond the control and fault of Consultant or its agents, employees and Subconsultants.
- 10.3. Claims against the Authority.** In the event of claims by others against the Authority in connection with the Project or the Services, Consultant shall provide to the Authority such technical assistance that the Authority may request. Such assistance shall constitute Additional Services, unless such claims are caused by the failure of Consultant, its agents, employees or Subconsultants to comply with the terms and conditions of this Agreement or otherwise perform their duties under this Agreement.
- 10.4. Delays more than and less than 30 days.** Subject to the provisions of paragraph 10.2 above, Consultant shall not make any charges or claims for damages for any delays or hindrances of less than 30 days from any cause whatsoever during the progress of any portion of the Services. The Authority may compensate such delays or hindrances of less than 30 days by an extension of time as the Authority may decide. However, any such extension shall not operate as a waiver of any other rights of the Authority. The Authority will consider delays or hindrances that exceed 30 days and will determine whether any additional services are needed from Consultant unless such delays or hindrances were caused in whole or in part by Consultant, its employees, agents, or Subconsultants or because of a suspension of the Project or Services entirely or partly by the Authority. This paragraph does not apply to suspensions of the Project or Services by the Authority, which suspensions will be governed by paragraph 7.
- 10.5. Audit.** If the Authority requires Consultant to provide it with an audit of its Project costs, such audit will not be considered Additional Services.
- 11. Assignment and Subconsultants.** Consultant shall not sublet, assign, or transfer this Agreement or any Services without the prior written consent of the Authority, which consent may be withheld in the Authority's sole discretion. Consultant shall be solely responsible for the employment, direction, supervision, compensation, and control of any and all Subconsultants. Consultant shall cause all Subconsultants to abide by the terms and conditions of this Agreement and all Laws. All agreements between Consultant and Subconsultants shall be in writing, with a copy of such agreements to be provided to the Authority upon its request for same.
- 12. Indemnification.** Consultant shall indemnify and hold harmless the Authority, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or

intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the contract.

13. Consultant's Insurance Requirements.

13.1. Consultant must maintain during the entire term of this Agreement, insurance in the following kinds and amounts with a company or companies authorized to do business in the State of Florida and shall not commence work under this Agreement until the Authority has received an acceptable certificate of insurance showing evidence of such coverage. The amounts and types of insurance shall be appropriate for the services being performed by the Consultant, its employees or agents and must conform to the following minimum requirements:

13.1.1. Workers Compensation. Coverage must apply for all employees and subcontractors with statutory limits in compliance with the applicable state and federal laws. In addition, the policy must include the following Employer's Liability with a minimum limit per accident in accordance with statutory requirements.

- a. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide Authority with thirty (30) days written notice of cancellation and/or restriction.
- b. Agent(s) must be in compliance with all applicable state and federal workers' compensation laws.

13.1.2. Commercial or Comprehensive General Liability. Coverage must include:

- a. \$2,000,000.00 combined limit per occurrence for bodily injury, personal injury and property damage.
- b. Contractual coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement, broad form property damage, explosion, collapse, and underground hazard coverage and independent contractor's coverage.
- c. Additional Insured. Authority is to be specifically included as an additional insured.
- d. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide Authority with thirty (30) days written notice of cancellation and/or restriction.

13.1.3. Comprehensive Automobile Liability. Coverage must be afforded on a form no more restricted than the latest edition of the Comprehensive Automobile Liability Policy filed by the Insurance Services Office and must include:

- a. \$1,000,000.00 combined single limit per accident for bodily injury and property damage.
- b. Owned Vehicle.
- c. Hired and Non-Owned Vehicles.
- d. Employee Non-Ownership.
- e. Additional Insured. Authority is to be specifically included as additional insured.

- f. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide Authority with thirty (30) days written notice of cancellation and/or restriction.

13.1.4. Watercraft/Aircraft Liability. If Consultant's provision of services involves utilization of watercraft or aircraft, watercraft and/or aircraft liability coverage must be provided to include bodily injury and property damage arising out of ownership, maintenance or use of any watercraft or aircraft, including owned, non-owned and hired.

13.1.5. Professional Liability. Coverage must include:

- a. Minimum limit of \$2,000,000.00 per occurrence or claim of malpractice, negligence, error and omissions.
- b. Minimum limit of \$2,000,000.00 in the aggregate for claims of malpractice, negligence, error and omissions.
- c. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts.
- d. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide Authority with thirty (30) days written notice of cancellation and/or restriction.
- e. Professional liability insurance shall continue in force until the end of the fifth calendar year following the calendar year in which the Agreement is terminated. The current professional liability insurance policy, if not renewed, shall provide for an extended reporting period on the existing policy through said fifth calendar year.

13.2. The required Certificates of Insurance not only shall name types of policies provided but also shall refer specifically to the Agreement.

13.3. Insurance coverage shall be placed with insurers or self-insurance funds, satisfactory to the Authority, licensed to do business in the State of Florida and with a resident agent designated for the service of process. Consultant shall provide the Authority with financial information concerning any self-insurance fund insuring Consultant. At the Authority's option, self-insurance fund financial information may be waived.

13.4. All the policies of insurance so required of Consultant, except workers compensation and professional liability, shall be endorsed to include as additional insureds: the Authority, its directors, officers, employees and agents as well as the Southwest Florida Water Management District as it may require through a funding agreement for the Project. Such insurance policies shall include or be endorsed to include a cross liability clause so the additional insureds will be treated as if a separate policy were in existence and issued to them. If the additional insureds have other insurance, which might be applicable to any loss, the insurance required of Consultant shall be considered primary, and all other insurance shall be considered excess. The cross liability clause does not increase the limits of liability or aggregate limits of the policy.

- 13.5.** Deductible and self-insured retention amounts shall be subject to approval by the Authority, which approval shall not be unreasonably withheld. Consultant is responsible for the amount of any deductibles or self-insured retentions.
- 13.6.** Approval of the insurance by the Authority shall not relieve or decrease the liability of Consultant hereunder. Consultant acknowledges and agrees the Authority does not in any way represent the insurance (or the limits of insurance) specified in this Section 14 is sufficient or adequate to protect Consultant's interests or liabilities, but are merely minimums.
- 13.7.** All of the policies of insurance required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed, or renewal refused, until at least thirty (30) days prior written notice has been given to the Authority and Consultant by certified mail. Consultant shall give notice to the Authority within twenty-four (24) hours of any oral or written notice of adverse change, non-renewal or cancellation. If the initial insurance expires prior to completion of the work, renewal Certificates of Insurance shall be furnished thirty (30) days prior to the date of their expiration.
- 13.8.** All insurance required hereunder shall remain in full force and effect until final payment and at all times thereafter when Consultant may be observing the correction, removal or replacement of defective work.
- 13.9.** Professional liability insurance shall continue in force until the end of the fifth calendar year following the calendar year in which the Agreement is terminated. The current professional liability insurance policy, if not renewed, shall provide for an extended reporting period on the existing policy through said fifth calendar year.
- 13.10.** Consultant shall, upon request by the Authority, deliver to the Authority a copy of each insurance policy purchased by Consultant.
- 13.11.** All policies, except for workers' compensation and professional liability, shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of subrogation against the Authority, its consultants, directors, officers, employees, representatives or agents. Nothing contained in these insurance requirements is to be construed as limiting the liability of Consultant or Consultant's insurance carriers.
- 13.12.** The commercial (occurrence form) or comprehensive general liability (occurrence form) insurance shall include contractual liability insurance applicable to all of the Consultant's obligations under the Agreement, including any indemnity or hold harmless provision.
- 13.13.** Consultant shall ensure that all Subconsultants procure and maintain, until the completion of that party's Services, insurance of the types and in the coverage amounts required to be carried by Consultant in this Agreement unless the Authority agrees in writing, in advance of Consultant's employment of any such Subconsultant, to other

types of coverage and/or lower coverage amounts. Provided however, that professional liability insurance shall not be required under this Agreement for Subconsultants, unless such party is a licensed professional. The preceding sentence does not preclude Consultant from requiring such insurance. Consultant is responsible for ensuring that all Subconsultants comply with all the insurance requirements contained herein relative to each such party.

14. Standard of Performance. Consultant shall perform and complete the Services in a timely manner and in accordance with the standard of care, skill, and diligence customarily provided by professionals with expertise and experience in the type of Services to be provided hereunder, and in accordance with sound professional principles and practices. Consultant acknowledges that it has represented to the Authority that Consultant has expertise and experience in the type of services to be rendered hereunder and that such representation was a material inducement to the Authority to enter into this Agreement with Consultant.

15. Project Documents and Data.

15.1. One (1) copy of all technical data and working papers regarding the Services, whether existing in the office of the Authority or in the office of Consultant, shall be made available to the other party to this Agreement without expense to such other party. Additional copies shall be made available at the expense of the requesting party.

15.2. All Project documents, tracings, plans, specifications, maps, evaluations, reports, technical data, and computer application code, other than working papers prepared or obtained under this Agreement, are the property of the Authority without restriction or limitation of use, and shall be made available, upon request, to the Authority at any reasonable time. Consultant, at its own expense, may retain copies thereof for its files and internal use. Any use by the Authority of such materials obtained under this Agreement for any other Project or use of incomplete materials obtained from Consultant by the Authority shall be made at the risk of the Authority. However, this does not constitute a disclaimer of the professional liability of Consultant with respect to the original Services as used for the Project.

15.3. All final plans and documents that are required by Florida Law to be endorsed and are prepared by Consultant in connection with the Services shall bear the endorsement of a person in the full employment of Consultant or duly retained by Consultant and duly licensed in the appropriate professional category.

15.4. Consultant shall make any patentable product or result of the Services and all information, design, specifications, know-how, data, and findings available to the Authority without cost to the Authority. No material prepared in connection with this Project will be subject to copyright by Consultant, all such copyrights being the property of the Authority. the Authority shall have the right to publish, distribute, disclose, and otherwise use any material prepared by or for Consultant

with respect to the Project. Any use of material or patents obtained by the Authority under this Agreement for any purpose not associated with this Project shall be at the risk of the Authority. In the Authority's discretion, whenever any renderings, photographs of renderings, photographs of models or photographs of the Project are released by the Authority for publicity, proper credit may be given to Consultant, provided the giving of such credit is without cost to the Authority.

- 15.5.** Consultant must not make any statements, press releases or public releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or any other information obtained or furnished in compliance with this Agreement, except at meetings where representatives of the Authority are present, without the Authority's prior written consent. Consultant shall not publish, copyright, or patent any of the data furnished or developed with respect to the Project without first obtaining the Authority's written consent, as all such rights are the property of the Authority.
- 16.** **Audit Rights.** Consultant shall keep all books, records, files, plans, drawings, and other documentation, including all electronically stored items, which concern or relate to the Services hereunder (collectively referred to herein as "Records") for a minimum of three (3) years from the date of expiration or termination of this Agreement or as otherwise required by Law, whichever date is later. The Authority, or any duly authorized agents or representatives of the Authority, shall have the right to audit, inspect and copy all or such Records as often as they deem necessary during any such period of time. This right to audit, inspect and copy the Records shall include all Records of Subconsultants.
- 17.** **Public Records.**
- 17.1. Duty to Maintain and Provide Records.** Consultant shall keep and maintain all public records required to perform services under this Contract as required by Chapter 119, Florida Statutes. All analyses, data, documents, models, modeling, reports, and tests performed or utilized by Consultant shall be made available to the Authority upon request and are considered public records in accordance with Chapter 119, Florida Statutes, unless they are exempt under the Law.
- 17.2. IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE AGENCY'S CUSTODIAN OF PUBLIC RECORDS AT PHONE (941) 316-1776; EMAIL – PEACERIVER@REGIONALWATER.ORG; OR MAIL – 9415 TOWN CENTER PARKWAY, LAKEWOOD RANCH, FLORIDA 34202.**
- 17.3. Post Contract Responsibilities.** Upon completion of this contract, Consultant

shall keep and maintain, at no cost, to the Authority, all public records produced under this Agreement in the possession of the Consultant or shall transfer them to the Authority. If the Consultant transfers all public records to the Authority, Consultant shall destroy any duplicate public records. If Consultant keeps and maintains public records after completion of the contract, the Consultant shall meet all legal requirements for retaining public records including the rules and retention schedules adopted by the Division of Library and Information Services of the Department of State under Section 119.021(2)(a), Florida Statutes. All records stored electronically must be provided to the Authority upon request from the Authority in a format that is compatible with the information technology systems of the Authority.

- 17.4. Exempt Records.** Consultant shall ensure that public records that are exempt from public records disclosure are not disclosed except as authorized by law during the term of this Agreement and following its completion if the Consultant does not transfer the records to the Authority.

18. Miscellaneous Provisions.

- 18.1. Entire Agreement.** This written document shall constitute the entire agreement between the parties hereto and the Agreement shall not be amended or modified except in writing duly executed by the party against whom such an amendment or modification is sought to be enforced. This Agreement shall govern the relationship between the Authority and Consultant on the Project.
- 18.2. Successors.** the Authority and Consultant each hereby binds itself, its successors, assigns, and legal representatives to the other.
- 18.3. No Third-Party Beneficiaries.** The rights and obligations in this Agreement shall inure solely to the parties hereto (their successors, assigns and legal representatives) and no other party shall have any rights or obligations under or by virtue of this Agreement.
- 18.4. Applicable Law and Venue.** This Agreement shall be governed by and construed under the laws of the State of Florida. Venue for any action under state law arising under this Agreement shall be in the Twelfth Judicial Circuit of Florida. Claims justiciable in federal court shall be in the Middle District of Florida.
- 18.5. Notices.** All notices or other communications permitted or required under this Agreement must be in writing and must be sent to the party at that party's address set forth below or a whatever other address the party specifies in writing. Notices must be personally delivered, sent by certified or registered mail, or sent by overnight courier, postage prepaid.

If to the Authority:

_____, _____
Name Title

Peace River Manasota Regional Water Supply Authority
9415 Town Center Parkway
Lakewood Ranch, Florida 34202

If to Consultant:

- 18.6. No Construction Against Drafting Party.** Each party acknowledges that it has carefully reviewed and understands this Agreement and has had an opportunity to review it with counsel of its choosing. This Agreement shall not be construed more strongly against any party, regardless of who drafted or prepared it.
- 18.7. Communications.** The Consultant’s communications with the Authority shall be limited to the Authority’s Executive Director and designated staff. Communications with the Authority’s Board Members are prohibited, except with the prior permission of the Authority’s Executive Director or at a duly noticed public board meeting. Any such prohibitive communications shall be deemed to be a material breach of this Agreement by Consultant. This provision does not prohibit or limit contacts by or on behalf of the Authority Board Members with Consultant.
- 18.8. Interpretation.** All words used herein in the singular shall extend to and include the plural, and the use of any gender shall extend to and include all genders. Unless the context requires otherwise: The term “include” contemplates “including but not limited to.” The terms “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 18.9. Headings.** The captions and headings herein are for convenience of reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions. Unless otherwise indicated, references to paragraphs include all subparts.
- 18.10. Time is of the Essence.** Time is of the essence of this Agreement and each of its provisions.
- 18.11. No Waiver.** Unless expressly stated in writing, no action taken by a party to this Agreement shall be considered a waiver by such party of compliance with any representations, warranty, duty, or responsibility under this Agreement.

- 18.12. Contest of Authority Decisions.** The Authority shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the Services called for hereunder, or the character, quality, amount, or value thereof. The decision of the Authority upon all such claims, questions or disputes shall be final and binding if not contested by Consultant in a written notice delivered to the Authority within seven days after Consultant's receipt of written notice from the Authority concerning such decision. Consultant shall not delay or postpone providing Services during the pendency of any dispute.
- 18.13. Survival.** All express representations, indemnifications, or limitations made or given in this Agreement shall survive its completion or termination for any reason.
- 18.14. Severability.** If any term of this Agreement is for any reason invalid or unenforceable, the rest of the Agreement remains fully valid and enforceable.
- 18.15. Independent Contractor.** Consultant is retained by the Authority only for the purposes and to the extent set forth in this Agreement, and its relationship with the Authority shall, during the term of this Agreement, be that of an independent contractor. Consultant shall have the discretion, subject to the requirement that it perform the services required hereunder competently and professionally in accordance with the applicable professional standards and otherwise comply with the terms of this Agreement, to select the means and methods of performing such services. In this regard, Consultant shall be fully responsible for the employment, direction, supervision, compensation, and control of all persons employed or retained by Consultant. Neither Consultant nor Consultant's contractors, subcontractors, consultants, subconsultants, suppliers, experts or other persons or organizations retained or utilized by Consultant for the services required hereunder ("Subconsultants") shall be considered by reason of the provisions of this Agreement or otherwise as being an employee or agent of the Authority. Consultant shall comply with all workers' compensation, employers' liability and other Federal, State and county and municipal laws, ordinances and regulations required of an employer performing services as herein contemplated. Provided, however, in no event shall the Authority be obligated to pay Consultant any overtime or other premium pay compensation unless such overtime or premium compensation was expressly approved in writing and in advance by the Authority. Furthermore, Consultant is responsible for paying all income and employment taxes, and the Authority shall not be responsible for collecting or paying withholding, FUTA, FICA or any other state or federal taxes.
- 18.16. Waiver of Jury Trial.** To the extent permitted by applicable law, Consultant and the Authority irrevocably waive any right to trial by jury in any legal proceeding arising out of or relating to this Agreement or any of the transactions contemplated by it. Neither the Authority nor Consultant or any successor thereof will seek a trial by jury in any action or proceeding (whether at law or in equity, whether direct or collateral, whether in contract or in tort) arising out of or related to this Agreement

or the relationship created by it. Neither the Authority nor Consultant shall seek to consolidate any action or proceeding in which trial by jury has been waived with any other action or proceeding in which a jury trial cannot be or has not been waived.

18.17. Authority's Right to Terminate under Section 287.135, Florida Statutes. As set forth in Section 287.135, Florida Statutes, the Authority reserves the right to terminate this Agreement and any contract for goods or services if Consultant: has been found to have submitted a false Scrutinized Vendor List certification; has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Section List; has been engaged in business operations in Cuba or Syria; or has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

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The parties have caused their duly qualified representatives to execute this Agreement on the dates set forth below.

Witnesses:

Signature

Print name

Print title

Date

Signature

Print name

Print title

Date

Attest:

Signature

Print name

Print title

Date

Approved as to legal sufficiency:

Douglas P. Manson, General Counsel

Consultant:

Firm Name

Signature

Print name

Print title

Date

**Peace River Manasota Regional Water
Supply Authority:**

Signature

Print name

Print title

Date

Exhibit A
Scope of Services

Implementation of the Brackish Groundwater Facility Project (Project) will require multi-disciplinary expertise. The professional services for the Project through the 30% design stage are expected to include, but are not necessarily limited to:

1. Peer review of the information identified in the Background Materials section herein and other publicly available information, and provision of pertinent observations regarding technical and permitting issues the Consultant believes have the potential to affect successful and timely accomplishment of the proposed Project, and associated recommendations to overcome them. Efforts would also include evaluation of technologies for brackish water treatment and advantages and disadvantages for each approach for the Authority's consideration, including economic and non-economic considerations.
2. Review and evaluation of the current approach to wellfield design and permitting, including any recommended revisions, and implementation of Authority-approved modifications, if any.
3. Professional Engineering and Geology design, oversight, and completion of a brackish groundwater well construction, development, and testing program. This shall include development of well construction and testing specifications, individual well testing during construction, aquifer performance testing to characterize aquifer production and confinement characteristics, and natural background brackish groundwater quality. The program will be designed to optimize well production while minimizing the potential for saline water upconing and avoiding adverse impacts to the Authority's ASR system and other surrounding water users.
4. Development of a Technical Memorandum (TM) that describes the exploratory well construction and testing program, its results, and associated observations and recommendations. This shall include but not be limited to documentation of well construction and testing program results and observations and predicted changes to natural background conditions (saline water upconing) under active wellfield conditions to assist the engineer of record in designing an effective and resilient supply and water treatment system.
5. Should the Authority determine that a change in wellfield configuration, withdrawal quantities, or well specifications is necessary during the 30% design period, Consultant shall update them accordingly, and provide technical and regulatory support for modification of the Authority's WUP to increase quantities and add production wells.
6. Numerical groundwater flow modeling using the SWFWMD's DWRM 4.0 model.
7. Surveying, geotechnical investigation, subsurface investigations, construction management/inspection, and hydraulic modeling.
8. Recommendation of a water treatment system for the brackish groundwater supply that will provide the flexibility to withstand projected changes in raw water salinity and ensure long

term sustainability, resiliency, and reliability under active wellfield conditions.

9. Preliminary evaluation of potential compatibility of injectate waters with injection zone formations and recommendations for associated pretreatment methods that may be necessary to avoid potential formation clogging.

10. Completion of 30% design drawings and outline technical specifications for production, monitoring and deep injection wells, pumping, conveyance, water treatment facilities, concentrate disposal-related facilities, and SCADA monitoring systems that will conform to SWFWMD Cooperative Funding Initiative Guidelines (Fiscal Year 2024). This shall include an AACE estimation of probable cost (total and itemized) and a schedule for completion of design, permitting and construction of the project.

11. Recommended next steps and schedule should the Authority select the Brackish Groundwater Facility Project as its next water supply development project.

Exhibit B
Consultant's 2023 SOQ for Professional Services for the Brackish Groundwater Facility
Project

Exhibit C
Authority Resolution 2018-01 Resolution Establishing Per Diem and Travel Expenses

Exhibit D
Certificate of Insurance