

NEW SMYRNA BEACH UTILITIES
200 CANAL STREET
P.O. BOX 100
NEW SMYRNA BEACH, FL 32170-010

REQUEST FOR PROPOSAL #22-22
PUMP AND MOTOR REPAIR

REQUEST FOR PROPOSAL

New Smyrna Beach Utilities is seeking proposals from qualified firms, licensed in the State of Florida to PROVIDE AS NEEDED PUMP AND MOTOR REPAIRS. The awarded firm shall furnish all services in accordance with, but not limited to, the guidelines in the Scope of Work.

Notice is hereby given that sealed proposals will be ACCEPTED ELECTRONICALLY VIA VENDOR LINK, until November 10, 2022 AT 2:30PM

<https://www.myvendorlink.com/common/searchsolicitations.aspx?aid=358>

They will be publicly opened in the 3rd floor DeBerry Room at 200 Canal Street, New Smyrna Beach, FL 32168 November 10, 2022 AT 3:00PM

Submit Maureen Lynch, CPPB
Proposals To: Procurement Manager
New Smyrna Beach Utilities
mlynch@nsbufl.com
(386) 424.3046 Voice
(386) 424.3147 Fax

Mailing 200 Canal Street
Address: New Smyrna Beach, FL 32168

Walk In 200 Canal Street
Delivery: New Smyrna Beach, FL 32168

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PROPOSAL SCHEDULE

- DISTRIBUTION OF THE REQUEST FOR PROPOSAL: **October 10, 2022**
- DEADLINE FOR FINAL QUESTIONS BY 2:30 P.M.: **October 25, 2022**
 - E-MAIL TO MLYNCH@NSBUFL.COM
- ADDENDUM PUBLISHED BY 5:00 P.M.: **November 1, 2022**
- PROPOSAL RETURN DEADLINE BY 2:30 P.M.: **November 10, 2022**
ELECTRONIC SUBMITTALS THROUGH VENDOR LINK
<https://www.myvendorlink.com/common/searchsolicitations.aspx?aid=358>
- **BID OPENING 3:00 P.M.** **November 10, 2022**
WE ARE ALSO OFFERING A REMOTE CALL-IN FOR LISTENING TO THE BID OPENING.
YOU CAN ATTEND BY DIALING 1(872) 216-5903
CONFERENCE ID: 967 470 466#

Please note: The Utilities Commission, City of New Smyrna Beach, Florida has adopted a new name “New Smyrna Utilities” and corresponding logo, effective July 1, 2022. The New Smyrna Beach Utilities name will be used as the public, outwardly facing name of the organization. We adopted this new name as a DBA however, our legal name, the Utilities Commission, City of New Smyrna Beach, Florida remains. Adopting this new name has not changed anything in our ownership or operations.

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GENERAL TERMS AND CONDITIONS

1. **INSTRUCTIONS TO PROPOSERS:** To ensure consideration of your proposal, please follow these instructions. Proposals not in compliance with conditions specified herein are subject to rejection.
2. **SEALED PROPOSALS:** AN ELECTRONIC PROPOSAL **must** be submitted through Vendor Link by the date and time specified
3. **NEW SMYRNA BEACH UTILITIES:** The term **NEW SMYRNA BEACH UTILITIES** used herein refers to the New Smyrna Beach Utilities, or its duly authorized representative.
4. **PROPOSER:** The term **PROPOSER** used herein refers to the dealer/manufacturer/vendor or business organization submitting a proposal to the **NEW SMYRNA BEACH UTILITIES** in response to this solicitation.
5. **COLLUSION:** The **PROPOSER** hereby attests that the prices in this offer have been arrived at independently without consultation, communication, or agreement with any competitor for the purpose of restricting competition.
6. **PRICE WARRANTY:** The **PROPOSER** warrants that the prices of the items set forth herein do not exceed the prices charged by the **PROPOSER** under a contract with the State of Florida.
7. **QUESTIONS REGARDING PROPOSAL:** **NEW SMYRNA BEACH UTILITIES** has made every effort to provide prospective vendors with the information needed to appropriately respond to this RFP. **NEW SMYRNA BEACH UTILITIES** realizes that some clarification, interpretation, or additional information may be required.

Questions regarding any portion of this RFP shall be directed, in writing, to:

New Smyrna Beach Utilities
Maureen Lynch, CPPB
Procurement Manager
mlynch@nsbufl.com

All such requests must be received no later than **2:30 PM**, Eastern Standard Time, **October 25, 2022**.

Responses to all requests for more information will be included in any addenda and will be made available to all **PROPOSERS VIA VENDOR LINK** on **November 1, 2022** by **5:00PM**.

<https://www.myvendorlink.com/common/searchsolicitations.aspx?aid=358>

Requests for additional information received after the **October 25, 2022** deadline will not receive a response. Responses will **not** be made orally.

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Any additional information pertaining to this RFP or to the services being sought hereunder obtained in a manner other than as described in the preceding paragraph should be regarded as unofficial. **NEW SMYRNA BEACH UTILITIES** will not be bound in any way by information so obtained, or by a **PROPOSER**'s reliance thereon.

8. **COMMUNICATIONS**: Any communication between any potential vendor, service provider, bidder, lobbyist or consultant and any **NEW SMYRNA BEACH UTILITIES**, staff member or consultant of the **NEW SMYRNA BEACH UTILITIES** regarding this procurement is strictly prohibited from the date on which the solicitation advertisement appears on the **NEW SMYRNA BEACH UTILITIES** website, VendorLink or newspaper through the date of contract award. Also, from the date of the filing of any notice of protest of award through resolution for the parties involved in the protest or contract award, whichever is longer. The only exceptions to this are communications with the **NEW SMYRNA BEACH UTILITIES** Material Manager or the **NEW SMYRNA BEACH UTILITIES** designated point of contact. Any violation shall constitute grounds for immediate and permanent disqualification of the offending firm and possible debarment or suspension. At the **NEW SMYRNA BEACH UTILITIES** General Manager/CEO and Director of Finance (CFO)'s sole discretion, it may also serve as grounds for the voiding of any Contract with the violator and/or to temporarily or permanently debarring the violator from future work with the **NEW SMYRNA BEACH UTILITIES**. This process will safeguard the integrity of the **NEW SMYRNA BEACH UTILITIES** procurement and protest process and also provide an ethical, equitable and transparent procurement process.
9. **NON DISCLOSURE**: New Smyrna Beach Utilities understands the vendors concerns regarding confidential and/or proprietary information for both participating parties. In response **NEW SMYRNA BEACH UTILITIES** is incorporating the following verbiage into **RFP 22-22** Upon receipt by **NEW SMYRNA BEACH UTILITIES**, responses to solicitations become public records subject to the provisions of Florida's state policy on public records, Section 119 Florida Statutes. If you believe that any portion of your response is exempt, you should clearly identify the specific documents for which confidentiality is claimed and provide specific legal authority of the asserted exemption.
10. **E-VERIFY**: By [registering as a vendor, submitting a response to this solicitation, entering into a Contract], you are obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Further, by your [registration as a vendor/response to this solicitation/entering into a contract] you affirm and represent that you are registered with the E-Verify system are using same, and will continue to use same as required by Section 448.095, F.S. Compliance with Section 448.095 includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination [as a vendor, disqualifying you for award of this solicitation, entering into a contract and/or, cancellation of an active contract], or if your subcontractor knowingly violates the statute, the subcontract must be terminated

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immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by the Vendor/Contractor, the Vendor/Contractor may not be allowed to do business with **New Smyrna Beach Utilities** or be awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Vendor/Contractor.

11. **INVOICES**: All invoices resulting from the award of this bid will be paid within 30 days of receipt of invoice or receipt of goods or acceptance of work performed.
12. **BID FORM**: A Bid Form is provided, and shall be returned via Vendor Link <https://www.myvendorlink.com/common/searchsolicitations.aspx?aid=358> marked with Bid number and acknowledgment of receipt of addenda where applicable. It is incumbent upon each **PROPOSER** to ensure that they have received all addenda before submitting their **PROPOSALS**.
13. **PREPARATION OF PROPOSAL**: All information shall be entered in ink, typewritten or produced by computer. It is your responsibility to make certain that unit prices and extended prices are correct. The **NEW SMYRNA BEACH UTILITIES** will not be responsible for errors or omissions made by proposer in determining proposal price (s). The proposal must contain a manual signature of an authorized representative of the agency proposing. In order to ensure uniformity, proposals must be submitted on this Proposal Form and the attached pages.
14. **OBLIGATION OF PROPOSER**: By submitting a proposal, the Proposer covenants and agrees that they have satisfied themselves from their own investigation of the conditions to be met, that they fully understand their obligation and that they will not make any claim for or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.
15. **AMENDED OR WITHDRAWN PROPOSALS**: Proposals may be amended or withdrawn only by written notice prior to the **PROPOSAL** opening. Amendments will only be accepted in the form of a new **PROPOSAL** package. The proposer must pick up the original RFP package and submit an amended sealed proposal prior to the RFP's closing date and time. Amendments or withdrawals received after the RFP opening will not be effective, and the original RFP submitted will be considered.
16. **PUBLIC ENTITY CRIMES**: UNDER SECTION 287.133(2)(a), FLORIDA STATUTES, 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 a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold

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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.

17. **CONSIDERATION OF PROPOSALS:** The NEW SMYRNA BEACH UTILITIES reserves the right to award the contract to the Proposer(s) that the NEW SMYRNA BEACH UTILITIES deems to offer the best overall proposal. The NEW SMYRNA BEACH UTILITIES is therefore not bound to accept a proposal on the basis of lowest price. In addition, the NEW SMYRNA BEACH UTILITIES at its sole discretion, reserves the right to cancel this Proposal, to reject any and all proposals, to waive any and all informalities and/or irregularities, to re-advertise with either the identical or revised specifications, or not award a contract at all if it is deemed to be in the best interest of the NEW SMYRNA BEACH UTILITIES to do so. The NEW SMYRNA BEACH UTILITIES also reserves the right to make multiple or split awards if it is deemed to be in the NEW SMYRNA BEACH UTILITIES'S best interest. The NEW SMYRNA BEACH UTILITIES shall not be responsible for any cost or expense incurred by the Proposer in preparing or submitting a proposal or any cost prior to the execution of a contract agreement.
18. **TIE PROPOSAL:** In the event of a tie proposal where quality and service are equal; a preference is given to vendors submitting, with the proposal, a certification of a drug free workplace in accordance with Section 287.087 Florida Statutes. Where tie proposals are between proposers, one of which is located in Volusia County and the other proposer is not, the recommended award shall be to the local proposer. Past Performance-Consideration will be given to a vendor based on previous history and performance on similar **New Smyrna Beach Utilities** projects or requirements. Delivery availability or completion period. Capacity to perform in terms of service availability, facilities, personnel or financial availability. Closeness to delivery point. If **all** conditions are equal, a flip of a coin, with two witnesses present, shall be the deciding factor.
19. **SUBMITTING PROPOSALS:** Proposals shall be **SUBMITTED THROUGH VENDOR LINK**
20. **NO PROPOSAL:** In the event a Request for Proposal is returned as a no bid, "**NO PROPOSAL**" shall be properly marked on the outside of the envelope with the RFP number.
21. **REJECTED PROPOSAL:** The NEW SMYRNA BEACH UTILITIES reserves the right to reject proposals containing any additional OR EXCLUDED terms or conditions not specifically requested in the original conditions and specifications.
22. **AWARDS:** Awards shall be made as required for the best interest of the NEW SMYRNA BEACH UTILITIES. The right is reserved to make award(s) by individual items, group of items, all or none, or any combination thereof, with one or more suppliers.
23. **PURCHASING AGREEMENTS WITH OTHER GOVERNMENT AGENCIES**
At the option of the awarded Supplier, the submission of any bid in response to this proposal request constitutes a bid made under the same terms and conditions, for the same contract price, to other

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governmental agencies including the State of Florida and its agencies, political subdivisions, counties and cities.

Each governmental agency desiring to accept these bids, and make an award thereof, shall do so independently of any other governmental agency. Each agency shall be responsible for its own purchases, and each shall be liable only for materials ordered and received by it and no agency assumes any liability by virtue of this bid.

24. **CHANGES**: NEW SMYRNA BEACH UTILITIES may, at any time, direct in writing additions, deletions or changes to all or any part of the work. If any such changes cause an increase or decrease in the cost of or in the time required to perform such work, Contractor shall submit detail information substantiating such claims and an equitable adjustment shall be made to the price or time of performance.
25. **CONFLICT OF INTEREST OF OFFICERS OR EMPLOYEES OF THE CONTRACTING ENTITY/LOCAL JURISDICTION, MEMBERS OF THE LOCAL GOVERNING BODY, OR OTHER ELECTED OFFICIALS**: No member or employee of the contracting entity/local jurisdiction or its designees or agents; no member of the governing body; and no other public official of the NEW SMYRNA BEACH UTILITIES who exercises any function or responsibility with respect to this contract, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts, the language set forth in this paragraph prohibiting conflict of interest.
26. **EMPLOYEE CONFLICT OF INTEREST**: It shall be unethical for any NEW SMYRNA BEACH UTILITIES employee to participate directly or indirectly in a procurement contract when the NEW SMYRNA BEACH UTILITIES employee knows that:
- (1) The NEW SMYRNA BEACH UTILITIES employee or any member of the NEW SMYRNA BEACH UTILITIES employee's immediate family has a financial interest in the procurement contract; or
 - (2) Any other person, business, or organization with whom the NEW SMYRNA BEACH UTILITIES employee or any member of a NEW SMYRNA BEACH UTILITIES employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- A NEW SMYRNA BEACH UTILITIES employee or any member of a NEW SMYRNA BEACH UTILITIES employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

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27. **GRATUITIES AND KICKBACKS:**

(1) Gratuities. It shall be unethical for any person to offer, give, or agree to give any **NEW SMYRNA BEACH UTILITIES** employee or former **NEW SMYRNA BEACH UTILITIES** employee, or for any **NEW SMYRNA BEACH UTILITIES** employee or former **NEW SMYRNA BEACH UTILITIES** employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity **NEW SMYRNA BEACH UTILITIES** in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

(2) Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation, therefore.

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28. **Indemnification for Tort Actions/Limitation of Liability-** The provisions of Florida Statute 768.28 applicable to the apply in full to this contract. Any legal actions to recover monetary damages in tort for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the **New Smyrna Beach Utilities** acting within the scope of his/her office or employment are subject to the limitations specified in this statute.

No officer, employee or agent of the **New Smyrna Beach Utilities** acting within the scope of his/her employment or function shall be held personally liable in tort or named as a defendant in any action for injury or damage suffered as a result of any act, event or failure to act.

The New Smyrna Beach Utilities shall not be liable in tort for the acts or omissions of an officer, employee or agent committed while acting outside the course and scope of his/her employment. This exclusion includes actions committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

To the fullest extent permitted by law, the vendor shall defend, indemnify, and hold harmless the **New Smyrna Beach Utilities**, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney's fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of the vendor or its subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the **New Smyrna Beach Utilities** .

Provided, however, if the contract between the **New Smyrna Beach Utilities** and the Contractor is deemed by a court of competent jurisdiction to be a construction contract for purposes of Section 725.06, Florida Statutes, any obligation of the Contractor to defend, indemnify or hold harmless the **New Smyrna Beach Utilities**, shall be limited to an obligation to indemnify or hold harmless the **New Smyrna Beach Utilities**, its officers and employees from liability damages, losses, and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the contractor and persons employed or utilized by the Contractor in the performance of the contract.

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CERTIFICATION OF DRUG-FREE WORKPLACE FORM

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

VENDOR SIGNATURE

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PUBLIC ENTITY CRIMES FORM
SWORN STATEMENT UNDER SECTION 287.133(3) (1) FLORIDA STATUTES

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

This sworn statement is submitted Bid, Bid or Contract for **REQUEST FOR PROPOSAL #22-22 PUMP AND MOTOR REPAIR**

This sworn statement is submitted by _____

[name of entity submitting sworn statement] whose business address is: _____ and (if applicable) its Federal Employer Identification Number (FEIN) is _____.

If entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____.

My name is _____ and my relationship to the entity named above is _____.

I understand that a “public entity crime” as defined in Paragraph 287.133 (1) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state, or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

I understand that “convicted” or “conviction” as defined in Paragraph 287.133 (91) (b), Florida Statutes means a finding of guilt or a conviction of a public entity crime, with or without adjudication of guilt, in any federal or state trial court or recording, relating to charges brought by federal or state trial court or recording, relating to charges brought by federal or state trial court or recording, relating to charged brought by indictment or information after July 1, 1989, as a result of just verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

I understand the “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes, means: (1) A Predecessor or Successor of a person convicted of public crime: or (2) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholder, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of public crime in Florida during the preceding 36 months shall be considered an affiliate.

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Public Entity Crimes Statement

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I understand that a “person” as defined in Paragraph 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provisions of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in management of an entity.

Based on information and belief, that statement which I have marked below is true in relation to the entity submitting this sworn statement. [Please indicate which statement applies]

____ Neither the entity submitting this sworn statement, or one more of the officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, nor any affiliate of the entity, has been charged with and convicted of public entity subsequent to July 1, 1989, AND [Please indicate which additional statement applies.]

____ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. [Please attach a copy of the final order.]

____ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. [Please attach a copy of the final order.]

____ The person or affiliate has not been placed on the convicted vendor list. [Please describe any action taken by or pending with the Department of General Services.]

Date _____ Signature _____

STATE OF: _____ COUNTY OF: _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority, _____
[name of individual signing] who after first sworn by me affixed his/her signature in the space provided above on this _____ day of _____, 20_____.

My Notary Commission expires: _____ Personally known to me, or
Produced Identification: _____

Notary Public _____ Print, Type or Notary Stamp _____ Type of I.D. _____

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NON-COLLUSION AFFIDAVIT OF PRIME BIDDER FORM

State of _____

County of _____

_____, being first duly sworn, deposes and says that:

He/she is _____ of _____, **PROPOSER** that has submitted the attached **PROPOSAL**;

He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

Neither the said **PROPOSER** nor any of its officers, partners, owners, agent representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, sought by agreement or collusion or communication or conference with any other **PROPOSER**, firm or person, to fix the price or prices in the attached Bid or of any other **PROPOSER**, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other **PROPOSER**, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the **NEW SMYRNA BEACH UTILITIES**.

The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the **PROPOSER** or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signed

Title

Subscribed and sworn to before me this _____ day of _____, 20____.

Title

My Notary Commission Expires: _____

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DESIGNATED SUBCONTRACTORS LIST
(TO BE EXECUTED BY BIDDER & SUBMITTED WITH BID)
PROJECT: RFP 22-22 PUMP AND MOTOR REPAIR

Bidder acknowledges and agrees that it must clearly set forth below the name, location and Florida contractor license number of each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the Work or who will specially fabricate and install a portion of the Work according to detailed drawings contained in the plans and specifications in an amount in excess of one-half of one percent (0.5%) of Bidder's total Bid and the kind of Work that each will perform. Vendors or suppliers of materials only do not need to be listed.

Bidder acknowledges and agrees that if Bidder fails to list as to any portion of Work, or if Bidder lists more than one subcontractor to perform the same portion of Work, Bidder must perform that portion itself or be subjected to penalty under applicable law. In case more than one subcontractor is named for the same kind of Work, state the portion of the kind of Work that each subcontractor will perform.

If alternate bids are called for and Bidder intends to use subcontractors different from or in addition to those subcontractors listed for work under the base Bid, Bidder must list subcontractors that will perform Work in an amount in excess of one half of one percent (0.5%) of Bidder's total Bid, including alternates.

If further space is required for the list of proposed subcontractors, attach additional sheets showing the required information, as indicated below.

Subcontractor Name: _____

FL Cont. Lic. #: _____ **Location:** _____

Portion of Work: _____

Subcontractor Name: _____

FL Cont. Lic. #: _____ **Location:** _____

Portion of Work: _____

Subcontractor Name: _____

FL Cont. Lic. #: _____ **Location:** _____

Portion of Work: _____

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Subcontractor Name: _____

FL Cont. Lic. #: _____ **Location:** _____

Portion of Work: _____

Subcontractor Name: _____

FL Cont. Lic. #: _____ **Location:** _____

Portion of Work: _____

Subcontractor Name: _____

FL Cont. Lic. #: _____ **Location:** _____

Portion of Work: _____

Subcontractor Name: _____

FL Cont. Lic. #: _____ **Location:** _____

Portion of Work: _____

Subcontractor Name: _____

FL Cont. Lic. #: _____ **Location:** _____

Portion of Work: _____

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VENDOR APPLICATION

In addition to General conditions, your **PROPOSAL** may be disqualified if the following vendor information is not returned with your **PROPOSAL**.

Vendor is:

- () Corporation
- () Partnership
- () Sole Proprietorship
- () Other _____ (Explain)

Federal Employer Identification

Number or Social Security Number: _____

Do you collect Florida State Sales Tax? () Yes () No

Firm Name: _____

Mailing Address: _____

Telephone No. _____ Fax No. _____

Email Address: _____ Web Address: _____

Commodity or Service Supply: _____

If vendor is quoting, as a manufacturer's representative and the purchase order should be addressed to the manufacturer in care of the vendor, so indicate.

If remittance address is different from the mailing address so indicate below.

Firm Name: _____

Mailing Address: _____

Submitted by: _____

Name & Title Printed: _____

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QUESTIONNAIRE

Additional space may be required. Please answer questions in the order presented. All questions must be answered, or **PROPOSER** may be disqualified.

1. Has your company ever been denied insurance or had insurance canceled?
2. Is your company bondable? Has your company ever been denied bond?
If yes, explain.
3. Can your insurance company produce a certificate of insurance stating your limits and naming NEW SMYRNA BEACH UTILITIES as an Additional Insured?
4. Has your company been a defendant in any lawsuits?
5. Is your company a subsidiary or otherwise legally affiliated with any other company?
6. Is your company rated by Dunn & Bradstreet or any other rating agency?
If yes, what is the name of the agency and rating?
7. Is your company in any stage of bankruptcy, including initial filing?
8. Has your company been disbarred by the Federal Government or any State Government?
9. How many employees does your company have?

Staff Employees: Full Time _____ Part Time _____

Contract Employees: Full Time _____ Part Time _____

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REQUIRED DISCLOSURE

At its sole discretion, the **NEW SMYRNA BEACH UTILITIES** may reject any proposer the **NEW SMYRNA BEACH UTILITIES** finds to lack, or whose present or former executive employees, officers, directors, stockholders, partners or owners are found by the **NEW SMYRNA BEACH UTILITIES** to lack honesty, integrity, or moral responsibility. The discretion of the **NEW SMYRNA BEACH UTILITIES** may be exercised based on the **NEW SMYRNA BEACH UTILITIES** own investigation, public records, or any other reliable sources of information. By submitting a proposal, **PROPOSER** recognizes and accepts that the **NEW SMYRNA BEACH UTILITIES** may reject the proposal based upon the exercise of its sole discretion and proposer waives any claim it might have for damages or other relief resulting from the rejection of its proposal based on these grounds.

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SCOPE OF WORK
Page 1 of 2

PROPOSER NAME: _____

New Smyrna Beach Utilities is soliciting proposals from qualified firms to provide as needed pump and motor repairs.

Award may be made to one or more firms, and no guaranteed quantity of work is offered. This will be a one-year agreement with the option to renew for three additional one-year terms. Price escalation and de-escalation will be considered at the end of each term.

Awarded firms will be responsible for:

- Pickup of equipment requested for evaluation and/or repair from affected New Smyrna Beach Utilities location within 24 hours of request
- After assessment of equipment, development of a quote for the work necessary to repair to include pricing in accordance with the agreement and timeline to complete the work.
- Execution of work on the equipment, once a Purchase Order referencing the quote has been issued.
- Timely completion of the work.
- Return of repaired equipment within 48 hours of completion of work.
- General responsiveness to request for evaluation/repair, phone calls and emails.

Service under this award will include a full range of pump and electric motor repair services. These services will include but not be limited to inspection, evaluation and repair of vertical turbine split case centrifugal pumps, centrifugal fans/blowers, lift station pumps, inspection, evaluation and repair of 3-phase electric motors, professional pump and electric motor reports, and other services as needed. Firms selected shall be capable of providing services including:

PUMP REPAIR SERVICES:

- Shaft Repair
- Shaft Replacement and Bearing Replacement
- Seal Repair
- Seal Replacement
- Wear Ring Replacement
- Impeller Repair
- Impeller Replacement
- Apply Protective Coatings
- Volute Repair
- Volute Replacement

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Casing Repair
Casing Replacement
Dynamic Balancing
Clean Pump
Assembly of Pump
Performance Testing
Pump Curves
Provide Detailed Shop Reports, and Recommendations

ELECTRIC MOTOR REPAIR SERVICES:

Repair Shaft
Replace Bearings
Rewind Motor
Dip and Bake Motor
Balance Motor
Motor Diagnostic

MOTOR TESTING TO INCLUDE:

Megging
HiPot Testing
Surge Testing
Voltage Drop Testing
Core Loss Testing
Provide Detail Shop Reports and Recommendations

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PROPOSAL SUBMITTAL REQUIREMENTS AND EVALUATION FACTORS
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PROPOSER NAME: _____

Proposals shall include all of the information as listed below, and any additional information that the **PROPOSER** deems pertinent to the understanding and evaluating of the proposal. Proposals shall be organized for evaluation in tabbed sections. **One tab FOR EACH EVALUATION FACTOR BELOW** Submittals must be clear, concise, typed on letter size paper and individually bound. Submittals should contain no more than (30), double-sided, single-spaced pages, at least #10 fonts. Longer submittals may be discarded. The **PROPOSER** should not withhold any information from the written response in anticipation of presenting the information orally or in a demonstration, since oral presentations or demonstrations may not be solicited. Failure to supply all of the information requested shall result in the proposal being excluded from consideration. The **NEW SMYRNA BEACH UTILITIES** reserves the right to request information or clarification from **PROPOSERS** following the bid opening if omissions are deemed curable.

NEW SMYRNA BEACH UTILITIES WILL CONSIDER THE FOLLOWING WEIGHTED FACTORS IN THE EVALUATION OF THE PROPOSALS RECEIVED. The total possible points earned in this RFP by the Evaluation Committee is 100. See table below.

EVALUATION CRITERIA	MAXIMUM POSSIBLE POINTS
Qualifications of Firm	20
Qualifications of the Project Team	20
References	20
Location	15
Responsiveness	15
Pricing	5
Required Forms	5
TOTAL	100

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PROPOSAL SUBMITTAL REQUIREMENTS AND EVALUATION FACTORS

PROPOSER NAME: _____

EVALUATION FACTOR # 1: QUALIFICATIONS OF FIRM
MAXIMUM POINTS OF 20

Provide a description and overview of firm, including the size, range of activities, licenses, certifications etc. Detail expertise in, and experience with troubleshooting and repair of pumps and electric motors such as lift station pump/motors, well pump/motors, transfer pump/motors, and high service pump/motors (3 HP to 300 HP and up to 5000 GPM) of similar size and materials. (Limit response to two pages maximum)

EVALUATION FACTOR # 2: QUALIFICATIONS OF THE PROJECT TEAM
MAXIMUM POINTS 20

Identify the primary individuals (Project Team) who will be responsible for supervising, managing and executing the work for this Contract. List all certifications appropriate to the work. (Limit response to one page)

EVALUATION FACTOR # 3: REFERENCES
MAXIMUM POINTS 20

Provide a list of six (6) utility clients for whom work has been performed within the past 5 years. Be sure to include:

- a. Entity/Client
- b. Location
- c. Year Completed
- d. Client contact name, Phone, and Email
- e. Details of the individual projects

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PROPOSAL SUBMITTAL REQUIREMENTS AND EVALUATION FACTORS
PAGE 2 OF 3

EVALUATION FACTOR # 4: LOCATION-
MAXIMUM POINTS 15

Provide shop location(s) where the bulk of work will occur and indicate which member of the Project Team primarily works from each. Provide information on alternate or backup facilities, if available.

EVALUATION FACTOR # 5: RESPONSIVENESS-
MAXIMUM POINTS 15

Describe your approach to timely completion of work and provide general turnaround times.

EVALUATION FACTOR #6 PRICING-
MAXIMUM POINTS 5

Provide a not to exceed pricing using the BID TABULATION (provided within this RFP). PLEASE FILL OUT AND UPLOAD BID TABULATION *AS WELL AS* ENTER PRICING DIRECTLY INTO VENDOR LINK IN THE PROVIDED TAB. *THANK YOU*

EVALUATION FACTOR#7 REQUIRED FORMS-
MAXIMUM POINTS 5

Forms must be complete and attached within the proposal under Tab 7

- Certification of Drug-Free Workplace
- Public Entity Crimes
- Non-collusion Affidavit
- Subcontractors List
- Request for Taxpayer Identification Number and Certification W-9 Form
- Vendor Application
- Questionnaire
- Required Disclosure
- Addenda Acknowledgement
- Include a copy of your current Occupational License from an authorizing government agency

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BID TABULATION
Page 1 of 2

PROPOSER NAME: _____

Item of Work	Per (Unit)	Unit Price
1. Trailer Truck Service to transport pump to and from repair facility (time must be reasonable compared to Google Maps estimate. No pay for breakdowns).	HR	\$
2. Crane Truck Service (including operator) for removing and install pump or motor	HR	\$
3. Standard Labor Rate (Mechanic) Monday – Friday, 8:00 am – 5:00 pm	HR	\$
4. Non-Standard Labor Rate (Mechanic) After hours, weekend, and holidays	HR	\$
5. Standard Labor Rate (Machinist) Monday – Friday, 8:00 am – 5:00 pm	HR	\$
6. Non-Standard Labor Rate (Machinist) After hours, weekend, and holidays	HR	\$
7. Tear Down and Inspection	HR	\$
Parts Allowance: Cost plus markup %		. %

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PROPOSAL FORM

PROPOSERS NAME: _____

The undersigned hereby declares that the following list states any and all variations from, and exceptions to, the requirements of the scope of work.

Submitted By:

Company _____

Name and Title _____ Signature _____

Telephone No. _____ e-mail _____

NEW SMYRNA BEACH UTILITIES reserves the right to award the contract to the PROPOSER(s) that the NEW SMYRNA BEACH UTILITIES deems to offer the best overall bid. NEW SMYRNA BEACH UTILITIES is therefore not bound to accept a bid on the basis of lowest price. In addition, NEW SMYRNA BEACH UTILITIES at its sole discretion, reserves the right to cancel this Bid, to reject any and all bids, to waive any and all informalities and/or irregularities, to re-advertise with either the identical or revised specifications, or not award a contract at all if it is deemed to be in the best interest of the NEW SMYRNA BEACH UTILITIES to do so. NEW SMYRNA BEACH UTILITIES also reserves the right to make multiple or split awards if it is deemed to be in the NEW SMYRNA BEACH UTILITIES'S best interest. NEW SMYRNA BEACH UTILITIES shall not be responsible for any cost or expense incurred by the PROPOSER in preparing or submitting a bid or any cost prior to the execution of a contract agreement.

As representative for the **PROPOSER**, I have read and understand this statement.

Name and Title _____ Signature _____

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ANNUAL CONTRACT FOR PUMP AND MOTOR REPAIRS

SAMPLE AGREEMENT

THIS AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES (“AGREEMENT”) is made and entered into this day of _____, 2021, by and between the **NEW SMYRNA BEACH UTILITIES**, (hereafter "**NEW SMYRNA BEACH UTILITIES**"), located at 200 Canal Street, New Smyrna Beach, Florida 32168, and, (hereafter **SERVICE PROVIDER**"), located at.

RECITALS

1. The **NEW SMYRNA BEACH UTILITIES** was created by special act of the Florida Legislature as a political subdivision of the State of Florida with certain powers, authorities, and duties related to the provision of water, wastewater, reclaimed water, and electric utility services, including the authority to enter into contracts .

2. The **NEW SMYRNA BEACH UTILITIES** wishes to obtain Underground Utility Services.

3. The **SERVICE PROVIDER** is willing to provide such services.

ACCORDINGLY, for and in consideration of the Recitals hereof, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the Parties, the Parties hereby covenant and agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct and form a material part of this Agreement.

SECTION 2. TERM. This Agreement is to be become effective upon execution by both parties. The initial term shall be for **ONE**(1) year(s). Additionally, the parties agree that this Agreement may be renewed beyond the initial term, up to **Three** (3) additional one-year periods upon mutual agreement in writing. Either party may elect to terminate the Agreement by giving written notice prior to **THIRTY DAYS (30)**.

SECTION 3. DESCRIPTION OF SERVICES. **SERVICE PROVIDER** agrees to perform _____ services as specified in Exhibit “A” attached to and incorporated into this Agreement.

SECTION 4. CHANGES IN THE SCOPE OF WORK.

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4.1 NEW SMYRNA BEACH UTILITIES may make changes in the services at any time by giving written notice to **SERVICE PROVIDER**. If such changes increase, decrease or eliminate any amount of work, **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** will negotiate any change in total cost or schedule modifications. If **NEW SMYRNA BEACH UTILITIES** approves, **NEW SMYRNA BEACH UTILITIES** shall amend the Scope of Services to reflect the modifications; and **SERVICE PROVIDER** shall be compensated for said services in accordance with the terms of Section 5 herein. All change orders shall be in writing and executed by both **NEW SMYRNA BEACH UTILITIES** designated representative and the **SERVICE PROVIDER**.

4.2 All of **NEW SMYRNA BEACH UTILITIES** said Scope of Services and amendments thereto shall be performed in strict accordance with the terms of this Agreement insofar as they are applicable.

SECTION 5. SCHEDULE AND PERIOD OF PERFORMANCE.

5.1 SERVICE PROVIDER shall perform its services in conformance with the agreed upon schedule. **SERVICE PROVIDER** shall complete all of said services in a timely manner and will keep **NEW SMYRNA BEACH UTILITIES** apprised of the status of work on a monthly basis. Should **SERVICE PROVIDER** fall behind the agreed-upon schedule, it shall employ such resources so as to comply with the agreed-upon schedule.

5.2 No extension for completion of services shall be granted to **SERVICE PROVIDER** without **NEW SMYRNA BEACH UTILITIES** prior written consent, except as provided in Sections 4.1 and 22.1 herein.

SECTION 6. COMPENSATION FOR SERVICES. **NEW SMYRNA BEACH UTILITIES** agrees to compensate **SERVICE PROVIDER** for services properly performed at the **HOURLY** rates of

SECTION 7. PAYMENT; INVOICES.

7.1 Invoices for **SERVICE PROVIDER'S** services shall be submitted to the **NEW SMYRNA BEACH UTILITIES** at monthly intervals for services rendered during the previous period. Each invoice shall delineate the period in which the services were rendered; shall include a summary of the progress to date as a percentage of the major phases of the work. Each invoice shall be certified as correct by a duly authorized representative of **SERVICE PROVIDER**. The bill[s] shall identify the services completed and the amount charged.

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7.2 NEW SMYRNA BEACH UTILITIES or its authorized representative shall have the right, at all reasonable times, at its own expense, to inspect and audit the books and records of **SERVICE PROVIDER** insofar as they pertain to the direct charges payable by **NEW SMYRNA BEACH UTILITIES** under this Agreement and such audit is performed within three (3) years after the expiration of this Agreement. The composition of fixed rates will not be subject to audit.

7.3 All invoices shall be due and payable thirty (30) days from receipt thereof by **NEW SMYRNA BEACH UTILITIES**, subject to **NEW SMYRNA BEACH UTILITIES** right to contest, in good faith, all or any part of the charges set forth therein. Payment of invoices shall not be unreasonably withheld by **NEW SMYRNA BEACH UTILITIES**, but the **NEW SMYRNA BEACH UTILITIES** reserves the right to reject any statement which fails to adequately describe the services rendered by **SERVICE PROVIDER**. Upon written notice to **SERVICE PROVIDER**, payment may be withheld, in whole or in part, for **SERVICE PROVIDER'S** failure to comply with a term, condition or requirement of this Agreement. **SERVICE PROVIDER** will help effect resolution and transmit a revised invoice as necessary. Thereafter, the withheld amount(s) shall be paid upon **SERVICE PROVIDER'S** satisfactory demonstration of compliance to the **NEW SMYRNA BEACH UTILITIES**. Amounts not questioned by **NEW SMYRNA BEACH UTILITIES** shall be promptly paid to **SERVICE PROVIDER** in accordance with the above payment procedures.

SECTION 8. RIGHT TO INSPECTION. **NEW SMYRNA BEACH UTILITIES** or its affiliates shall at all times have the right to review or observe the services performed by **SERVICE PROVIDER**. No inspection, review, or observation shall relieve **SERVICE PROVIDER** of its responsibility under this Agreement.

SECTION 9. WARRANTY AND ACCEPTANCE. The **SERVICE PROVIDER** agrees that all material shall be new and workmanship shall be first class in every respect. The work shall be subject to inspection and acceptance by the **NEW SMYRNA BEACH UTILITIES**. **SERVICE PROVIDER** guarantees its work hereunder for a period of 12 months after completion and acceptance of the work unless otherwise set forth herein. In the event **NEW SMYRNA BEACH UTILITIES** discovers defects in material or workmanship at any time before the expiration of the specified warranty period, **SERVICE PROVIDER** shall, upon written notice from the **NEW SMYRNA BEACH UTILITIES**, repair or replace at its sole expense any such defects. **NEW SMYRNA BEACH UTILITIES** may perform such repairs or replacements by other reasonable means and **SERVICE PROVIDER** agrees to pay for such corrective measures. Neither acceptance of the work by the **NEW SMYRNA BEACH UTILITIES** nor payment shall relieve **SERVICE PROVIDER** from liability under the indemnity clause or any of the guarantees or warranties contained or implied herein.

SECTION 10. SAFETY. To the extent the **NEW SMYRNA BEACH UTILITIES'S** safety standards do not violate other County, State or Federal standards, **SERVICE PROVIDER** agrees

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to comply with **NEW SMYRNA BEACH UTILITIES** safety standards while on the property of the **NEW SMYRNA BEACH UTILITIES**. **SERVICE PROVIDER** shall have full responsibility and assume all liability for the safety and supervision of its employees while performing services provided hereunder.

SECTION 11. INSURANCE.

11.1 SERVICE PROVIDER shall maintain in force during the term of this Agreement, at its own expense, public liability insurance and other insurance coverage as set forth in Exhibit "B" which is hereby made a part of this Agreement.

11.2 SERVICE PROVIDER and **NEW SMYRNA BEACH UTILITIES** waive all rights against each other and their respective directors, officers, partners, New Smyrna Beach Utilities officials, agents, subcontractors, **SERVICE PROVIDERS**, and employees for damages covered by any type of property insurance during and after the completion of the services. A similar provision shall be incorporated into all construction contractual arrangements entered into by **NEW SMYRNA BEACH UTILITIES** and shall protect **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** to the same extent. All project contractors shall be required to include **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** as additional insureds on their general liability insurance policies.

SECTION 12. STANDARDS OF CONDUCT; COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS.

12.1 The **SERVICE PROVIDER** warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the **SERVICE PROVIDER** to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the **SERVICE PROVIDER** any fee, **NEW SMYRNA BEACH UTILITIES**, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

12.2 The **SERVICE PROVIDER** covenants that it or any of its employees presently has no interest and shall not acquire any interest, direct or indirect, financial, or otherwise, that would conflict in any manner or degree with performance of services hereunder.

12.3 The **SERVICE PROVIDER** agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313, Florida Statutes, as it relates to services performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. The **SERVICE PROVIDER** agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the services performed.

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12.4 The **SERVICE PROVIDER** shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

12.5 The **SERVICE PROVIDER** warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the **SERVICE PROVIDER** to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporations, individual, or firm, other than a bona fide employee working solely for the **SERVICE PROVIDER** any fee, New Smyrna Beach Utilities, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement.

12.6 **SERVICE PROVIDER** is subject to the provisions of Section 287.133(2)(a), Florida Statutes, on Public Entity Crimes.

SECTION 13. SERVICE PROVIDER'S REPRESENTATIONS. On behalf of its employees, agents, servants and contractors, **SERVICE PROVIDER** represents and warrants to the **NEW SMYRNA BEACH UTILITIES** each of the following:

13.1 **SERVICE PROVIDER** represents that the services provided hereunder shall conform to all requirements of this Agreement; shall be consistent with recognized and sound consulting practices and procedures; and shall conform to the professional standards of care, skill, and diligence appropriate to the nature of the services rendered.

13.2 **SERVICE PROVIDER** represents that the personnel furnishing such services shall be qualified and competent to perform the services assigned to them and that such guidance given by and the recommendations and performance of such personnel shall reflect their best personal knowledge and judgment.

13.3 **SERVICE PROVIDER** represents that if **SERVICE PROVIDER**, through its negligent acts, errors, or omissions, causes any injury to **NEW SMYRNA BEACH UTILITIES** or causes any physical damage to, or destruction of, any of **NEW SMYRNA BEACH UTILITIES** property during the term of this Agreement, it shall be liable for said injuries and/or damages, including reasonable attorney fees and costs incurred as a result therefrom.

13.4 **SERVICE PROVIDER** represents that none of **SERVICE PROVIDER**'s principals or the immediate family of **SERVICE PROVIDER**'s principals has a compensation arrangement of any kind with City. For purposes of this subsection, the term "immediate family" shall include a spouse, natural or adoptive parent, child or sibling, stepparent, stepchild, stepbrother or stepsister, father-in-law, mother-in-law, grandparent, grandchild or spouse of a grandparent or

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grandchild. For purposes of this subsection, compensation shall be defined as any type of remuneration directly or indirectly, overtly or covertly, paid in cash or in kind.

13.5 SERVICE PROVIDER represents that it is not undergoing any type of audit by a public or private, state or regulatory body or auditing entity.

13.6 SERVICE PROVIDER represents that it and its principals have not engaged in, and during the term of this Agreement agree not to engage in, any activities prohibited under the federal anti-kickback laws (42 U.S.C. 1320a-7, 1320a-7a, 1320a-7b), the regulations promulgated pursuant to such federal statutes, related state or local statutes or regulations, or rules of professional conduct.

13.7 Should **SERVICE PROVIDER** breach the representations set forth above, **NEW SMYRNA BEACH UTILITIES** shall have such remedies as are set forth in this Agreement. To the extent an applicable remedy is not provided herein, both Parties shall have all such remedies as allowed under the laws of the State of Florida. Additionally, without limiting the generality of the foregoing, if prior to the expiration of two (2) years from the date **SERVICE PROVIDER** completes its services hereunder, **SERVICE PROVIDER'S** services are negligent or erroneous and **NEW SMYRNA BEACH UTILITIES** notifies **SERVICE PROVIDER** in writing that a negligent error or omission has been discovered in **SERVICE PROVIDER'S** services, **SERVICE PROVIDER** shall correctly perform such negligent services at no additional cost to **NEW SMYRNA BEACH UTILITIES** and within a reasonable time period.

SECTION 14. GUARANTEE AGAINST INFRINGEMENT. **SERVICE PROVIDER** guarantees that all services provided under this Agreement shall be free from claims of patent, copyright, and trademark infringement. **SERVICE PROVIDER** shall indemnify, hold harmless, and defend **NEW SMYRNA BEACH UTILITIES**, its officers, directors, employees, agents, assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of any goods, services, or other item delivered under this Agreement.

SECTION 15. INDEMNIFICATION. **SERVICE PROVIDER** shall defend, indemnify, and hold harmless the **NEW SMYRNA BEACH UTILITIES**, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with **SERVICE PROVIDER'S** negligent performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from Agreements between the **SERVICE PROVIDER** and third parties made pursuant to this Agreement. **SERVICE PROVIDER** shall reimburse the **NEW SMYRNA BEACH UTILITIES** for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with **SERVICE PROVIDER'S** performance or non-performance of this Agreement. This section shall be interpreted and construed in a manner to

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comply with any applicable Florida Statutes, including without limitation Sections 725.06 and 725.08, Fla. Stat., if applicable. The provisions of this section shall survive termination of this Agreement. Ten dollars (\$10) of the payments made by the **NEW SMYRNA BEACH UTILITIES** constitute separate, distinct, and independent consideration for the granting of this indemnification, the receipt and sufficiency of which is voluntary and knowingly acknowledged by the **SERVICE PROVIDER**.

SECTION 16. AUDIT; PUBLIC RECORDS RETENTION; DOCUMENTS; OWNERSHIP.

16.1 Upon **NEW SMYRNA BEACH UTILITIES** or its designated Project Leader's request, at any time during the term of this Agreement or upon completion or termination of this Agreement, **SERVICE PROVIDER** shall provide **NEW SMYRNA BEACH UTILITIES** or its designated Project Leader with a copy of all documents prepared by **SERVICE PROVIDER** under this Agreement. Documents shall be original and PDF versions.

16.2 The parties acknowledge that the **NEW SMYRNA BEACH UTILITIES** is a part of the government of the City of New Smyrna Beach, Florida, and subject to the Florida Public Records Law. **SERVICE PROVIDER** has been advised the **NEW SMYRNA BEACH UTILITIES** that all its activities are subject to the Public Records Law (Chapter 119, Florida Statutes) and the Sunshine Law (Section 286.011, Florida Statutes), and agrees to maintain all records necessary to comply with the requirement of such laws, and for the proper supervision of the services performed pursuant to this Agreement. **SERVICE PROVIDER** agrees to comply with all **NEW SMYRNA BEACH UTILITIES** policies and procedures in observing the requirement of said laws. **SERVICE PROVIDER** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the **SERVICE PROVIDER** in conjunction with this **AGREEMENT**. Specifically, the **SERVICE PROVIDER** must:

(1) Keep and maintain public records that ordinarily and necessarily would be required by the **NEW SMYRNA BEACH UTILITIES** in order to perform the services being performed by the **SERVICE PROVIDER**.

(2) Provide the public with access to public records on the same terms and conditions that the **NEW SMYRNA BEACH UTILITIES** would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(4) Meet all requirements for retaining public records and transfer, at no cost, to the **NEW SMYRNA BEACH UTILITIES** all public records in possession of the **SERVICE PROVIDER** upon termination of the **AGREEMENT** and destroy any duplicate public records that are exempt or

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confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the **NEW SMYRNA BEACH UTILITIES** in a format that is compatible with the information technology systems of the **NEW SMYRNA BEACH UTILITIES**.

The **SERVICE PROVIDER** shall promptly provide the **NEW SMYRNA BEACH UTILITIES** with a copy of any request to inspect or copy public records in possession of the **SERVICE PROVIDER** and shall promptly provide the **NEW SMYRNA BEACH UTILITIES** a copy of the **SERVICE PROVIDER'S** response to each such request. Failure to grant such public access will be grounds for immediate termination of this **AGREEMENT** by the **NEW SMYRNA BEACH UTILITIES**.

16.3 NEW SMYRNA BEACH UTILITIES shall have the right to audit the books, records and accounts of **SERVICE PROVIDER** that are related to the performance of Services pursuant to this Agreement. **SERVICE PROVIDER** shall keep such books, records and accounts as may be necessary in order to record complete and correct entries related to this Agreement. **SERVICE PROVIDER** shall preserve and make available, at reasonable times for examination and audit by **NEW SMYRNA BEACH UTILITIES**, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or if the Florida Public Records Act is not applicable for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by **NEW SMYRNA BEACH UTILITIES** to be applicable to **SERVICE PROVIDER'S** records, **SERVICE PROVIDER** shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by **SERVICE PROVIDER**. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for **NEW SMYRNA BEACH UTILITIES** disallowance and/or recovery of any payment upon such entry. The **SERVICE PROVIDER** shall retain all records relating to this Agreement for five years after the **NEW SMYRNA BEACH UTILITIES** makes final payment and all other pending matters are closed.

16.4 Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of **NEW SMYRNA BEACH UTILITIES**. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by **SERVICE PROVIDER**, whether finished or unfinished, shall become the property of **NEW SMYRNA BEACH UTILITIES** and shall be delivered by **SERVICE PROVIDER** to the **NEW SMYRNA BEACH UTILITIES** within seven (7) days of termination of this Agreement by either party. Any compensation due to **SERVICE PROVIDER** may be withheld until all documents are received as provided herein.

SECTION 17. ASSIGNMENT

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17.1 SERVICE PROVIDER shall not assign or subcontract this Agreement or any rights or any monies due or to become due hereunder without the prior, written consent of **NEW SMYRNA BEACH UTILITIES**. All requirements to be observed by the **SERVICE PROVIDER** shall be observed by all subcontractors.

17.2 If upon receiving written approval from **NEW SMYRNA BEACH UTILITIES**, any part of this Agreement is subcontracted by **SERVICE PROVIDER**, **SERVICE PROVIDER** shall be fully responsible to **NEW SMYRNA BEACH UTILITIES** for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.

17.3 If **NEW SMYRNA BEACH UTILITIES** determines that any subcontractor is not performing in accordance with this Agreement, **NEW SMYRNA BEACH UTILITIES** shall so notify **SERVICE PROVIDER** who shall take immediate steps to cancel the subcontract or correct the deficiency. **NEW SMYRNA BEACH UTILITIES** shall also be given permission to communicate directly to the subcontractor, which communication shall not constitute interference with contractor/subcontractor relationship, provided that **NEW SMYRNA BEACH UTILITIES** notifies **SERVICE PROVIDER** in writing of said communication.

17.4 If any part of this Agreement is subcontracted by **SERVICE PROVIDER** prior to commencement of any work by the subcontractor, **SERVICE PROVIDER** shall require the subcontractor to provide **NEW SMYRNA BEACH UTILITIES** with insurance coverage as set forth by Section 11 and Exhibit "B".

SECTION 18. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship will be created by this Agreement. It is understood that **NEW SMYRNA BEACH UTILITIES** does not agree to use **SERVICE PROVIDER** exclusively. It is further understood that **SERVICE PROVIDER** is free to contract for similar services to be performed for others while under contract with **NEW SMYRNA BEACH UTILITIES**. The parties expressly acknowledge that **SERVICE PROVIDER** is an independent **SERVICE PROVIDER**, and nothing contained in this Agreement will be deemed or construed to create a partnership or joint venture between **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** or any other relationship between the parties. Additionally, nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, or to allow **NEW SMYRNA BEACH UTILITIES**, or its agents, representative, or employees, to exercise control or direction over the manner or method by which **SERVICE PROVIDER** performs any services which are the subject of this Agreement.

SECTION 19. AUTHORIZATION. **SERVICE PROVIDER** shall not, without authorization first being given by **NEW SMYRNA BEACH UTILITIES**: a) Use or pledge money or credit of the **NEW SMYRNA BEACH UTILITIES**, except in the usual and regular course of business and on account of or for the benefit of the **NEW SMYRNA BEACH UTILITIES**; b)

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Release or discharge any debt due to **NEW SMYRNA BEACH UTILITIES** without receiving the full amount thereof; c) Commit any act causing seizure or attachment of the **NEW SMYRNA BEACH UTILITIES** property; or d) Cause **NEW SMYRNA BEACH UTILITIES** to become a guarantor, surety, or endorser, or give any note which obligates the **NEW SMYRNA BEACH UTILITIES**.

SECTION 20. TAXES. **SERVICE PROVIDER** shall assume full responsibility for payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, Social Security, and income tax laws, with respect to **SERVICE PROVIDER'S** performance of this Agreement.

SECTION 21. DEFAULT. If, during the term of this Agreement, **SERVICE PROVIDER** shall be in default of any provision of this Agreement, **NEW SMYRNA BEACH UTILITIES** may suspend its payment or performance hereunder until such delinquency or default has been corrected; provided, however, that no suspension shall be effective unless and until **NEW SMYRNA BEACH UTILITIES** gives notice of the default to **SERVICE PROVIDER** with at least ten (10) days to cure such default.

SECTION 22. TERMINATION. Notwithstanding any other provision of this Agreement, **NEW SMYRNA BEACH UTILITIES** may, upon fifteen (15) days written notice to **SERVICE PROVIDER**, terminate this Agreement if: (a) **SERVICE PROVIDER** is adjudged to be bankrupt; (b) **SERVICE PROVIDER** makes a general assignment for the benefit of its creditors; (c) **SERVICE PROVIDER** fails to comply with any of the conditions or provisions of this Agreement; or (d) **SERVICE PROVIDER** is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement, without prejudice to any other right or remedy **NEW SMYRNA BEACH UTILITIES** may have under this Agreement; or (e) when deemed by the **NEW SMYRNA BEACH UTILITIES** (in its sole discretion) is in the best interest of the **NEW SMYRNA BEACH UTILITIES**. In the event of such termination, **NEW SMYRNA BEACH UTILITIES** shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for work properly performed prior to the effective date of termination.

SECTION 23. FORCE MAJEURE. Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strikes; extraordinary breakdown or damage to **NEW SMYRNA BEACH UTILITIES** generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes.

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SECTION 24. NOTICE. Any notices required to be given by the terms of this Agreement shall be delivered by hand or mailed, postage prepaid, to:

For SERVICE PROVIDER:

For NEW SMYRNA BEACH UTILITIES:

New Smyrna Beach Utilities
Attention: Josef Grusauskus, Director of Water Resources
P.O. Box 100
New Smyrna Beach, FL 32170-0100

SECTION 25. GOVERNING LAW. This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida.

SECTION 26. SEVERABILITY. In the event any portion of part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of competent jurisdiction, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.

SECTION 27. WAIVER AND ELECTION OF REMEDIES.

27.1 Waiver by **NEW SMYRNA BEACH UTILITIES** of any term, condition, or provision of this Agreement shall not be considered a waiver of any term, condition, or provision in the future.

27.2 No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

27.3 Notwithstanding any other provision of this Agreement, the provisions of Sections 13, 14 and 15 shall survive the termination or expiration of this Agreement.

SECTION 28. THIRD PARTY RIGHTS. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER**.

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SECTION 29. LIMITATION OF LIABILITY. To the fullest extent permitted by law, **SERVICE PROVIDER'S** total liability for any and all claims, losses, damages and expenses resulting in any way from this Agreement shall not exceed the total compensation received by **SERVICE PROVIDER** under the applicable Scope of Services notwithstanding the fault, tort (including negligence), strict liability or other basis of legal liability of the **SERVICE PROVIDER** and shall extend to its officers, directors, employees, licensors, agents, subcontractors, vendors and related entities.

SECTION 30. CONSEQUENTIAL DAMAGES. Notwithstanding any provision in this Agreement to the contrary, and to the fullest extent permitted by law, **NEW SMYRNA BEACH UTILITIES** shall not be liable to **SERVICE PROVIDER** for loss of profits, revenue, use, opportunity, and goodwill; cost of substitute facilities, goods, and services; cost of capital; and increased operating costs.

SECTION 31. ENTIRE AGREEMENT. This Agreement, including Exhibits "A" and "B" constitutes the entire agreement between **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** with respect to the services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

SECTION 32. JOINT PREPARATION. Preparation of this Agreement has been a joint effort of **NEW SMYRNA BEACH UTILITIES** and **SERVICE PROVIDER** and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

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NEW SMYRNA BEACH UTILITIES:

UTILITIES NEW SMYRNA BEACH UTILITIES, CITY OF
NEW SMYRNA BEACH, FLORIDA

By: _____

Director of Finance/CFO

ATTEST: _____

By: _____

Director of Department

SERVICE PROVIDER:

By: _____

Its: _____

ATTEST: _____

Its: _____

(CORPORATE SEAL)

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EXHIBIT A
SCOPE OF WORK

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EXHIBIT B
INSURANCE REQUIREMENTS

I. INSURANCE: Except as otherwise specified in this contract, the **SERVICE PROVIDER** and its subcontractors of any tier will be required at their own expense to maintain in effect at all times during the performance of the work insurance coverage with limits set forth below with insurers and under forms of policies satisfactory to the **NEW SMYRNA BEACH UTILITIES**. It shall be the responsibility of the **SERVICE PROVIDER** and its subcontractors to maintain adequate insurance coverage and to assure that subcontractors are adequately insured at all times. Failure of the **SERVICE PROVIDER** and its subcontractors to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation.

The **SERVICE PROVIDER** and its subcontractors shall furnish to the **NEW SMYRNA BEACH UTILITIES** such Certificates of Insurance or endorsements required by the provisions set forth herein, which Certificates of Insurance shall name the **NEW SMYRNA BEACH UTILITIES** as Additional Insured. All Certificates of Insurance must be provided by an acceptable insurance carrier to the **NEW SMYRNA BEACH UTILITIES** and that the carrier should have no less rating than A - X by A.M. Best and Company. **NEW SMYRNA BEACH UTILITIES** reserves the right to accept or decline carrier providing coverage.

II. CERTIFICATES OF INSURANCE: At the time of the execution of this contract and each subcontract, but in any event, prior to commencing work, the **SERVICE PROVIDER** and its subcontractors shall furnish the **NEW SMYRNA BEACH UTILITIES** with Certificates of Insurance as evidence that the policies providing the required coverages and limits of insurance are in full force and effect. The Certificates shall provide that any company issuing an insurance policy for the work under this contract shall provide not less than thirty (30) days' advance notice to the **NEW SMYRNA BEACH UTILITIES** in writing of cancellation, non-renewal, or material change in the policy of insurance. In addition, the **SERVICE PROVIDER** shall immediately provide written notice to the **NEW SMYRNA BEACH UTILITIES** upon receipt of notice of cancellation of an insurance policy or a decision to terminate or alter any insurance policy. All Certificates of Insurance shall clearly state that all applicable requirements have been satisfied including certification that the Comprehensive General Liability policies are of the "occurrence form". Certificates of Insurance for **SERVICE PROVIDER** and subcontractor-furnished insurance and notices of any cancellations, terminations, or alterations of such policies shall be mailed to the **NEW SMYRNA BEACH UTILITIES** office, ATTN: Procurement Manager, at P.O. Box 100, New Smyrna Beach, Florida 32170-0100.

III. ADDITIONAL INSURED: All insurance coverages (except Workers' Compensation and Professional Liability) furnished under this contract shall include the **SERVICE PROVIDER**, the **NEW SMYRNA BEACH UTILITIES** and its New Smyrna Beach Utilities officials, directors,

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officers, agents, and employees as Additional Insured's with respect to the activities of the **SERVICE PROVIDER** and its subcontractors.

These policies shall contain a "cross-liability" or "severability of interest" clause or endorsement. Notwithstanding any other provisions of these policies, the insurance afforded shall apply separately to each insured, named insured, or Additional Insured with respect to any claim, suit, or judgment made or brought by or for any other insured, named insured, or Additional Insured as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount or amounts for which the insurer would have been liable had only one insured been named.

IV. WAIVER OF SUBROGATION: The **SERVICE PROVIDER** and its subcontractors shall require their insurance carrier, with respect to all insurance policies, to waive all rights of subrogation against the **NEW SMYRNA BEACH UTILITIES**, its officials, directors, officers, agents, and employees.

V. COMPREHENSIVE GENERAL LIABILITY: This insurance shall be an occurrence-type policy written in comprehensive form and shall protect the **SERVICE PROVIDER** and its subcontractors and the Additional Insured's against all claims arising from bodily injury, sickness, disease, or death of any person other than the **SERVICE PROVIDER's** employees or damage to property of the **NEW SMYRNA BEACH UTILITIES** or others arising out of the act or omission of the **SERVICE PROVIDER** or its subcontractors or their agents, employees, or subcontractors. This policy shall include protection against claims insured by usual Personal Injury Liability coverage and an endorsement (Protective Liability) to insure the contractual liability assumed by the **SERVICE PROVIDER** and its subcontractors under the Section entitled "Indemnification," as well as Completed Operations, Products Liability, Contractual Liability, Broad Form Property Coverage, Premises/Operations, and Independent Contractors.

Combined Single Limit: \$1,000,000 per claim and annual aggregate of \$2,000,000.

VI. COMPREHENSIVE AUTOMOBILE LIABILITY: This insurance shall be written in the comprehensive form and shall protect the **SERVICE PROVIDER** and its subcontractors and the Additional Insured's against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. The liability shall not be less than:

Combined Single Limit: \$1,000,000 per claim and annual aggregate of \$2,000,000.

VII. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY: The insurance shall protect the **SERVICE PROVIDER** and its subcontractors against all claims under applicable state workers' compensation laws. The insured shall also be protected against claims for injury,

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disease, or death of employees which, for any reason, may not fall within the provisions of workers' compensation laws. This policy shall include an all-states endorsement. The liability limits shall not be less than:

Workers' Compensation: Statutory

Employers' Liability: \$100,000 each accident;
\$500,000 disease policy limit;
and
\$100,000 disease, each employee.

VIII. PROFESSIONAL LIABILITY: Professional Liability insurance shall be provided in an amount of \$100,000.