

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE BAYSHORE FIRE PROTECTION & RESCUE SERVICE DISTRICT
AND**

**[insert Consultant's name]
FOR INDEPENDENT SPECIAL FIRE CONTROL DISTRICT PERFORMANCE
REVIEW**

THIS AGREEMENT is made this ____ day of _____, 2022 ("Effective Date")
between _____ [insert Consultant's name], a
_____ [insert type of entity], (the "Consultant"), whose address is
_____, and the Bayshore Fire Protection & Rescue
Service District (the "District"), an independent special fire control district operating in
accordance with Chapters 189 and 191, Florida Statutes, whose address is 17350 Nalle
Road, North Fort Myers, FL 33917.

WHEREAS, beginning October 1, 2022, Section 189.0695, Florida Statutes, requires
all independent special fire control districts to have a performance review conducted as
more fully described in the Scope of Services, attached as Exhibit A, by an
independent entity ("Project");
and

WHEREAS, Section 189.0695, Florida Statutes, requires that the independent entity
selected to perform the Project must have at least five (5) years of experience
conducting comparable reviews of organizations similar in size and function to the
independent special fire control district under review, must conduct the review
according to applicable industry best practices, and may not have any affiliation with or
financial involvement in the reviewed independent special fire control district;
and

WHEREAS, Section 189.0695, Florida Statutes, requires that the performance review
will be filed with the independent special fire control district's governing board, the
Auditor General, the President of the Senate, and the Speaker of the House of
Representatives no later than July 1, 2023,
and

WHEREAS, the District has selected Consultant in accordance with the Charter,
Policy SOG 06-002 ("Procurement Policy"), and the Project Request for Proposal
information packet;
and

WHEREAS, Consultant desires to conduct the Project and has the experience, staff,
and resources to timely complete the Project,
and

WHEREAS, the Consultant and District have agreed upon a scope of services,
schedule, and fee for the Project;
and

WHEREAS, the Consultant agrees that the Consultant's client is the District and not the Florida Legislature.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the District agree as follows.

SECTION 1. WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Agreement and made a part hereof.

SECTION 2. ENGAGEMENT OF CONSULTANT

- A. The District hereby agrees to engage Consultant and Consultant hereby agrees to perform the professional services to the District as set forth in the Scope of Services, attached as Exhibit A, as directed, and approved by the District.
- B. Key personnel and subconsultants shall not be assigned to or removed from the Project by Consultant without the prior written approval of the District. Both parties agree that replacement of key personnel and subconsultants must be with equal or more qualified persons and must be approved by the District before a new member works on the Project
- C. For purposes of this Agreement, successful completion of the Project means the approval of the final report by the District Board of Commissioners and submission of the final report to the State Auditor, Florida Senate President, and Florida House of Representatives Speaker by the Consultant.

SECTION 3. SCOPE OF SERVICES AND THE CONSULTANT'S RESPONSIBILITY

Consultant shall complete the Scope of Services, which includes the Project tasks, timelines, and deliverables. Any modification to the Scope of Services must be approved in writing by the District. In addition to the services set forth in the Scope of Services, the Consultant shall perform the following:

- A. Consultant shall secure at its own expense, all personnel, facilities, and equipment required to perform the services necessary to complete the Project. (The District does offer use of our conference room for necessary on-site work)
- B. Consultant shall maintain an adequate and competent professional staff appropriately certified/licensed and operating within the State of Florida.
- C. Consultant shall designate in writing a single representative with whom the District shall coordinate Project work, which shall be the Project Manager listed in the proposal incorporated into this Agreement pursuant to Section 7, unless

otherwise revised in accordance with Section 2. This representative shall have the authority to transmit instructions, receive information, and interpret and deliver Consultant's policies, opinions, and decisions related to the Project.

- D. Consultant shall secure all licenses or permits required by law for the completion of the Scope of Services and shall be in compliance with all federal, state, and local law, statutes, rules, regulations, ordinances, orders, and decisions in effect at the time of the execution of the Agreement and during the time of performance of such services.
- E. Consultant shall, at all times, keep the District advised as to the status of the Project including, but not limited to, the progress on individual tasks within the Scope of Services. The District and its authorized representatives shall have the right to visit the office of Consultant at any reasonable time for purposes of inspection.
- F. Consultant shall cooperate with other consultants, contractors, or agents retained by the District as needed.
- G. The District shall have the right during the three (3) year period following the expiration or termination of the Agreement to audit Consultant with regard to any financial matters in connection with the services provided under this Agreement. The requested audit shall be performed by a certified public accountant selected and paid for by the District. Consultant shall make all documents and data available to the District or its designated auditor. Consultant may have the audit reviewed by Consultant's auditor at Consultant's expense.

SECTION 4. THE DISTRICT'S RESPONSIBILITY

Except as otherwise provided in the Scope of Services, the District's responsibilities are as follows:

- A. To designate the District's Fire Chief to act on the District's behalf with respect to all matters relating to the Project. The Fire Chief, or his or her designee, shall have complete authority to authorize changes to the Scope of Services; transmit instructions; receive information; and interpret and define District's policies and decisions with respect to materials, elements, subconsultants, key personnel, and systems pertinent to Consultant's services.
- B. To provide, within a reasonable time from request of Consultant: existing data, plans, reports, and other information in the District's possession or under the District's control that are necessary or may be helpful to Consultant in performance of their duties, and to provide full information regarding requirements of the Project.

- C. To furnish required information and services and render approvals and decisions as expeditiously as necessary for the orderly progress of Consultant's services.

SECTION 5. TIME OF PERFORMANCE

Consultant recognizes that the District is required to have the Project completed in a timely manner to ensure compliance with the deadline established by Section 189.0695, Florida Statutes. Consultant shall commence providing services in the Scope of Services upon the Effective Date and shall satisfactorily complete such services within the established schedule.

SECTION 6. COMPENSATION

The District agrees to pay the Consultant \$_____ [insert fee that was included in the Consultant's proposal] for services performed in the accordance with Part VII, Chapter 218, Florida Statutes (the Local Government Prompt Payment Act), upon receipt of a proper invoice and as follows:

- A. Final payment will be subject to successful completion of the Project in accordance with the terms of this Agreement.
- B. The Consultant is expected to allow for all necessary expenses connected to the performance of the duties herein described and agreed to by the District. The District shall, upon proper invoice and detail for each phase of project, pay Consultant within 45 days of receipt of said invoice. Expenses, which may be incurred by the Consultant for travel or hotels, must be included and allowed for in the Consultant's bid price.
- C. Consultant shall prepare and submit to the District a Final invoice for the services rendered upon completion of the Project. Payment shall be made in accordance with paragraph A from the date when it is stamped as received by the District unless payment is not approved by the Fire Chief pursuant to paragraph D.
- D. The District reserves the right to withhold payment to Consultant for failure to perform services in accordance with the provisions of the Agreement and the District shall promptly notify Consultant if the invoice is found to be unacceptable and will specify the reasons, therefore.
- E. A dispute regarding the invoice shall be resolved pursuant to Section 218.76(2), Florida Statutes, as may be amended.

SECTION 7. AGREEMENT DOCUMENTS

The following documents are attached or incorporated herein by reference and made a part of this Agreement:

- A. Scope of Services, attached hereto as Exhibit A
- B. Consultant's _____, 2022 Proposal submitted in response to the District's Request for Proposal – Independent Special Fire Control District Performance Review and any handouts and presentations delivered to the Selection Committee / Board of Fire Commissioners, attached hereto as Exhibit B
- C. E-Verify Affidavit, attached hereto as Exhibit C
- D. Certificate of Insurance, attached hereto as Exhibit D
- E. Any written amendments or addenda to the Agreement.

In the event of a conflict of contract terminology, priority shall first be given to the language in the body of this Agreement, then to Exhibit A, as they may be amended.

SECTION 8. DOCUMENTS AND DATA

- A. Consultant will provide the District with the draft report, revised draft report(s), if applicable, final reports, and other documents as identified in the Scope of Services at no additional cost to the District. In the case of additional requested copies, the supplemental cost for such deliverables will be negotiated on a case-by-case basis in advance of authorization to commence production. All original documents prepared by Consultant are instruments of service and shall become property of the District. The use of data gathered under the Agreement shall be restricted and limited to the purposes of the Agreement, excluding the data in the public domain, and shall not be used in connection with other contracts or for other clients of Consultant without written permission of the District. Consultant will provide the District with reproducible copies of all reports and other documents. Copies of electronic media used to store data shall be provided to the District in a format suitable for hard copy print out and ADA Compliant.
- B. The reports, documents, and working papers obtained or generated under the Agreement shall be maintained by Consultant and made available to the District upon request by the District at all times during the term of the Agreement and for five (5) years thereafter. Consultant shall deliver to the District, at no cost, copies of such documents or reports.

- C. All reports, documents, and working papers prepared or obtained under the Agreement, shall become the property of the District without restriction or limitation of use, and shall be made available, upon request, to the District at any reasonable time. Consultant may retain copies thereof for their files and internal use. Any use by the District of such materials obtained under the Agreement for any purpose not related to the Project pursuant to the Agreement, or use of incomplete materials obtained from Consultant by the District shall be made at the risk of the District and made without liability to Consultant. However, this does not constitute a disclaimer of the professional competency of the original work as used within the Project.
- D. For a period of five (5) years after the completion of the Project, Consultant agrees to provide the District with copies of any additional materials in its possession resulting from the performance of the Scope of Services at no cost. However, this provision shall not be considered a waiver of any claim of attorney/client privilege to which Consultant is entitled.
- E. Consultant shall not publish, copyright, or patent any of the data furnished or developed pursuant to the Scope of Services without first obtaining the District's written consent.
- F. Consultant shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law). In addition to this Agreement's requirements and as required by Section 119.0701(2), Florida Statutes, the Consultant shall
 - (1) keep and maintain public records that ordinarily and necessarily would be required by the District in order to perform the service;
 - (2) provide the public with access to public records on the same terms and conditions that the District would provide the records and at a cost that does not exceed the cost 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; and
 - (4) meet all requirements for retaining public records and transfer, at no cost to the District, all public records in possession of the Consultant upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records requirements.

All records stored electronically must be provided to the District in a format that is compatible with the information technology systems of the District. Pursuant to Section 119.071(3)(b), Florida Statutes, building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, water treatment facility or other structure owned or operated by the District are exempt from the

inspection, examination and duplication of public records provisions of Section 119.07(1), Florida Statutes, and Section 24(a), Article I of the State Constitution.

Information made exempt by Section 119.071(3)(b), Florida Statutes, may only be disclosed to other governmental entities if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to licensed architects, engineers, or contractors who are performing work on or related to the building or other structure; or upon a showing of good cause before a court of competent jurisdiction. Entities or persons receiving such information are required to maintain the exempt status of the information.

Consultant agrees to include the above provision in all agreements with subconsultants that are related to the Consultant's performance under this Agreement, and to which the provisions of Chapter 119, Florida Statutes, also apply. Consultant shall also notify the District within forty-eight (48) hours of receipt of a public records request under Chapter 119, Florida Statutes.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT tsharp@bayshorefire.org

SECTION 9. STANDARD OF PERFORMANCE

Consultant shall perform and complete the Project in a timely manner and in accordance with the standard of care, skill, and diligence customarily provided by an experienced professional organization rendering the same services, and in accordance with sound principles and practices. The District shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of the Agreement, the prosecution and fulfillment of the services called for hereunder, or the character, quality, amount, or value thereof. The decision of the District upon all such claims, questions, or disputes shall be reasonable and in adherence with sound principles and practices applicable to the professional services.

SECTION 10. CONSULTANT'S ACKNOWLEDGEMENTS AND REPRESENTATIONS

Consultant acknowledges and explicitly represents to the District the following:

- A. Consultant is duly authorized to conduct business in the State of Florida.
- B. In connection with the services to be performed under the Agreement, Consultant will abide by and assist the District in satisfying all applicable federal, state, and local

laws, rules, regulations, and guidelines (including but not limited to the Americans with Disabilities Act) relative to performance under this Agreement. Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, disability, marital status, or national origin. Consultant will obtain and maintain all permits and licenses necessary for its performance under this Agreement.

C. Consultant recognizes that:

1. The performance of the services provided for within the Scope of Services may interface with work performed by others, and
2. District may suffer penalties if the services are not completed within the time periods set forth in the Scope of Services, or any extensions thereof.

D. Consultant has familiarized itself with the nature and extent of the Agreement, services expected to be performed under the Agreement, and federal, state, and local laws, statutes, rules, regulations, ordinances, orders, and decisions, which may affect Consultant's performance of the Agreement.

E. Consultant has reviewed the Agreement (including its Exhibits) and all available information and data shown or indicated in the Agreement and has given the District written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in the Agreement or information or data, and the written resolution thereof by the District is acceptable to Consultant.

F. Consultant recognizes and acknowledges that the time for the performance of the services within the Scope of Services is of the essence.

G. By signing this Agreement, Consultant certifies that it has at least five (5) years of experience conducting comparable reviews of organizations similar in size and function to the District, and it does not have any affiliation with or financial involvement with the District.

SECTION 11. SUSPENSION OF PROJECT

A. The District shall have the absolute right to terminate or suspend the Consultant's provision of any services, or amend the Scope of Services upon mutual agreement, at any time and for any reason upon reasonable notice, and such action on its part shall not be deemed a default or breach of the Agreement. Suspensions or termination of the Scope of Services by the District, and amendments to the Scope of Services, shall be in writing.

B. In the event the provision of services is entirely or partly suspended, delayed, or otherwise hindered by any cause whatsoever, Consultant shall make no claims for additional compensation or damages owing to such suspensions, delays, or

hindrances. Such suspensions, delays, or hindrances may only be compensated for by an extension of time, as the District may decide; however, such extension shall not operate as a waiver of any other rights of the District. Upon resumption of the provision of services, Consultant shall resume its service until the Project is completed, and the time for completion of the services, which were suspended, shall be extended for the duration of the suspension.

- C. If, in the opinion of the District, the progress of the Project during any period is substantially less than the amount that is necessary to meet the Project schedule, the District may require Consultant to take whatever action is necessary, in the opinion of the District, to put the Project back on schedule at no cost to the District.

SECTION 12. SUBCONSULTANTS

Consultant shall not subcontract, assign, or transfer the Agreement or any services specifically authorized in the Agreement without the prior written consent of the District, which consent may be withheld in the District's sole discretion, unless such subconsultant was identified as key personnel in the Consultant's proposal. Consultant shall be solely responsible for the employment, direction, supervision, compensation, and control of any and all subconsultants or other persons employed by Consultant. Consultant shall cause all subconsultants or other persons employed by Consultant to abide by the terms and conditions of the Agreement and all applicable law as their services affect the District. Consultant shall not permit any subconsultant or other person or organization to perform services unless such subconsultant or other person or organization has complied with the workers' compensation insurance requirements contained in Section 14 herein. Nothing in this Agreement shall be construed to create, or be implied to create any relationship between the District and any subconsultant of the Consultant.

SECTION 13. INDEPENDENT CONTRACTOR

Neither the District nor any of its employees shall have any control over the conduct of Consultant or any of Consultant's employees, subconsultants, or agents, except as herein set forth, and Consultant expressly warrants not to represent at any time or in any manner that Consultant or Consultant's agents, subconsultants, or employees are in any manner agents, subconsultants, or employees of the District. It is understood and agreed that Consultant is and shall at all times remain as to the District, a wholly independent contractor and that Consultant's obligations to the District are solely as prescribed by the Agreement. Nothing contained in this Agreement will be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between the District and the Consultant.

SECTION 14. INSURANCE

A. The 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 District has received an acceptable certificate of insurance showing evidence of such coverage.

B. 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:

1. Workers Compensation. Coverage must apply for all employees and statutory limits in compliance with the applicable state and federal laws. In addition, the policy must include the following:

a. Employer's Liability with a minimum limit per accident in accordance with statutory requirements.

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

2. Professional Liability. Coverage must include:

a. Minimum limit of \$1,000,000.00 per occurrence or claim of malpractice, negligence, error and omissions.

b. Minimum limit of \$1,000,000.00 in the aggregate for claims of malpractice, negligence, error and omissions.

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

C. Consultant must deliver to the District Certificates of Insurance evidencing the insurance coverage specified in this Section 14 prior to commencing services under the Agreement. The required Certificates of Insurance not only shall name types of policies provided but also shall refer specifically to the Agreement.

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

E. All the policies of insurance so required of Consultant shall be endorsed to include as additional insureds: the District, its commissioners, officers, employees, and agents. 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.

F. Deductible and self-insured retention amounts shall be subject to approval by the District, which approval shall not be unreasonably withheld. Consultant is responsible for the amount of any deductibles or self-insured retentions.

G. Approval of the insurance by the District shall not relieve or decrease the liability of Consultant hereunder. Consultant acknowledges and agrees the District 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.

H. 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 District and Consultant by certified mail. Consultant shall give notice to the District 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.

I. All insurance required hereunder shall remain in full force and effect until final payment.

J. Consultant shall, upon request by the District, deliver to the District a copy of each insurance policy purchased by Consultant.

K. 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 District, its consultants, commissioners, officers, employees, or agents. Nothing contained in these insurance requirements is to be construed as limiting the liability of Consultant or Consultant's insurance carriers.

L. 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.

M. Consultant shall require each of its subconsultants and other persons or organizations working for Consultant to 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 the Agreement unless the District agrees, in writing, to other types of coverage and/or lower coverage amounts. Provided, however, professional liability insurance shall not be required under the Agreement for subconsultants or other persons or organizations working for Consultant, unless such party is a licensed professional. The preceding sentence does not preclude Consultant for requiring such insurance. Consultant shall be responsible for ensuring all of its subconsultants and other persons or organizations working for Consultant in connection with the Project comply with all of the insurance requirements contained herein relative to each such party. The Consultant must obtain Certificates of Insurance from any subconsultant otherwise the Consultant must provide evidence satisfactory to the District that coverage is afforded to the subconsultant or by the Consultant's insurance policies.

SECTION 15. INDEMNIFICATION OF THE DISTRICT

Consultant agrees to indemnify and hold harmless the District, and its commissioners, officers, and employees from liabilities, damages, losses, and costs, either at law or in equity, including but not limited to, reasonable attorney fees and costs and attorney fees and costs on appeal, as a result of any negligent or reckless act or omission or any intentional wrongful conduct of Consultant and other persons employed or utilized by the Consultant in performance of the Agreement. The execution of the Agreement by Consultant shall obligate Consultant to comply with the foregoing indemnification provision; however, the obligations of ensuring this indemnification must also be complied with as set forth in Section 14 herein.

SECTION 16. TERM OF AGREEMENT

The term of this Agreement is for the duration of the Project or a period of one (1) year from the Effective Date whichever comes first, unless terminated pursuant to the provisions of this Agreement.

SECTION 17. TERMINATION OF AGREEMENT BY THE DISTRICT/SURVIVAL

A. The Agreement may be terminated by the District, with or without cause, upon ten (10) days written notice to the Consultant. Termination will be effective on the date provided in the notice. In the event of termination under this section, the Consultant shall be entitled to compensation for all services provided to the District up to the date of termination, which are within the Scope of Services, and are allowed under this Agreement. If the Agreement is so terminated, Consultant must promptly deliver to the District copies of all then completed deliverable items and other documents that directly support the deliverables prepared by Consultant.

B. In the event the Agreement expires or should be terminated by the District or Consultant, the duties and obligations of Consultant under the following provisions shall survive termination and continue in full force and effect:

1. Section 3(G), regarding Audits;
2. Section 8, regarding Documents and Data;
3. Section 15, regarding Indemnification of the District;
4. Section 17, regarding Termination of Agreement by the District/Survival;
5. Section 18, regarding Default/Remedies;
6. Section 21, regarding Truth-In-Negotiations/Public Entity Crimes Affidavit;
7. Section 25, regarding Dispute Resolution; and
8. Section 26, regarding Controlling Law/Attorney Fees.

SECTION 18. DEFAULT/REMEDIES

A. Either party may terminate this Agreement upon the other party's failure to comply with any term or condition of this Agreement, as long as the terminating party is not in default of any term or condition of this Agreement at the time of termination. To effect termination, the terminating party shall provide the defaulting party with a written "Notice of Termination" stating its intent to terminate and describing all terms and conditions with which the defaulting party has failed to comply. If the defaulting party has not remedied its default within thirty (30) days after receiving the Notice of Termination, this Agreement shall automatically terminate. In addition, the initiation, either by Consultant or against Consultant, of proceedings in bankruptcy, or other proceedings for relief under any law for the relief of debtors, or Consultant becoming insolvent, admitting in writing its inability to pay its debts as they mature or making an assignment for the benefit of creditors shall constitute a default by Consultant entitling the District to terminate this Agreement as set forth above. The parties agree that this Agreement is an executory contract. If, after termination by the District, it is determined that the Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the District. The rights and remedies in this provision are in addition to any other rights and remedies provided by law or this Agreement.

B. Unless specifically waived by the District, the Consultant's failure to timely comply with any obligation in this Agreement shall be deemed a breach of this Agreement and the expenses and costs incurred by the District, including attorney fees and costs and attorney fees and costs on appeal, due to said breach shall be borne by the Consultant. Additionally, the District shall not be limited by the above but may avail itself of any and all remedies under Florida law for any breach of this Agreement.

C. A waiver, at any time, by the District of Consultant's breach of, or default in, any of the terms, provisions and obligations of this Agreement will not be construed to be a waiver of any other terms, provisions, and obligations hereof or a waiver of any breach or default other than specifically waived. The District's failure at any time to compel a fulfillment of any one or more of the terms, provisions or obligations under this

Agreement will not be construed to be a waiver of District's right thereafter to enforce any such right. No waiver by the District will be deemed to have been made unless expressed in writing and signed by the District.

SECTION 19. SEVERABILITY

In the event any provision of the Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of the Agreement or such other appropriate actions as shall, to the maximum extent practicable in the light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of the Agreement, as amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect. If the parties cannot agree to such amendments, modifications or supplements to the Agreement, the remainder of the provisions in the Agreement will remain in full force and effect and will in no way be affected, impaired, or invalidated.

SECTION 20. PROHIBITION AGAINST CONTINGENCY FEES

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

SECTION 21. PUBLIC ENTITY CRIMES

Pursuant to Subsections 287.133(2) and (3), 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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 amount provided in Section 287.017, Florida Statutes, for Category Two, for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. By signing this Agreement, Consultant warrants that it is not currently on a suspended vendor list and that it has not been placed on a convicted vendor list in the past thirty-six (36) months. Consultant further agrees to

notify the District if placement on either of these lists occurs within three (3) days of placement on either of these lists. Consultant agrees to include this provision in all subcontracts and require the Public Entity Crimes Statement Form for all subcontracts and lower tier agreements executed to support the Consultant's work under this Agreement.

SECTION 22. SUCCESSORS AND ASSIGNS

Except as otherwise provided in this Agreement, Consultant may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the District.

SECTION 23. FORCE MAJEURE

Consultant is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond control of Consultant. In any such event, Consultant's contract price and schedule shall be equitably adjusted by the District.

SECTION 24. NO THIRD-PARTY BENEFICIARY

Nothing in this Agreement shall be construed to benefit any person or entity not a party to this Agreement.

SECTION 25. DISPUTE RESOLUTION

In the event any dispute or disagreement arises during the term of this Agreement, the Consultant shall fully perform the Scope of Services in accordance with the District's written instructions and may claim additional compensation. The Consultant is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation, schedule adjustment or other proposed dispute resolution to the District's Fire Chief no later than ten (10) days after the precipitating event. The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options. No services shall be delayed or postponed pending resolution of any disputes or disagreements.

SECTION 26. CONTROLLING LAW/ATTORNEY FEES

A. The Agreement is to be governed by the laws of the State of Florida. The sole and exclusive venue for any litigation resulting out of the Agreement shall be in Lee County, Florida, and if in federal court, shall be exclusively in the Middle District of Florida, Civil Division. Consultant hereby expressly waives any right it has to object to the venue of any action commenced in any courts in Lee County, Florida or the Middle District of Florida, Civil Division.

B. Should either party employ an attorney or attorneys to enforce any of the provisions of this Agreement, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach of this Agreement, the party prevailing is entitled to receive from the other party all reasonable costs, charges, and expenses, including attorneys' fees, expert witness fees, fees, and costs on appeal, and the cost of paraprofessionals working under the supervision of an attorney, expended or incurred in connection therewith, whether resolved by out-of-court settlement, arbitration, pre-trial settlement, trial or appellate proceedings, to the extent permitted under Section 768.28, Florida Statutes. This paragraph does not constitute a waiver of the District's sovereign immunity or extend the District's liability beyond the limits established in Section 768.28, Florida Statutes.

SECTION 27. CONFLICTING EMPLOYMENT

Consultant certifies that it does not at the time of execution of this Agreement have any retainer or employment agreement, oral or written, with any third party that directly conflicts with any interest or position of the District relating to the services provided by the Consultant under this Agreement. The Consultant further agrees that it shall not accept during the term of this Agreement any retainer or employment from a third party whose interests are in direct conflict with those of the District regarding the services being performed under this Agreement. In the event the Consultant is faced with an employment opportunity that appears to be a direct conflict with the services the Consultant is performing under this Agreement, the Consultant shall provide the District with notice of the employment opportunity. If the District determines that the employment would be a direct conflict with the services the Consultant is performing under this Agreement, the Consultant and the District shall have the opportunity to decide whether or not the Consultant will decline the employment opportunity or will accept the employment opportunity and terminate this Agreement.

SECTION 28. SCRUTINIZED COMPANIES

A. Pursuant to Section 287.135, Florida Statutes, a company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, shall be ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of any amount. By signing this Agreement, the Consultant certifies that it is not currently on the aforementioned list or is engaged in a boycott of Israel and agrees to notify the District if placement on the list or a boycott occurs. If Consultant submits a false certification, the District may terminate this Agreement and bring a civil action against the Consultant, which may result in a penalty equal to the greater of \$2 million or twice the fee for

completion of the Scope of Services resulting from this Agreement and all reasonable attorney's fees and costs.

B. The Consultant shall continue to satisfy the conditions and requirements that it was required to satisfy to provide services on this Project throughout the term of this Agreement.

SECTION 29. CONFLICT OF INTEREST

This Agreement is subject to the provisions of Chapter 112, Part III, Florida Statutes, as amended, governing conflicts of interest. By execution of this Agreement, Consultant certifies that it has disclosed to the District the name of any officer, director, or agent who is also an employee of the District, and the name of any employee of the District who owns, directly or indirectly, an interest in the Consultant's company or any of its subsidiaries.

SECTION 30. NOTICES

Any notices or other writings permitted or required to be delivered under the provisions of the Agreement must be in writing and shall be delivered by sending the notice by personal delivery, U.S. certified mail return receipt requested, or overnight delivery in any event with sufficient postage affixed, and addressed as follows:

If to the District: Fire Chief William Underwood
 17350 Nalle Road
 North Fort Myers, FL 33917

If to the Consultant: [insert Consultant name and address]

Either party may change said address by notice in writing to the other party in the manner herein provided.

SECTION 31. EXTENT OF AGREEMENT

The Agreement represents the entire and integrated agreement between the District and Consultant and supersedes all prior negotiations, representations, or agreement, either written or oral for services under a blanket agreement of this nature. This Agreement is not connected with nor affects separate agreement(s) arrived at through formal solicitation for professional services associated with large, dedicated capital improvement projects as may be awarded by the Board of Commissioners.

SECTION 32. PARTICIPATION IN E-VERIFY SYSTEM

Consultant and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees. Consultant agrees and acknowledges that the District is a public employer that is subject to the E-Verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions thereof apply to this Agreement. Consultant by entering into this Agreement with the District, certifies: (i) it is registered with and uses the E-Verify system operated by the U.S. Department of Homeland Security to verify the work authorization status of all newly hired employees, (ii) during the year prior to making its submission or entering into this Agreement, no contract of Consultant was terminated by a public employer in compliance with Section 448.095, Florida Statutes, and (iii) Consultant is and shall remain in compliance with Sections 448.09 and 448.095, Florida Statutes, including securing and maintaining subconsultant affidavits as required by Section 448.095(2)(b), Florida Statutes.

Additionally, Consultant shall require all subconsultants performing work under this Agreement to use the E-Verify system for any employees hired on and after January 1, 2021. Consultant must provide evidence to the District of compliance with Section 448.095, Florida Statutes, prior to entering into the Agreement and then annually on each anniversary of the Agreement's Effective Date. The District's receipt of proof that Consultant and each subconsultant performing through Consultant are E-Verify system participants is a condition precedent to entering this Agreement. The submission of an executed affidavit, similar to the affidavit in Exhibit D, from the Consultant and any subconsultants stating it is in compliance with Section 448.095, Florida Statutes, and all employees 36 hired on and after January 1, 2021, have had their work authorization status verified through the E-Verify system shall satisfy this requirement.

Notwithstanding the provisions of SECTION 17., TERMINATION OF AGREEMENT BY THE DISTRICT/SURVIVAL, or SECTION 18., DEFAULT/REMEDIES herein, if the District has a good faith belief that Consultant or its subconsultant/contractors have knowingly hired, recruited, or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, the District shall terminate this Agreement. Consultant shall be liable for any additional costs incurred by the District as a result of the termination of this Agreement based on the failure of Consultant or its subconsultant/contractors to comply with the E-Verify requirements referenced herein.

SECTION 33. PROVISION FOR OTHER SPECIAL DISTRICTS

As provided in Section 189.053, Florida Statutes, Consultant agrees that other Special Districts may, at Consultant's discretion, acquire the contractual services provided for under this Agreement from the Consultant upon the terms and conditions set forth in this Agreement.

SECTION 34. AMENDMENTS

This Agreement may be amended from time to time provided the District and the Consultant mutually agree to such amendment, and the amendment is stated in writing, executed by both parties; provided, however, that District may review and modify the terms and conditions of this Agreement at any time during the term as deemed necessary by the District for the following reasons including, but not limited to:

- A. Conforming the Agreement to the adoption or revision of Florida Statutes, rules, cases, regulations, and standards that require the modification of the Agreement for compliance; and
- B. Conforming to the adoption or revision of the District's Procurement Policy.

SECTION 35. COUNTERPARTS

The parties hereto may execute this Agreement in counterparts and such signatures will have the same effect as if signed all at the same time.

SECTION 36. COMPUTATION OF TIME

The time in which any act provided by this Agreement is to be done is computed by excluding the first day and including the last day, unless the last day is Saturday, Sunday, or a legal holiday and then it is also extended to the next business day.

SECTION 37. TIME OF ESSENCE

Time is of the essence with respect to each date and time specified in this Agreement by which an event is to occur.

SECTION 38. HEADINGS AND CAPTIONS

All headings and captions in this Agreement are for reference and convenience only and will not be held to modify or affect the substantive terms and provisions of this Agreement in any manner.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the day and year written above.

**Bayshore Fire Protection
And Rescue Service District**

ATTEST:

BY: _____

[insert name and title] Date

WITNESS:

Consultant (name & title) Date

PREPARED BY AND APPROVED
AS TO FORM BY:
Bayshore Fire Protection
& Rescue Service District

EXHIBIT A Consultant Scope of Services

The Project shall include the following services and deliverables:

Task 1: Project Kick Off

Completed no later than 2 weeks of Effective Date

- Meet with the District Fire Chief and staff (as designated by the Fire Chief) to discuss the requirements of the performance audit. (May be remote at the discretion of both parties)
- Obtain relevant materials needed from the District.

Task 2: Performance Review

Completed no later than 10 weeks of Effective Date

- Perform a performance review, which is defined as an evaluation of the District and its programs, activities, and functions.
- Research and analyze the following:
 - The special district's purpose and goals as stated in its charter.
 - The special district's goals and objectives for each program and activity, the problem or need that the program or activity was designed to address, the expected benefits of each program and activity, and the performance measures and standards used by the special district to determine if the program or activity achieves the district's goals and objectives.
 - The delivery of services by the special district, including alternative methods of providing those services that would reduce costs and improve performance, including whether revisions to the organization or administration will improve the efficiency, effectiveness, or economical operation of the special district.
 - A comparison of similar services provided by the county and municipal governments located wholly or partially within the boundaries of the special district, including similarities and differences in services, relative costs and efficiencies, and possible service consolidations.
 - The revenues and costs of programs and activities of the special district, using data from the current year and the previous three (3) fiscal years.
 - The extent to which the special district's goals and objectives have been achieved, including whether the goals and objectives are clearly stated, measurable, adequately address the statutory purpose of the special district, provide sufficient direction for the district's programs and activities, and may be achieved within the district's adopted budget.
 - Any performance measures and standards of the special district's programs and activities using data from the current year and the previous three (3) fiscal years, including whether the performance measures and standards:
 - Are relevant, useful, and sufficient to evaluate the costs of the programs and activities.
 - Are being met.
 - Should be revised.
- Factors that have contributed to any failure to meet the special district's performance measures and standards or achieve the district's goals and objectives, including a description of efforts taken by the special district to prevent such failure in the future.
- Recommendations for statutory or budgetary changes to improve the special district's program operations, reduce costs, or reduce duplication, including the potential benefits to be achieved and the potential adverse consequences of the proposed changes.

The analysis must be conducted in accordance with the applicable industry best practices (including but not limited to the National Fire Protection Association, Center for Public Safety Excellence, and the Insurance Services Office).

- Meetings with District Fire Chief and staff (as designated by the Fire Chief) as required and requested by the Consultant. At a minimum, the Consultant will meet with the District Fire Chief and staff at least twice as part of this task. (One of these may be remote at the discretion of the Consultant)
- Obtain any additional information, data, materials needed to complete the performance review.

Task 3: Draft Performance Review Report ("Draft Report")

Completed no later than 12 weeks of Effective Date

- Develop an electronic Draft Report of the analysis and review as provided for in Task 2, which shall include a separate section and analysis on each paragraph provided in Section 189.0695(1)(a)-(i), Florida Statutes.
- Submit the Draft Report to the District Fire Chief and staff (as designated by the Fire Chief).
- Schedule and hold a meeting with the District Fire Chief and staff (as designated by the Fire Chief) within one (1) week of Draft Report submission to discuss Draft Report, concerns, recommendations, etc. The purpose of the meeting is to provide a medium for discussing the Draft Report, including the results, conclusions, observations, and recommendations. (Meeting may be remotely held at the discretion of the Fire Chief.)
- Revise the Draft Report based on the above meeting and comments by District and submit an electronic revised Draft Report. Revisions and additional Draft Report(s) are required to be made until approved by the Fire Chief.
- Incorporate District's comments submitted to the Consultant if received no more than three (3) weeks from submission of the Draft Report or a revised Draft Report(s) to the District, whichever is later. The Consultant shall include the District's comments in the Final Report, which shall be included in a separate section.

Task 4: Final Performance Review Report ("Final Report")

Completed no later than 16 weeks of Effective Date

- Upon approval by the Fire Chief of the Draft Report, finalize and submit the Final Report to the District Fire Chief.
- Provide an electronic copy of the Final Report that must be ADA compliant, and seven (7) printed and bound copies to the District. In addition, all relevant electronic files will be provided in their native format on a USB drive.
- Consultant will deliver a final presentation to the District's Board of Fire Commissioners.
- Submit the Final Report to the State Auditor, Florida Senate President, and Florida House of Representatives Speaker no later than seven (7) days from the presentation to and acceptance by the Board of Fire Commissioners, if requested, or submission of the Final Report to the District, whichever is later.

EXHIBIT B
Consultant Proposal
[insert proposal]

EXHIBIT C
CONSULTANT E-VERIFY
AFFIDAVIT

I hereby certify that [insert Consultant name] does not employ, contract with, or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

All employees hired on or after January 1, 2021, have had their work authorization status verified through the E-Verify system.

A true and correct copy of [insert Consultant name] proof of registration in the E-Verify system is attached to this Affidavit.

Print Name:

Date:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2022, by _____ of _____, a company organized under the laws of the State of _____, on behalf of the company, who is personally known to me or has produced as identification.

Notary Public

(Name Printed) _____

My commission expires _____.

(Printed typed or stamped Commissioned name of Notary Public)

SUBCONSULTANT E-VERIFY
AFFIDAVIT

I hereby certify that [insert Subconsultant company name] does not employ, contract with, or subcontract with an unauthorized alien, and is otherwise in full compliance with, section 448.095, Florida Statutes.

All employees hired on or after January 1, 2021, have had their work authorization status verified through the E-Verify system.

A true and correct copy of [insert Subconsultant company name] proof of registration in the E-Verify system is attached to this Affidavit.

Print Name:

Date:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 2022, by _____ of _____, a company organized under the laws of the State of _____, on behalf of the company, who is personally known to me or has produced as identification.

Notary Public
(Name Printed) _____
My commission expires _____.

(Printed typed or stamped
Commissioned name of Notary Public

EXHIBIT D
(certificate of insurance)