

**AS-NEEDED  
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between **TAMPA BAY WATER, A Regional Water Supply Authority**, an interlocal governmental agency of the State of Florida, created and existing pursuant to Sections 163.01, 373.1962 and 373.1963, (“TAMPA BAY WATER”), and \_\_\_\_\_ (“CONSULTANT”), a corporation in the State of \_\_\_\_\_ and authorized to do business in the State of Florida.

**WITNESSETH:**

**WHEREAS**, TAMPA BAY WATER desires to retain CONSULTANT for “as-needed” services;

**WHEREAS**, TAMPA BAY WATER has selected CONSULTANT in accordance with TAMPA BAY WATER’s procurement policy and applicable provisions of Florida law ; and

**WHEREAS**, CONSULTANT agrees to provide “as-needed” services based upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the premises set forth above, and of the mutual promises set forth below, and other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

**SECTION 1 - AS-NEEDED ASSIGNMENTS**

1.1 The term “Agreement” includes “Assignments” issued hereunder. The term “Assignment” as used in this Agreement shall mean a written direction from TAMPA BAY WATER to CONSULTANT to perform specific tasks.

1.2 CONSULTANT shall perform professional services, through each Assignment, which services shall consist of providing consultation and advice in connection with various projects involving \_\_\_\_\_ and related fields of science, studies, and investigations. The location for the performance of these services is primarily the three Florida counties of Pasco, Pinellas and Hillsborough.

1.3 TAMPA BAY WATER shall set forth and authorize each Assignment in writing and describe specifically the tasks to be performed, the duration of the Assignment, the required work product, and the fee for such services rendered. Any compensation for services negotiated between TAMPA BAY WATER and CONSULTANT, as to any particular Assignment, shall be based upon the schedule of fees set forth in Exhibit 1 which is attached hereto and made a part hereof (“Fee Schedule”). CONSULTANT acknowledges and agrees that the rates set forth in the Fee Schedule shall remain fixed

through the term of this Agreement. Notwithstanding anything herein to the contrary, the total amount of Assignments, including Additional Services and expenses, under this Agreement shall not exceed \$\_\_\_\_.

1.4 CONSULTANT'S obligations under this Agreement are included and incorporated in each Assignment. CONSULTANT'S failure to perform under any Assignment shall constitute a failure to perform and carry out CONSULTANT'S obligations under this Agreement.

## **SECTION 2 - BASIC SERVICES OF CONSULTANT**

2.1 With respect to each Assignment issued hereunder, unless expressly excluded in the particular Assignment, the following basic services shall be included and provided by CONSULTANT, in addition to those specified in the particular Assignment.

2.1.1 Consult with TAMPA BAY WATER to clarify and define TAMPA BAY WATER's requirements relative to each Assignment and obtain and review all available data.

2.1.2 Advise TAMPA BAY WATER if there is a need for TAMPA BAY WATER to provide or obtain special services from others, and/or additional data required in connection with each Assignment (which services and data CONSULTANT is not to provide hereunder but which CONSULTANT may utilize in performing services hereunder), and act, upon TAMPA BAY WATER's written request, as TAMPA BAY WATER's representative in connection with any such services or additional data to be provided by others.

2.1.3 Prepare and furnish five (5) copies of completed deliverables to TAMPA BAY WATER and, if requested by TAMPA BAY WATER, present them in person for review with TAMPA BAY WATER.

2.1.4 CONSULTANT agrees that to the extent any particular Assignment includes the involvement of CONSULTANT with a particular construction project identified in that Assignment, CONSULTANT shall review TAMPA BAY WATER's applicable construction contract forms, and the services required of CONSULTANT under such Assignment, unless otherwise expressly noted in the subject Assignment, shall include all services required to be performed by the CONSULTANT under the applicable TAMPA BAY WATER construction contract form, the relevant portions of which shall be made part of any such Assignment. 2.2 Additional Services related to an Assignment, but not described therein nor in paragraph 2.1 above, shall be performed by CONSULTANT upon written request of TAMPA BAY WATER. Such Additional Services shall be provided by CONSULTANT for an additional fee as the parties may agree in writing prior to performance of such Additional Services.

2.3 In the performance of an Assignment, the hours CONSULTANT is to work on any given day will be entirely within CONSULTANT's control and TAMPA BAY WATER will rely upon CONSULTANT to work such number of hours as is necessary to fulfill its duties and to perform the services required thereunder and hereunder with due diligence, to the best of its ability and in a professional and competent manner. Provided, however, TAMPA BAY WATER shall not be liable for nor be required to pay CONSULTANT any overtime or other premium pay, unless such overtime or premium pay has been expressly approved in advance and in writing by TAMPA BAY WATER.

Further, unless otherwise provided in the Assignment, each Assignment shall set forth a time schedule for the performance of the services required of CONSULTANT thereunder, which time schedule CONSULTANT hereby agrees to comply with. CONSULTANT acknowledges and agrees that time is of the essence with respect to its performance under this Agreement.

2.4 CONSULTANT is retained by TAMPA BAY WATER only for the purposes and to the extent set forth in this Agreement, and its relationship with TAMPA BAY WATER shall, during the term of this Agreement, be that of an independent contractor. CONSULTANT shall have the discretion, subject to the requirement that it perform the services required hereunder competently and professionally in accordance with the applicable professional standards and otherwise comply with the terms of this Agreement, to select the means and methods of performing such services. In this regard, CONSULTANT shall be fully responsible for the employment, direction, supervision, compensation and control of any and all persons employed or retained by CONSULTANT. Neither CONSULTANT nor CONSULTANT's contractors, subcontractors, consultants, subconsultants, suppliers, experts or other persons or organizations retained or utilized by CONSULTANT for the services required hereunder ("Subconsultants") shall be considered by reason of the provisions of this Agreement or otherwise as being an employee or agent of TAMPA BAY WATER. CONSULTANT shall comply with all workers' compensation, employers' liability and other Federal, State and county and municipal laws, ordinances and regulations required of an employer performing services as herein contemplated. Furthermore, CONSULTANT is responsible for paying all income and employment taxes, and TAMPA BAY WATER shall not be responsible for collecting and/or paying withholding, FUTA, FICA or any other state or federal taxes.

2.5 In performing services hereunder, CONSULTANT shall comply with all federal, state, and local laws and regulations. CONSULTANT shall be responsible for identifying and obtaining all permits necessary to complete the services. TAMPA BAY WATER shall pay the cost of obtaining any such permits. Provided, however, CONSULTANT shall be responsible for obtaining, at its sole cost and expense, all necessary licenses and other governmental approvals required in order for CONSULTANT to provide the type of services required of it hereunder.

2.6 At all times during the performance of any of the services required hereunder, CONSULTANT shall comply with Title VII of the Civil Rights Act of 1964, as amended, and the Florida Civil Rights Act of 1992. CONSULTANT shall not discriminate in any form or manner against its employees or applicants for employment on the basis of race, color, national origin, religion, sex, age, handicap or marital status. Further, CONSULTANT shall comply with all applicable rules, regulations or executive orders promulgated to give effect to the Civil Rights Act of 1964, as amended.

2.7 CONSULTANT has represented to TAMPA BAY WATER that CONSULTANT has special expertise in the type of professional services to be provided pursuant to this Agreement and CONSULTANT acknowledges that such representations were a material inducement to TAMPA BAY WATER to enter into this Agreement with CONSULTANT. CONSULTANT, in representing TAMPA BAY WATER, shall promote the best interest of TAMPA BAY WATER and assume towards TAMPA BAY WATER a relationship of trust, confidence and fair dealing.

### **SECTION 3 – TAMPA BAY WATER RESPONSIBILITIES**

3.1 With respect to each Assignment, TAMPA BAY WATER shall provide the applicable criteria and information of TAMPA BAY WATER's requirements and designate a person to act on its behalf on all matters concerning the Assignments issued under this Agreement. Provided, however, except as otherwise expressly stated herein or in the applicable Assignment, no such representative is authorized on behalf of TAMPA BAY WATER to issue any Assignment or approve any change or amendment to this Agreement or any Assignment unless in the best interest of TAMPA BAY WATER and due to causes or circumstances beyond the control of CONSULTANT; and

3.2 With respect to each Assignment, TAMPA BAY WATER shall make available to CONSULTANT studies, reports and other data available to TAMPA BAY WATER that is pertinent to the Assignment, as requested by CONSULTANT, to the extent such items are in TAMPA BAY WATER's possession and TAMPA BAY WATER has actual knowledge of their existence and location. Notwithstanding anything herein to the contrary, TAMPA BAY WATER does not represent or warrant the accuracy or completeness of any such studies, reports and other data, unless it is expressly noted otherwise in writing on such study, report or other data.

#### **SECTION 4 - PERIOD OF SERVICE**

4.1 This Agreement shall commence on the day and year as shown above. To the extent CONSULTANT is required to continue performance under any Assignments, this Agreement shall continue in full force and effect as to the services being provided under those Assignments. This Agreement may be terminated as provided in paragraphs 4.2 or 4.4. No Assignments may be issued after written notice of termination by either party.

4.2 This Agreement may be terminated by TAMPA BAY WATER without cause upon written notice by certified mail or actual delivery of notice to CONSULTANT in accordance with paragraph 9.8 of this Agreement. In the event TAMPA BAY WATER exercises its rights under this paragraph 4.2, CONSULTANT shall continue to perform in accordance with all previously issued Assignments, except to the extent CONSULTANT is directed by TAMPA BAY WATER in the termination notice to cease the performance of services under any or all such previously issued Assignments. This Agreement may be terminated by CONSULTANT without cause upon sixty days written notice to TAMPA BAY WATER in accordance with paragraph 9.8 of this Agreement, unless TAMPA BAY WATER terminates this Agreement without cause prior to the expiration of this sixty (60) day period. In the event CONSULTANT exercises its rights under this paragraph 4.2, CONSULTANT shall continue to perform in accordance with all previously issued Assignments, except to the extent CONSULTANT is directed by TAMPA BAY WATER in writing to cease the performance of services under any or all such previously issued Assignments.

4.3 In the event TAMPA BAY WATER terminates this Agreement without cause, CONSULTANT's sole and exclusive recovery against TAMPA BAY WATER shall be limited to that portion of CONSULTANT's compensation earned through the date of termination, together with any costs reasonably incurred by CONSULTANT that are directly attributable to the termination, but the CONSULTANT shall not be entitled to any other or further recovery against TAMPA BAY WATER, including, but not limited to, anticipated fees or profit on services not required to be performed. TAMPA BAY WATER shall determine that portion of the fee earned for any incomplete Assignment based on the ratio of such part of the Assignment that has been completed relative to the entire Assignment. Any such determination shall be made in TAMPA BAY WATER's sole discretion.

4.4 CONSULTANT shall be considered in material default of this Agreement and such default shall be considered cause for TAMPA BAY WATER to terminate this Agreement, in whole or in part, for any of the following reasons: (a) failure to begin services authorized under any particular Assignment within the time specified in that Assignment, or (b) failure to properly and timely perform the services required hereunder or as directed by TAMPA BAY WATER, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONSULTANT or by any of CONSULTANT's principals, partners, officers or directors, or (d) failure to obey and comply with any laws, ordinances, regulations or other codes of conduct, or (e) CONSULTANT fails or refuses to allow public access to all public record documents and other records made or received by CONSULTANT in conjunction with this Agreement, unless exempt under Florida law, or (f) CONSULTANT otherwise materially breaches this Agreement. In any such event, TAMPA BAY WATER may terminate this Agreement, in whole or in part, by giving CONSULTANT fourteen (14) days' written notice. In the event of any such termination, TAMPA BAY WATER shall not be obligated to make any further payments to CONSULTANT hereunder until such time as TAMPA BAY WATER has determined all costs, expenses, losses and damages which TAMPA BAY WATER may have incurred as a result of such default by CONSULTANT, whereupon TAMPA BAY WATER shall be entitled to set off all costs, expenses, losses and damages so incurred by TAMPA BAY WATER against any amounts due CONSULTANT hereunder for services properly performed.

4.5 Notwithstanding the provisions of paragraphs 4.4, this Agreement will not terminate for cause if the party receiving the notice begins, within seven (7) days of receipt, to correct its failure and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof; provided, however, that if and to the extent such cause for termination cannot reasonably be cured within such thirty (30) day period, and if such party has diligently attempted to cure the same and thereafter continues to diligently cure the same, then the cure period may be further extended by the party that provided said notice.

4.6 If, after notice of termination of this Agreement as provided for in paragraph 4.4 above, it is determined for any reason that CONSULTANT was not in default, or that its default was excusable, or that TAMPA BAY WATER otherwise was not entitled to the remedies against CONSULTANT provided for in paragraph 4.4, then any such termination for cause shall be deemed to be a termination without cause as provided for in paragraph 4.2 above, and CONSULTANT's sole and exclusive remedies against TAMPA BAY WATER shall be the same as and limited to those afforded CONSULTANT under paragraph 4.3 above.

## **SECTION 5 - PAYMENT**

5.1 TAMPA BAY WATER shall pay CONSULTANT for services rendered hereunder according to the fee negotiated and incorporated into the applicable Assignment which shall comply with Tampa Bay Water Administrative Policy 650-15, a copy of which is attached hereto as Exhibit 2. The Fee Schedule for Assignments made under this Agreement is included as Exhibit 1.

5.2 CONSULTANT shall submit separate monthly statements in sufficient detail to allow a preaudit and postaudit thereof for services rendered and allowable expenses incurred for each Assignment. TAMPA BAY WATER shall reimburse CONSULTANT for travel expenses (subject to the "administrative limits" of Section 112.061, Florida Statutes, and Administrative Policy 650-15), provided

CONSULTANT (a) maintains and submits appropriate documentation substantiating the expense, (b) discloses that such claim is true and correct as to every material matter, and (c) honors a claim for refund by TAMPA BAY WATER should such reimbursement be in excess of the administrative limits.

5.3 TAMPA BAY WATER shall pay such charges within thirty (30) days of receipt of a complete and correct statement provided (a) there has been progress satisfactory to TAMPA BAY WATER on the Assignment, and (b) CONSULTANT has not violated this Agreement or the Assignment terms.

5.4 The fee or other compensation to be paid to CONSULTANT under any particular Assignment is to be based on Tampa Bay Water Administrative Policy 650-15 (Exhibit 2), CONSULTANT hereby certifies that the wage rates and other factual unit costs supporting such compensation shall be accurate, complete and current at the time such Assignment is executed. Further, CONSULTANT acknowledges and agrees that any such compensation and any additions thereto shall be adjusted to exclude any significant sums by which TAMPA BAY WATER determines such compensation was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. Any such adjustment may be made by TAMPA BAY WATER for up to one (1) year after the expiration or termination of this Agreement.

5.5 CONSULTANT's acceptance of final payment as to any particular Assignment shall constitute a full waiver of any and all claims for payment by CONSULTANT against TAMPA BAY WATER arising out of or relating to that Assignment, except those previously made in writing and identified by CONSULTANT as unsettled at the time it submits its invoice for final payment under such Assignment. Neither the acceptance of CONSULTANT's services hereunder nor any payment by TAMPA BAY WATER shall be deemed to be an acceptance of defective or incomplete services by CONSULTANT or a waiver of any of TAMPA BAY WATER's rights or remedies against CONSULTANT.

## **SECTION 6 – DELEGATION OF AUTHORITY**

6.1 TAMPA BAY WATER hereby delegates to its General Manager or his designee authority to approve and execute on behalf of TAMPA BAY WATER any Assignments, including any amendments to any Assignments, provided such Assignments and amendments thereto are not in conflict with any provision of this Agreement..

## **SECTION 7 - GENERAL INSURANCE REQUIREMENTS**

7.1 The types of insurance CONSULTANT shall purchase and maintain shall include the specific coverage set forth in SECTION 8 and be written for no less than the limits specified therein for each occurrence, aggregate and per occurrence combined single limit for all liability, with excess or umbrella insurance making up the difference, if any, between the policy limits of underlying policies, including employers liability required in the workers compensation coverage section, and the total amount of coverage required.

7.2 CONSULTANT shall not commence or continue to perform any Assignment unless CONSULTANT has in full force and effect all required insurance, and until all insurance certificates evidencing the specific insurance coverage required have been delivered to or made available to TAMPA BAY WATER for review, unless TAMPA BAY WATER approves commencement or continuation of the Assignment in writing after full disclosure of the absence of any such insurance by CONSULTANT.

No payment for services performed hereunder shall become due and payable until such certificates have been delivered or made available for review. CONSULTANT shall not permit any Subconsultant to perform any portion of an Assignment, unless all insurance requirements, including workers' compensation insurance, have been complied with by such Subconsultant.

7.3 Insurance coverage shall be placed with insurers or self-insurance funds, satisfactory to TAMPA BAY WATER, licensed to do business in the State of Florida and countersigned by a resident agent. Insurers shall have an "A" policyholder's rating and a financial rating of at least Class VIII in accordance with the most current Best's rating. CONSULTANT shall provide TAMPA BAY WATER with financial information concerning any self-insurance fund insuring CONSULTANT. At TAMPA BAY WATER's option, a Best's rating or self-insurance fund financial information may be waived.

7.4 As evidence of the insurance coverages required by this Agreement, CONSULTANT shall provide TAMPA BAY WATER certificates of insurance evidencing the specific policies issued, the limits of coverage afforded, and the specific endorsement(s) provided, all in accordance with the form attached hereto and made a part hereof as Exhibit 3, or an ACORD form as included in Exhibit 3 meeting these requirements may be substituted with the consent of TAMPA BAY WATER.

7.5 All insurance shall be maintained in full force and effect throughout the entire term of this Agreement. Required insurance shall provide that TAMPA BAY WATER be notified by certified mail at least 30 days in advance of cancellation, non-renewal or adverse change. Should any coverage approach expiration during the period in which it is to remain in full force and effect, it shall be renewed prior to its expiration, and a new certificate of insurance shall be provided to TAMPA BAY WATER at least fifteen (15) days prior to coverage renewal, or a binder shall be provided to TAMPA BAY WATER at least fifteen (15) days prior to renewal with a certificate of insurance within fifteen (15) days thereafter.

7.6 All the policies of insurance required of CONSULTANT, except professional liability and workers' compensation insurance, shall be endorsed to include as additional insureds: TAMPA BAY WATER, and each of its directors, officers, employees, representatives, agents or volunteers with respect to CONSULTANT's liabilities herein. 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.

7.7 Deductible and self-insured retention amounts shall be subject to approval by TAMPA BAY WATER. CONSULTANT is responsible for payment of any deductibles or self-insured retentions.

7.8 Approval of the insurance by TAMPA BAY WATER shall not relieve or decrease the liability of CONSULTANT hereunder, nor shall it be deemed an acknowledgement by TAMPA BAY WATER that CONSULTANT has satisfied its insurance obligations hereunder. CONSULTANT agrees and understands that TAMPA BAY WATER does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect CONSULTANT's interests or liabilities, but are merely minimums.

7.9 TAMPA BAY WATER shall have the right to examine copies and relevant provisions of the insurance policies required by this Agreement, subject to reasonable notice to CONSULTANT and appropriate confidentiality provisions to safeguard the proprietary nature of CONSULTANT manuscript policies.

7.10 With respect to all matters covered by any insurance maintained by CONSULTANT, CONSULTANT hereby waives its right of recovery against TAMPA BAY WATER.

7.11 All of the policies of insurance required of CONSULTANT shall be endorsed to expand coverage as required in this Section and Section 8.

7.12 Precaution shall be exercised at all times by CONSULTANT for the protection of all persons, including employees, and their property. CONSULTANT shall comply with all laws, regulations or ordinances related to safety and health, shall make special effort to detect hazardous conditions and shall take prompt action where loss control/safety measures should reasonably be expected.

7.12.1 TAMPA BAY WATER may order services to be stopped if conditions exist that TAMPA BAY WATER determines present immediate danger to persons or property. CONSULTANT acknowledges that such stoppage will not shift responsibility for any damages from CONSULTANT to TAMPA BAY WATER.

7.13 Unless expressly waived in writing by TAMPA BAY WATER, CONSULTANT shall require each Subconsultant to procure and maintain, until the completion of such Subconsultant's work or services, insurance of the types and in the coverage amounts specified in Section 8. Professional liability insurance shall be required under this Agreement for Subconsultants if the Subconsultant is a licensed professional engineer, geologist, architect, surveyor, landscape architect or related professional, although this does not preclude CONSULTANT from requiring such insurance from others. It shall be the responsibility of CONSULTANT to assure that all Subconsultants comply with all of the insurance requirements contained herein relative to the Subconsultants.

## **SECTION 8 - INSURANCE AND COVERAGE REQUIREMENTS**

8.1 CONSULTANT shall provide the following described insurance, except for coverages specifically waived in writing by TAMPA BAY WATER, on policies and with insurers acceptable to TAMPA BAY WATER. The amounts and types of insurance shall conform to the following minimum requirements with the use of current insurance service office forms and endorsements or their equivalent. Notwithstanding the foregoing, the wording of all policies and endorsements shall be subject to TAMPA BAY WATER's review and approval which shall not be unreasonably withheld.

### **8.2 LIABILITY INSURANCE**

#### **8.2.1 General Liability**

a) CONSULTANT shall purchase and maintain such commercial (occurrence form) or comprehensive general liability, automobile policies and other appropriate insurance for the services being performed and furnished hereunder which shall provide protection from claims set forth below which may arise out of or result from CONSULTANT's performance and furnishing of the services and CONSULTANT's other obligations under the Agreement and Assignments issued hereunder.

b) Minimum limits of \$1,000,000 per occurrence for all liability must be provided, with excess or umbrella insurance making up the difference, if any, between the policy limits of underlying policies (including employers liability required in the Worker's Compensation coverage section) and \$2,000,000 per occurrence of total coverage required. Limits of coverage shall not be less than the following for Bodily Injury, Property Damage and Personal Injury, Combined Single Limits:

General Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Personal Injury/Advertising Injury	\$1,000,000
Products Comp/Operations Aggregate	\$1,000,000

c) CONSULTANT liability insurance shall include contractual liability coverage sufficient to cover CONSULTANT indemnification obligations under this Agreement. CONSULTANT agrees to pay on behalf of TAMPA BAY WATER, and to provide and pay for a defense for all claims covered by CONSULTANT obligations under the indemnification provisions.

#### 8.2.2 Excess or Umbrella Liability

a) Umbrella liability insurance is preferred, but an Excess Liability equivalent may be allowed. Whichever type of coverage is provided, it shall not be more restrictive than the underlying insurance policy coverages.

#### 8.2.3 Vehicle Liability

a) Coverage shall be maintained as to the business use of all its owned, non-owned, leased or hired vehicles with limits of not less than: Bodily Injury & Property Damage Liability \$1,000,000, Combined Single Limit Each Accident.

b) If CONSULTANT has no owned, non-owned, leased or hired vehicles, a letter from CONSULTANT so stating must be included with the Certificate of Insurance.

#### 8.2.4 Watercraft/Aircraft Liability

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

### 8.3 WORKERS COMPENSATION COVERAGE

8.3.1 CONSULTANT shall purchase and maintain workers' compensation insurance for all workers' compensation obligations imposed by state law and employers' liability limits of at least \$100,000 each accident and \$100,000 each employee, \$500,000 policy limit for disease.

a) TAMPA BAY WATER requires CONSULTANT and the Subconsultants to purchase workers' compensation insurance for all its employees regardless of the number of employees

they have and regardless of any other exemptions. Florida law permits employers who may be exempt from purchase of coverage to waive their exemptions and purchase the coverage. TAMPA BAY WATER requires CONSULTANT and all Subconsultants to purchase said coverage, unless waived in writing by TAMPA BAY WATER.

b) CONSULTANT and the Subconsultants shall also purchase any other coverages required by law for the benefit of employees.

#### 8.4 PROFESSIONAL LIABILITY/MALPRACTICE/ERRORS OR OMISSIONS INSURANCE

8.4.1 CONSULTANT shall purchase and maintain professional liability or malpractice or errors or omissions insurance with minimum limits of \$1,000,000 per occurrence.

8.4.2 If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts.

8.4.3 To the extent commercially available, coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

### **SECTION 9 - MISCELLANEOUS**

9.1 All documents prepared by or for CONSULTANT pursuant to this Agreement are instruments of service and are the property of TAMPA BAY WATER, subject to TAMPA BAY WATER's payment obligations hereunder.

9.2 CONSULTANT shall notify TAMPA BAY WATER in writing prior to undertaking any commitments during the term of this Agreement which may constitute a potential or actual conflict of interest with respect to services for TAMPA BAY WATER under this Agreement.

9.3 TAMPA BAY WATER reserves the right to terminate this Agreement and cancel any Assignments hereunder without compensation to CONSULTANT pursuant to paragraph 4.4 if CONSULTANT fails to notify TAMPA BAY WATER in writing as prescribed in paragraph 9.2 above.

9.4 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than TAMPA BAY WATER and CONSULTANT.

9.5 INDEMNIFICATION: In consideration of One Hundred Dollars (\$100) separately allocated from the consideration paid hereunder, to the fullest extent permitted by law, the receipt and sufficiency of which is acknowledged by CONSULTANT's execution of this Agreement, CONSULTANT shall indemnify and hold harmless TAMPA BAY WATER, its officers and employees from and against any and all liabilities, damages, losses and costs (including but not limited to reasonable attorneys fees) arising out of or to the extent caused by the negligence, recklessness or intentionally wrongful conduct of CONSULTANT or any of the Subconsultants or any other person or organization employed by or

utilized by CONSULTANT in the performance of the services required hereunder. This indemnification shall also include all liability, damages, losses and costs (including but not limited to reasonable attorneys fees) arising out of or to the extent caused by any infringement of patents or copyrights incident to providing the services required hereunder.

9.6 CONSULTANT shall not sublet, assign, or transfer this Agreement, any Assignment or any other work specifically set forth under this Agreement without the prior written consent of TAMPA BAY WATER, which consent may be withheld in TAMPA BAY WATER's sole discretion.

9.7 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. Further, CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement or from any Assignment issued under this Agreement. CONSULTANT represents that it has complied with the provisions of Section 287.055(6), Florida Statutes.

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

If to TAMPA BAY WATER:

Tampa Bay Water  
2575 Enterprise Road  
Clearwater, Florida 33763-1102  
Attention:\_\_\_\_\_

If to CONSULTANT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention:\_\_\_\_\_

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

9.9 This written document and all attachments shall constitute the entire Agreement between the parties hereto and said Agreement shall not be amended or modified except in writing duly executed by the party against whom such an amendment or modification is sought to be enforced.

9.10 This Agreement shall be governed by and construed under the laws of the State of Florida.

9.11 Venue for any action arising under this Agreement shall lie exclusively in the State courts for Pinellas County, Florida.

9.12 CONSULTANT communications with TAMPA BAY WATER shall be limited to TAMPA BAY WATER's General Manager and designated staff. Communications with TAMPA BAY WATER Board Members are prohibited, except with the prior written permission of TAMPA BAY WATER's General Manager or at a duly noticed public Board meeting. Any failure of CONSULTANT to strictly comply with the requirements of this paragraph 9.12 shall be deemed a material breach of this Agreement by CONSULTANT. This provision does not prohibit or limit contacts by or on behalf of TAMPA BAY WATER Board Members with CONSULTANT.

9.13 All words used herein in the singular shall extend to and include the plural, and the use of any gender shall extend to and include all genders. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement and Assignments as a whole and not to any particular provision of this Agreement of Assignment unless stated otherwise.

9.14 The captions and headings herein are for convenience of reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions. Unless otherwise indicated, references to Sections and paragraphs shall include all subparts.

9.15 CONSULTANT represents that it is in compliance with Subsections 287.133(2) and (3), Florida Statutes, which provide that 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 or 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 36 months following the date of being placed on the convicted vendor list.

9.16 All analyses, data, documents, models, modeling, reports and tests performed or utilized by CONSULTANT shall be made available to TAMPA BAY WATER upon request and shall be considered public records.

9.17 The parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation or drafting.

9.18 CONSULTANT shall keep all books, records, files, drawings, plans and other documentation, including all electronically stored items, which concern or relate to the services required hereunder (collectively referred to as "Records"), for a minimum of three (3) years from the date of expiration or termination of this Agreement, or as otherwise required by any applicable law, whichever date is later. TAMPA BAY WATER, or any duly authorized agents or representatives of TAMPA BAY WATER, shall have the right to order, inspect and copy all such Records as often as they deem necessary during any such period of time. This right to audit, inspect and copy the Records shall include all of the Records of the Subconsultants.

9.19 CONSULTANT represents that it is in compliance with Subsection 287.134(2)(a), Florida Statutes, which provides that an entity or affiliate who has been placed on the discriminatory vendor list 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.

9.20 TAMPA BAY WATER shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services called for hereunder, or the character, quality, amount, or value thereof. The decision of TAMPA BAY WATER upon all such claims, questions or disputes shall be final and binding if not contested by CONSULTANT in a written notice delivered to TAMPA BAY WATER within seven (7) days after CONSULTANT's receipt of written notice from TAMPA BAY WATER concerning such decision.

9.21 All express representations, indemnifications, or limitations made or given in this Agreement shall survive its completion or termination for any reason.

9.22 Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TAMPA BAY WATER and CONSULTANT, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.23 CONSULTANT has the full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided for herein, all of which have been duly authorized by all proper and necessary actions of the governing entity of CONSULTANT.

9.24 This Agreement is a valid, binding and enforceable obligation of CONSULTANT, and does not violate any law, rule, regulation, contract or agreement otherwise enforceable by or against CONSULTANT, except as same may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally.

**9.25 TO THE EXTENT PERMITTED BY APPLICABLE LAW, CONSULTANT AND TAMPA BAY WATER HEREBY ACKNOWLEDGE AND AGREE THAT ANY AND ALL CLAIMS ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIP CREATED HEREBY ARE MATTERS WHICH, IF ADJUDICATED, SHOULD BE ADJUDICATED BY A COURT WITHOUT A JURY. THEREFORE, THE PARTIES HEREBY WAIVE A TRIAL BY A JURY. NEITHER TAMPA BAY WATER NOR CONSULTANT OR ANY SUCCESSOR THEREOF SHALL SEEK A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (WHETHER AT LAW OR IN EQUITY, WHETHER DIRECT OR COLLATERAL, WHETHER IN CONTRACT OR IN TORT) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE RELATIONSHIP CREATED HEREBY. NEITHER TAMPA BAY WATER NOR CONSULTANT SHALL SEEK TO CONSOLIDATE ANY ACTION OR PROCEEDING IN WHICH TRIAL BY JURY HAS BEEN WAIVED WITH**

**ANY OTHER ACTION OR PROCEEDING IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH CANNOT BE AND HAVE NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY DISCUSSED BY THE PARTIES AND THEIR RESPECTIVE ATTORNEYS AND THE PROVISIONS HEREOF SHALL BE SUBJECT TO NO EXCEPTIONS. TAMPA BAY WATER AND CONSULTANT ACKNOWLEDGE AND AGREE THAT NO ONE, INCLUDING, WITHOUT LIMITATION, TAMPA BAY WATER'S AGENTS OR CONSULTANTS, HAS REPRESENTED THAT THE PROVISIONS OF THIS PARAGRAPH OR OF ANY OTHER PARAGRAPH OF THIS AGREEMENT WILL NOT BE FULLY ENFORCED.**

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed by their duly qualified representatives on the date first set forth above.

**WITNESSES:**

\_\_\_\_\_  
(CONSULTANT)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

(SEAL)

**ATTEST:**

**TAMPA BAY WATER, A REGIONAL  
WATER SUPPLY AUTHORITY**

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

(SEAL)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Office of the General Counsel

[Version 7-23-09]

## **INDEX OF EXHIBITS**

EXHIBIT 1 – Fee Schedule

EXHIBIT 2 – Tampa Bay Water Administrative Policy 650-15

EXHIBIT 3 – Tampa Bay Water Certificate of Insurance (or ACORD)

**EXHIBIT 1**

**FEE SCHEDULE**

**EXHIBIT 2**

**TAMPA BAY WATER  
ADMINISTRATIVE POLICY 650-15**

**EXHIBIT 3**

**TAMPA BAY WATER CERTIFICATE OF INSURANCE  
OR  
APPROVED ACORD FORM**



2575 Enterprise Road  
 Clearwater, Florida 33763-1102  
 Phone: 727.796.2355  
 Fax: 727.791.2388  
 Suncom: 513.7010  
 www.tampabaywater.org

Issue Date: \_\_\_\_\_ Contract Number: \_\_\_\_\_  
 CANCELLATION: Should any of the below described policies be cancelled, non-renewed or adversely changed before the expiration date thereof, the issuing company will provide 30 days written notice to **TAMPA BAY WATER** by certified mail.

Producer: \_\_\_\_\_ Insured: \_\_\_\_\_

Companies Affording Coverage: \_\_\_\_\_ Best Rating/Class: \_\_\_\_\_

A. \_\_\_\_\_

B. \_\_\_\_\_

C. \_\_\_\_\_

D. \_\_\_\_\_

E. \_\_\_\_\_

COVERAGES: This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated.

Co. Letter	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF. DATE	POLICY EXPIR. DATE	LIMITS ALL LIMITS IN THOUSANDS		
						EACH OCCURRENCE	AGGREGATE
	General Liability <input type="checkbox"/> Commercial Form <input type="checkbox"/> Occurrence <input type="checkbox"/> Claims Made <input type="checkbox"/> Comprehensive Form <input type="checkbox"/> Premises Operations <input type="checkbox"/> Explosion, Collapse, Underground Hazard <input type="checkbox"/> Products/Completed Operations Hazard <input type="checkbox"/> Contractual Insurance <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Independent Contractor <input type="checkbox"/> Personal Injury						
	Automobile Liability <input type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Combined Single Limit Bodily Injury (Per Person) Property Damage		
	Umbrella/Excess Liability <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Excess Form <input type="checkbox"/> Following Form Coverage				Each Occurrence Aggregate		
	Workers' Compensation and Employers' Liability				<input type="checkbox"/> Statutory Coverage Limit EL Each Accident EL Disease Policy Limit EL Disease Each Employee		
	Professional Liability <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence Retro Date: _____					\$	\$
	Builder's Risk <input type="checkbox"/> All Risk <input type="checkbox"/> Permission to Occupy <input type="checkbox"/> All Owner's Contractors, Subcontractors' Interests Covered <input type="checkbox"/> Installation Floater					\$	\$
	Fidelity <input type="checkbox"/> Employee Dishonesty <input type="checkbox"/> Covers Loss to Tampa Bay Water					\$	
	Other						

Description of Operations/Locations/Vehicle/Special Items:  
 \* Specific Project or Location:

CERTIFICATE HOLDER and ADDITIONAL INSURED  
 Tampa Bay Water, its Consultants, Subsidiaries or Affiliates and each of Tampa Bay Water's Directors, Officers, Employees, Representatives, Agents or Volunteers.

Authorized Representative: \_\_\_\_\_  
 (Signature required)

Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

**SEE REVERSE SIDE OF FORM**

THIS IS TO FURTHER CERTIFY THAT:

1. The company issuing the General Liability Coverage hereby agrees to waive any right of subrogation it may acquire against Tampa Bay Water, its engineers, its consultants, and all other parties named as insured by reason of any payment made on account of personal injury, bodily injury, including death resulting therefrom, sustained by any employee of the insured or property damage arising out of the performance or furnishing of work under the above referenced Agreement.
2. Each of the above described policies contains a provision or endorsement that the coverage afforded will not be canceled, adversely changed or non-renewed until at least thirty (30) days prior written notice has been given to Tampa Bay Water by certified mail.
3. Each of the above listed companies hereby agrees to deliver to Tampa Bay Water new Certificate(s) of Insurance at least fifteen (15) days prior to coverage renewals or binder within such period and a certificate within fifteen (15) days thereafter.
4. If requested, each of the above listed companies hereby agrees to deliver two (2) copies of the policies purchased by the Agent to Tampa Bay Water.
5. Each of the above listed companies is authorized to do business and has an agent for service of process in Florida and has an "A" policy holders rating and a financial rating of at least Class VIII in accordance with the most current Best's rating. For self-insurance funds, financial statements are to be provided if requested by Tampa Bay Water. (AT Tampa Bay Water's option, a Best's rating or financial information regarding any self-insurance funds may be waived.)

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**   DATE (MM/DD/YYYY)

PRODUCER  Your Insurance Agent	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED  Company Name Street City, State, Zip Code	INSURER A: Company Name	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Policy Number	effective	expires	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
X	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	Policy Number	effective	expires	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
X	<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$	Policy Number	effective	expires	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below NO	Policy Number	effective	expires	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 DISEASE - POLICY LIMIT \$ 500,000
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Re: Job Name/Number  
 Tampa Bay Water, its Engineers, Architects, Consultants, Subsidiaries or Affiliates and each of the Tampa Bay Water Directors, Officers, Employees, Representatives, Agents or Volunteers shall be named as additional insured under the GL Policy per CG 20 10 (07/04) AND CG 20 37 (07/04) or equivalent, and the Automobile Liability policy. Waiver of Subrogation is provided in favor of Tampa Bay Water on all policies. The insurance evidenced by this Certificate is primary and non-contributory to any insurance maintained by Tampa Bay Water.

<b>CERTIFICATE HOLDER</b>  Tampa Bay Water 2575 Enterprise Road Clearwater, FL 33763-1102	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.