

City of Marco Island Florida



CONTRACT 19-033:

Consulting Services for Nutrient Source Evaluation & Assessment

January 7, 2020

Environmental Research & Design, Inc.
3419 Trentwood Blvd. Ste 102
Belle Isle, Florida 32812
Phone: (407) 855-9465

AND

City of Marco Island
50 Bald Eagle Drive
Marco Island, Florida 34145
Phone: (239) 389-5000

Professional Services Agreement

THIS AGREEMENT, made and entered into this 7th day of January, 2020, by and between Environmental Research & Design, Inc. , hereinafter called the "Consultant," and the City of Marco Island, Florida, a political subdivision of the State of Florida, Collier County, hereinafter called the "City."

WITNESSETH

1. **CITY APPROVAL OF PROPOSAL/AGREEMENT**: The Response to RFP #19-033 Consulting Services for Nutrient Source Evaluation & Assessment, submitted by the Consultant on October 15, 2019, as well as a Services Proposal dated December 27, 2019 (Exhibit "A") have been approved for contract award.
2. **CONTRACT TIME**: As specified in the Exhibit "A".
3. **STATEMENT OF WORK**: Consulting Services for Nutrient Source Evaluation & Assessment as specified in the Exhibit "A" and RFP 19-033.
4. **COMPENSATION**: The City shall compensate the Consultant for the satisfactory performance of work based solely on the services provided as may be ordered by the City from time to time during the term of this Agreement. All invoices shall be submitted in sufficient detail to demonstrate compliance with the terms of the contract.
5. **NOTICES**: Consultant's address of record:

Harvey H. Harper, III, Ph.D., P.E.
President
Environmental Research & Design, Inc.
3419 Trentwood Blvd. Ste 102
Belle Isle, Florida 32812
hharper@erd.org
Phone: (407) 855-9465

City's address of record:

Lina Upham
Purchasing and Risk Manager/Deputy City Clerk
50 Bald Eagle Drive
Marco Island, Florida 34145
lupham@cityofmarcoisland.com
Phone: (239) 389-5000

The Consultant and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

7. **LICENSES:** Consultant must be fully licensed for the type of work to be performed in the State of Florida. Licenses must remain current during contract term with the City. Professional License number(s) must be identified.

9. **TERMINATION:** Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other.

Moreover, the City may terminate this Agreement for convenience with a seven (7) day written notice to the Consultant.

10. **NO DISCRIMINATION:** The Consultant agrees not to discriminate against or upon employees or subConsultants as to race, sex, color, creed or national origin.

11. **INSURANCE:** All entities wishing to perform work for the City of Marco Island will be required to comply with the following minimum insurance requirements.

- | | |
|--|--------------------------------|
| <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY LIMITS | \$ 2,000,000 AGGREGATE |
| (MUST INCLUDE CONTRACTUAL LIABILITY) | \$ 1,000,000 EACH OCCURRENCE |
| | \$ 1,000,000 PRODUCTS-COMP/OP |
| | \$ 1,000,000 PERS & ADV INJURY |
| <input type="checkbox"/> PROFESSIONAL LIABILITY AND/OR | \$ 1,000,000 AGGREGATE |

ERRORS AND OMISSIONS LIABILITY	\$ 1,000,000 EACH OCCURRENCE
❑ AUTOMOBILE LIABILITY	\$ 1,000,000 COMBINED SINGLE LIMIT (INCLUDE HIRED AND NON-OWNED LIABILITY)
❑ WORKER'S COMPENSATION	STATUTORY
❑ EMPLOYER'S LIABILITY	\$ 1,000,000 EACH ACCIDENT \$ 1,000,000 DISEASE-POLICY LIMIT \$ 1,000,000 DISEASE-EACH EMPLOYEE

THE ABOVE REFLECTS THE MINIMUM REQUIREMENTS FOR WORKING WITH THE CITY OF MARCO ISLAND, FLORIDA. ANY REQUIREMENTS FOUND IN A PARTICULAR JOB'S CONTRACT THAT ARE OF A HIGHER STANDARD WILL PREVAIL.

THE CITY OF MARCO ISLAND, FLORIDA MUST BE GIVEN A CERTIFICATE OF INSURANCE SHOWING THAT THE ABOVE REQUIREMENTS HAVE BEEN COMPLIED WITH. A CURRENT CERTIFICATE OF INSURANCE MUST BE IN THE CITY'S OFFICES BEFORE THE WORK BEGINS. THE CERTIFICATE OF INSURANCE MUST REMAIN CURRENT IN ORDER FOR THE CITY TO ISSUE PAYMENTS TO THE CONSULTANT OR SUB CONSULTANT.

(1) This policy shall include contractual liability coverage to contemplate the indemnity provisions of this agreement.

(2) Consultant shall ensure that all subConsultants comply with the same insurance requirements that he is required to meet. The same Consultant shall provide the City with certificates of insurance meeting the required insurance provisions.

(3) The City of Marco Island shall be named as the Certificate Holder. NOTE: The "Certificate Holder" should read as follows:

The City of Marco Island
Attn: Risk Manager
50 Bald Eagle Drive
Marco Island, FL 34145

(6) **Thirty (30) Days Cancellation Notice is required.**

12. **INDEMNIFICATION:** The Consultant, in consideration of One Hundred Dollars (\$100), the receipt and sufficiency of which is accepted through the signing of this Agreement, shall hold harmless and defend the City of Marco Island and its agents and employees from all suits and actions, including attorneys fees, and all costs of litigation and judgments of any name and description arising out of or incidental to the performance of this Agreement or Work performed hereunder. This provision shall also apply to any claims brought against the City by any employee of the named Consultant, the Consultants' subConsultant or sub-subConsultant, or anyone directly or indirectly employed by any of them. The Consultant's obligation under this provision shall not be limited in any way by the agreed upon contract price as listed in Section 4 above, or the Consultant's

limit of, or lack of, sufficient insurance protection. The first One Hundred Dollars (\$100) of money received on the contract price herein is considered as payment of this obligation by the City.

This section does not pertain to any incident arising from the sole negligence of the City of Marco Island.

13. **ADMINISTRATION OF AGREEMENT:** This Agreement shall be fully administered by the City Manager or his designee on behalf of the City. The Consultant shall only receive and act upon orders and directives issued by the City Manager, his designee, or the City's Purchasing and Risk Manager/Deputy City Clerk.

14. **COMPONENT PARTS OF THIS AGREEMENT:** This Agreement consists of, by reference, the Contract Bidding Documents for: Consulting Services for Nutrient Source Evaluation & Assessment, **RFP# 19-033** and the Consultant's Proposal submittal, Exhibit "A" attached, and thus made a formal part of the binding Agreement between the City and the Consultant.

15. **OFFER EXTENDED TO OTHER ENTITIES:** The City of Marco Island encourages and agrees to the successful bidder/proposer extending the pricing, terms and conditions of this solicitation or resultant contract to other governmental entities at the discretion of the successful bidder/proposer.

16. **SUBJECT TO APPROPRIATION:** It is further understood and agreed by and between the parties herein that this Agreement is subject to the continuation of appropriation of funds by the City Council of the City of Marco Island.

17. **ACCESS TO RECORDS AND AUDIT CLAUSE:** All records, books, documents, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City. The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.

18. **PUBLIC RECORDS:** Consultant agrees to keep and maintain public records in Consultant's possession or control in connection with Consultant's performance under this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.

Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to City. Upon request from City custodian of public records, Consultant shall provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City.

Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of Consultant or keep and maintain public records required by City to perform the service. If Consultant transfers all public records to City upon completion of this Agreement, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of this Agreement, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically by Consultant shall be delivered to City, upon request from the City's Custodian of Records, in a format that is compatible with the City's information technology systems.

Any compensation due to Consultant shall be withheld until all records are received as provided herein.

Consultant's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by City.

Section 119.0701(2)(a), Florida Statutes

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

Custodian of Public Records: LAURA LITZAN, CITY CLERK
Mailing address: 50 Bald Eagle Drive, Marco Island, FL 34145
Telephone number: 239-389-5010
Email: llitzan@cityofmarcoisland.com

19. **ANTI-LOBBYING:** Consultant warrants that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for Consultant any fee, commission, percentage fee, gifts or any other considerations contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Owner shall have the right to cancel this Agreement without liability. This provision shall not apply to Consultant's retention of an attorney on a non-contingent fee basis for purposes of negotiating this Agreement.

20. **SEVERABILITY:** Should any provision of the Agreement be determined by a court to be unenforceable; such a determination shall not affect the validity or enforceability of any other section or part thereof.

21. **ORDER OF PRECEDENCE:** In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Construction Agreement and the General Terms and Conditions shall take precedence over the terms of all other Contract Documents. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Construction Agreement and the General Terms and Conditions, the conflict shall be resolved by imposing the more strict obligation under the Contract Documents upon Consultant.

22. **GOVERNING LAW, JURISDICTION AND VENUE:** The Agreement shall be interpreted under, and its performance governed by, the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue for any action to enforce this Agreement shall be in Collier County, Florida.

23. **SAFETY, GOVERNMENTAL COMPLIANCE AND HAZARDOUS MATERIALS:** Consultant shall be responsible for safety of its operations and its employees and shall take all reasonable safety precautions with respect to its Work. Consultant in addition to its own standards shall comply with all safety policies and procedures initiated by Consultant for the Project, including Consultant's policy regarding drugs, alcohol and controlled substances, and shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property, including, but not limited to, the Federal Occupational Safety and Health Act (OSHA). Consultant shall immediately notify City of any injury to any of the Consultant's employees. Consultant shall require its personnel to attend any safety meetings the City might conduct and direct Consultant to attend.

Consultant agrees that in performing its Work, it will not create, use or dispose of any hazardous chemicals or substances in an unlawful or hazardous manner and shall be solely responsible for the lawful, proper and safe handling, storage and removal of all hazardous wastes, chemicals and substances which are introduced to the site, or removed from the site, by Consultant's operations. The term "hazardous wastes, chemicals or substances" shall mean those materials and substances prohibited, proscribed, or the use of which is controlled by any agency of the federal government or the applicable state or local agency having jurisdiction of such matters. In the event Consultant encounters material reasonably believed to be hazardous wastes, chemicals or substances, Consultant shall immediately stop work in the area affected and report such condition to City in writing. Consultant shall comply with all federal, state and local regulations dealing with the use, storage or disposal of all hazardous wastes, chemicals and substances. Consultant shall be responsible for any and all claims and damages resulting from its use, handling, storage, removal and disposal of such hazardous wastes, chemicals or substances from the Project, and will indemnify, defend and hold City harmless from any and all liability associated with such use, handling, storage, removal and disposal including all associated attorney's fees and costs and costs of all cleanup operations wherever and whenever required by any governmental authority or City.

24. **SCRUTINIZED COMPANIES:** Consultant certifies that it and its subConsultants are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Consultant or its subConsultants are found to have submitted a false certification; or if the Consultant, or its subConsultants are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

If this Agreement is for more than one million dollars, the Consultant certifies that it and its subConsultants are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Consultant, its affiliates, or its subConsultants are found to have submitted a false certification; or if the Consultant, its affiliates, or its subConsultants are placed on the Scrutinized Companies with Activities in Sudan List,

or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

The Consultant agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

25. **E-VERIFY:** Consultants providing service to the City are required to comply with all state and federal employment laws. This includes, but is not limited to, laws resulting from the Immigration and Reform and Control Act of 1986, wherein all employers are required to verify the identity and employment eligibility of all employees. The Department of Homeland Security, U.S. Citizenship and Immigration Services require employees and employers to complete Form I-9 and the employer must examine evidence of identity and employment eligibility within three business days of the date employment begins. Non-compliant Consultants will be subject to contract sanctions, up to and including contract termination.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement on the latest date(s) indicated below.

ATTEST:

CONSULTANT:

ENVIRONMENTAL RESEARCH & DESIGN, INC.

Corporate Secretary/Witness

2nd Witness (If Not Incorporated)

ITS: _____

President (If Incorporated)

Date: _____

[Corporate Seal]

ATTEST:

OWNER:

CITY OF MARCO ISLAND, FLORIDA

BY: _____
Laura Litzan, City Clerk

BY: _____
Michael McNees, City Manager

Date: _____

Approved as to form and legal sufficiency for the
use and reliance of the City of Marco Island only.

BY: _____
Alan L. Gabriel, City Attorney