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# VILLAGE OF INDIANTOWN



## **REQUEST FOR PROPOSALS**

for

## **COMMUNICATIONS CONSULTANT**

**RFP #2020-001-HB**

**January 3, 2020**

**Village of Indiantown**

**VILLAGE MANAGER'S OFFICE**

P.O. Box 398

Indiantown, FL 34956

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# COMMUNICATIONS CONSULTANT

RFP #2020-001-HB

## I. REQUEST SUMMARY

The Village of Indiantown (Village) seeks proposals from marketing, public relations and/or communications professionals to assist the Village with informing the press and public of the Village's work in an effective, timely and concise manner. Candidates should have the capability and experience needed to provide comprehensive, strategic and innovative services on designated projects, and develop the framework for a comprehensive communications program, integrating print, website, and social media platforms. The intended end result of the communications program is to increase civic engagement for Village programs, projects, meetings, and events.

An initial contract for one year is anticipated. Assuming need and mutual satisfaction, the contract may be renewed for two consecutive one-year terms, for up to three years total.

## II. INTRODUCTION

### A. Community Profile

Indiantown is a rural community in Florida's Treasure Coast first established in the early 1900's, then incorporated on December 31, 2017 as the newest local government in Florida. While its population of less than 7,000 is small, its resident engagement is good and its potential for community building and new business opportunity is large. The Village is governed by a Mayor and Council elected at large, while day-to-day operations are directed by the Village Manager. Because our staff is small, we're called upon to apply versatile talents and skills across many disciplines making our daily work very challenging and dynamic.

The Village is approximately nine square miles with a residential population of approximately 6,800. The total adopted budget for FY 2019-2020 is approximately \$4.9 million.

### B. Background

The primary objective is to effectively partner with a firm to provide professional public relations, social media planning and placement, and website consultation for the Village. The firm must drive social media efforts and be responsive to print, online, and social media effectiveness. The consultant shall provide assistance to departmental staff on issues and projects, as needed and as resources allow. The Village's brand (e.g. logo, color palette, tagline, graphics, etc.) are already in place.

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The Village of Indiantown has a three-person Village Manager's Office, which includes an Office Coordinator and Management Analyst. The Management Analyst is the primary staff person who is involved with various aspects of communications, including overseeing the contract for the communications consultant. The Management Analyst will work in coordination with Village staff in various departments to advance the Village's messaging on a wide range of programs, projects, events, and issues. The selected communications consultant will work closely with identified Indiantown staff and private consultants, contractors, and Village Council to implement a comprehensive integrated communications program. It is important that the consultant monitor trends and proactively initiate ideas on when and how to inform the public and work with the Village Manager's Office to implement these recommendations as appropriate.

In addition to Village staff's distribution of press releases, management of the Village's website ([www.indiantownfl.gov](http://www.indiantownfl.gov)), and use of email automation software (Constant Contact) to send emails to individuals who are interested in various topics, the Village also uses some social media platforms.

The Village of Indiantown has not previously used a communications consultant vendor.

### **C. General RFP Submittal Information**

The Village's designated staff will evaluate proposals received. During the review process, the Village reserves the right, where it may serve the Village's best interest, to request additional information or clarification from those that submit proposals, or allow clarifications, corrections of errors, or omissions. Any and all changes in the RFP will be made by written addendum, which shall be issued by the Village to all prospective proposers who have registered for the RFP via the Village's website.

The Village reserves the right to retain all proposals submitted. Submission of a proposal indicates the Proposer's acceptance of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Village and the Proposer selected.

The preparation of the proposal will be at the total expense of the Proposer. There is no expressed or implied obligation for the Village to reimburse responding Proposers for any expense incurred in the preparation of proposals in response to this request. All proposals submitted to the Village shall become properties of the Village and will not be returned. If any information in your proposal is confidential and/or proprietary, please further submit a separate, redacted copy for servicing public records requests.

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The proposer may submit an alternative proposal (or proposals) that it believes will also meet the Village's project objectives but in a different way. In this case, the proposer must provide an analysis of the advantages and disadvantages of each of the alternatives and discuss under what circumstances the Village would prefer one alternative to the other(s). If an alternative proposal is submitted, the maximum length of the proposal may be expanded proportionately by the number of alternatives submitted.

The Village reserves the right to reject any or all proposals, in whole or part, to waive any informality in any proposal, and to accept the proposal which, in its discretion, is in the best interest of the Village. Any proposer may withdraw his proposal, without obligation, at any time prior to the scheduled closing time for receipt of proposals. A withdrawal will not be effective unless made personally or by telephonic notification received prior to the closing date. Proposals may later be referred to the Village Council for appropriate action.

All proposals are due no later than **3:00 p.m. on Monday, January 27, 2020**, at which time they will be opened at the Village Clerk's Desk on the First Floor of Village Hall. Late submissions will not be accepted.

To be considered, proposers must send one (1) color original, one (1) USB flash drive with a searchable PDF copy of the proposal in its entirety and three (3) hard copies of their proposal in a sealed envelope with the name of the company submitting the proposal and the title of **"RFP #2020-001-HB – Communications Consulting Services"** to:

**Village of Indiantown  
Village Clerk  
16550 SW Warfield Blvd  
Indiantown, Florida 34956**

For a complete list of the Village's RFP submittal terms and conditions, legal statements, and insurance requirements, please refer to the exhibits attached hereto.

#### **D. RFP Questions**

Questions with regard to this RFP should be submitted by e-mail to Mr. Daniel Eick, Management Analyst at [deick@indiantownfl.gov](mailto:deick@indiantownfl.gov) by Monday, January 13, 2020. All firms registered for the RFP will receive responses to questions and any other addenda that may be released, via e-mail by Tuesday, January 21, 2020.

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## E. Schedule

The Village reserves the right to make changes to the below schedule, but plans to adhere to the implementation of this RFP process as follows:

RFP released:	January 3, 2020
Deadline for receiving questions:	January 13, 2020
Response to questions:	January 21, 2020
<b>Proposals due:</b>	<b>January 27, 2020 at 3:00pm</b>
Finalists selected:	On or before February 3, 2020
Presentations/Interviews:	Week of February 10, 2020
Vendor selected:	On or before February 17, 2020

## III. SCOPE OF SERVICES

The Village of Indiantown intends to obtain the services of a qualified firm to provide communications consulting services as outlined below. Best industry practices and/or best management practices may require additional services not explicitly enumerated. The proposer should identify any additional services required with price and explanation included in their response.

### A. Project Scope

1. Execute two weekly strategy discussions with designated Village contact(s) by phone;
2. Read the Village Council Meeting Agendas for opportunities for information sharing with the public;
3. Monitor local and national publications and online alerts for stories about or of concern to Indiantown;
4. Provide on-call services for the Village Manager and other duly authorized representatives of the Village to answer questions, develop strategies, or otherwise aid in efforts related to the scope of the retainer (Consultant's cell phone number will be provided to staff and will be available 24-7);
5. Monitor and report on communications metrics on a monthly basis;
6. Develop and manage a 12-month calendar for Village communications and a related plan for executing;
7. Revisit the 12-month calendar every quarter with a two-hour, on-site strategy/training session with senior staff or staff focused on communication matters from each department;

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8. Connect with other leaders and communication staff in sister agencies and organizations that serve Indiantown residents (i.e. utility agencies, Chamber of Commerce, Martin County, Martin County community service groups, etc.);
  9. Monitor traditional and digital media for Indiantown coverage and mentions and notify the Village Manager's Office of stories that should receive their attention;
  10. Champion, manage, and monitor the use of all forms of communication including social media platforms, the Village's media channels, print materials, surveys, and other communication methods that are available or might become available in the future;
  11. Create Nextdoor Posts on the Village's Main Nextdoor account on behalf of the Assistants to the Village Manager; various departments post their own announcements on Nextdoor directly.
  12. Design and schedule posts to Village's social media platforms, including Facebook, Twitter, Instagram and Nextdoor;
  13. Respond to all inquiries from the Public's posts and direct messages on the Village's main above mentioned accounts after verifying information from Village staff (if required);
  14. Advise identified Village social media managers on use of their social media platforms including responses to inquiries on social media;
  15. Provide recommendations to staff to improve the Village's website;
  16. Provide Village staff with guidance on email marketing best practices and emails as a key source for social media content. Identify appropriate imagery to use, where possible to aid the work impact and reach of social media posts;
  17. Provide Village staff with advice on stakeholder outreach, communication efforts, and public engagement initiatives;
  18. Prepare at least three Press Releases per month based on content provided by Village staff;
  19. Utilize Constant Contact to keep subscribed individuals abreast of topics of concern, as well as any other email automation software used by the Village.
  20. Provide leadership and direction for the implementation and maintenance of a Villagewide strategic communication plan that keeps the public and the workforce highly informed, engages the public in local government, and manages media relations.

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21. Advise the Village Leadership team during crisis management when responding to emergencies, including coordinating communications efforts with key external stakeholders;
  22. Perform ad hoc work including: additional press releases beyond the scope identified above, photography services, video production services, newsletter development and assembly, graphic design support, writing speeches and letters to the editor, presentation preparation, media training session, drafting or reviewing policies and procedures, organizing press conferences or writing articles for the websites or other publications, marketing campaigns and the strategies, tactics and resources necessary to support the strategic mission of the Village. Campaigns may be developed in conjunction with external consultants. Ad hoc work must be approved by the Village in advance.

#### **IV. PROPOSAL OUTLINE TO BE SUBMITTED**

The proposal shall be organized and submitted with the following elements:

**A. *Cover Page***

**B. *Table of Contents***

**C. *Executive Summary***

Provide a brief summary describing the proposer's ability to perform the work requested, a history of the proposer's background and experience providing services, the qualifications of the proposer's personnel to be assigned to this project, any subcontractor, sub consultants, and/or suppliers and a brief history of their background and experience, and any other information called for by this request for proposal which the proposer deems relevant, including restating any exceptions to this request for proposal. This summary should be brief and concise to apprise the reader of the basic services offered, experience and qualifications of the proposer, staff, subcontractors, and/or suppliers.

**D. *Questionnaire/Response to Scope of Services***

Proposer shall provide responses and information to fully satisfy each item in the Questionnaire. Each question item should be presented before the proposer's response.

**E. *Attachments***

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## **V. QUESTIONNAIRE**

### **A. Company and General Information**

1. Company name and address.
2. Letter of transmittal signed by an individual authorized to bind the respondent, stating that the respondent has read and will comply with all terms and conditions of the RFP.
3. General information about the primary contact who would be able to answer questions about the proposal. Include name, title, telephone number and email address of the individual.

### **B. Qualifications and Experience of the Firm**

1. Describe your firm's history and organizational structure. Include the size of the firm, location of offices, years in business, organizational chart, name(s) of owner(s) and principal parties, and number and position titles of staff.
2. What is the primary business of the parent company and/or affiliates?
3. Which office(s) of your organization will have primary responsibility for managing this account? List the members of your team who will be responsible for providing the services and for ongoing support. Describe the duties of these team members.
4. Provide the estimated number of hours (weekly) and billing rate for each consultant team member providing services.
5. What is your firm's experience conducting the services requested? Describe comparable services performed by your firm in the last five years, including the number of accounts, scope of service, and their status.
6. Comment on other areas that may make your firm different from your competitors.

### **C. Qualifications and Experience of Proposed Project Team**

1. Describe the qualifications of staff proposed for the assignment, position(s) in the firm, and types and amount of equivalent experience. Be sure to include any municipal agencies they have worked with in the past three years and their level of involvement. A description of how overall supervision will be provided should be included.
2. Identify and provide the resume(s) of the personnel who will be assigned to this project.



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#### **D. Questions/Response to Scope of Services**

1. Describe the methods by which your firm will fulfill the services requested in the Scope of Services and subsequent sections.
2. Provide a statement of the service(s) that differentiate your firm from other respondents.

#### **E. Fees**

1. Provide your fees for the proposed services. Fee quotes should be detailed by service.
2. Outline billing and payment expectations, including timing and method of payment.
3. Describe any remaining fees not previously detailed in the above, i.e. for ad-hoc services.

#### **F. References**

List the name, address and telephone number of references from at least three recent similar projects. Include a brief description of the work provided for each reference. Florida municipal or county projects are preferred. You may offer more than three recent similar projects if desired. The references should include the start date of the project and the date of completion for each project.

#### **G. Implementation Schedule**

Include a detailed implementation schedule with an estimated start date of March 1, 2020 and note key milestones and timelines for deliverables. Identify any assumptions used in developing the schedule.

#### **H. Certificate(s) of Insurance**

The Village will require the successful Respondent (or Proposer) to provide Certificates of Insurance evidencing required coverage types and the minimum limits. See the attached Village Draft Standard Agreement for more information on the Village's insurance requirements.

#### **I. Business Tax Certificate**

The proposing organization does not require an Indiantown business tax certificate to respond to this RFP. However, the successful proposer may be required to acquire an Indiantown Business Tax Certificate during the contracting process and maintain the certificate throughout the contracted period.

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## **J. Standard Village Professional Services Agreement**

The Village will require the successful company to execute a professional services agreement with the Village. Please review the attached draft agreement and identify any questions, changes, or areas of concern in your proposal to the Village. Any/all requests for changes to the agreement must be included with the responsive proposal. A company's failure to respond with proposed changes to the draft agreement indicates their concurrence with its terms and conditions.

## **VI. EVALUATION OF PROPOSALS**

Proposals will be judged on the Proposer's ability to provide services that meet the requirements set forth in this document. The Village reserves the right to make such investigations as it deems necessary to determine the ability of the Proposer to provide services meeting a satisfactory level of performance in accordance with the Village's requirements. Interviews and presentations by one, several, or all of the Proposers may be requested by evaluators if deemed necessary to fully understand and compare the Proposer's capabilities and qualifications. The adequacy, depth, and clarity of the proposal will influence, to a considerable degree, its evaluation.

Proposals will be evaluated on the basis of the following criteria, in no particular order:

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|--|-------------------|
| 1. Qualifications & Experience             | Section IV, B & C |
| 2. Questions/Response to Scope of Services | Section IV, D     |
| 3. Fees                                    | Section IV, E     |
| 4. References, Schedule & Required Forms   | Section IV, F – I |

As reflected above, contract award will not be based solely on price, but on a combination of factors as determined to be in the best interest of the Village. After evaluating the proposals and discussing them further with the finalists, the Village reserves the right to further negotiate the proposed work and/or method and amount of compensation.

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## **SUPPLEMENTAL TERMS AND CONDITIONS AND LEGAL STATEMENTS**

### **SUPPLEMENTAL TERMS AND CONDITIONS**

- I. Submission of a proposal shall be deemed a binding offer to enter into a contract with the Village. Any proposed modifications to the agreement shall be signed by the successful Proposer and returned, together with the certificate of insurance required pursuant to said Section of the Agreement within ten (10) days after the Notice of Award.
- II. All Proposers shall be presumed to understand all of the terms, conditions and requirements of the agreement as stated in the specifications and to be thoroughly familiar with the project.
- III. The selected Proposer shall be required to obtain all applicable Indiantown permits and business licenses. The cost of these items shall be included in the total proposal price.
- IV. Any proposal may be withdrawn prior to the RFP opening time provided that the request is in writing and signed by the authorized representative. The withdrawal of a proposal shall not prejudice the right of the Proposer to file a new proposal to the time and date set for the opening of proposals. No proposal received after the time fixed for the RFP opening will be considered.
- V. Subsequent to the RFP opening, a Proposer shall be relieved of a proposal due to mistakes only if the Proposer can establish to the satisfaction of the Village that all of the following circumstances exist:
  - a. A mistake was made;
  - b. The Proposer gave the Village written notice within five (5) days after the opening of the proposals of the mistake; specifying in the notice, in detail, how the mistake occurred;
  - c. The mistake made the proposal materially different than the Proposer intended it to be;
  - d. The mistake was made filling out the proposal and not due to error in judgment or to carelessness in reviewing the scope of service or specifications as stated in the RFP.
- VI. The Village reserves the right to seek supplemental information from any proposer at any time between the dates of proposal submission and the RFP award. Such information will be limited to clarification or amplification of questions asked in the original proposal. Any proposer may be subject to personal interview and inspection of their business premises prior to award.
- VII. The Village reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received and to accept any portion of proposal

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or all items of proposal if deemed in the best interest of the Village. In addition, the Village reserves the right to do any, or all, of the following:

- a. Reject any or all proposals or make no award;
- b. Issue subsequent RFP;
- c. Cancel the RFP;
- d. Remedy technical errors in the request for proposals;
- e. Modify any requirements contained within the RFP and request revised submittals from Proposers determined to be within the competitive range;
- f. Award a contract to one or more Proposers;
- g. Accept the written proposal as an offer, without negotiation and issue a notice to proceed, if applicable.

VIII. The Village reserves the right to contract with any of the organizations responding to this RFP based solely upon its judgment of the qualifications and capabilities of that organization.

IX. All materials submitted regarding this RFP become the property of the Village. Responses may be reviewed by any person at RFP opening time and thereafter. The Village has the right to use any or all information presented in reply to this request, subject to the limitations outlined in Proprietary Information below. Disqualification of a proposer does not eliminate this right.

- a. *Proprietary Information* – Any restrictions on the use of data contained within a proposal must be clearly stated in the proposal itself. Proprietary information submitted in response to this RFP will be handled in accordance with applicable Village Procurement Regulations and the Florida Public Records Act.

X. The Village is not liable for any cost incurred by proposer prior to issuance of an agreement, contract, or purchase order.

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## LEGAL STATEMENTS

All proposers must meet the following contractual and legal requirements in order to enter into a contractual agreement with the Village:

### I. PROHIBITED INTERESTS

- a. Contractor warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for Contractor, to solicit or secure this contract and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for Contractor, any fee, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this contract. For violation of this warranty, the Village shall have the right to annul this contract without liability;
- b. Contractor agrees that, for the term of this Contract no member, officer, or employee of the Village, or of a local public body during his/her employment for one (1) year thereafter, shall have any interest, direct or indirect, in this contract, or to any benefit arising thereof ;
- c. The employment by Contractor of personnel on the Village's payroll will not be permitted in the execution of this contract, even though such employment may be outside of the employee's regular working hours or on Saturdays, holidays, or vacation time; further, the employment by the Contractor of personnel who have been on the Village's payroll within one (1) year prior to the date of contract award, where such employment is caused by and/or dependent upon Contractor securing this or related contract with the Village, is also prohibited.

### II. ANTI-LOBBYING PROVISION

- a. During the period between proposal submission date and the contract award, proposers, including their agents and representatives, shall not directly discuss or promote their proposal with any member of the Village of Indiantown Village Council or Village staff except in the course of Village-Sponsored inquiries, briefings, interviews, or presentations, unless requested by the Village;
- b. This provision is not meant to preclude offerors from discussing other matters with Village Council members or Village staff. This policy is intended to create a level playing field for all potential offerors, assure that contract decisions are made in public, and to protect the integrity of the RFP / Bid Evaluation process. Violation of this provision may result in rejection of the offeror's proposal.

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- III. **NON-DISCRIMINATION PROVISION:** The Village of Indiantown encourages the participation of Small Business Enterprises (SBEs) and Disadvantaged Business Enterprises (DBEs) in its procurement and contracting activities. The Village reaffirms its commitment to award its contracts and purchase orders in a non-discriminatory manner regardless of the individual's or entity's ancestry, age, color, physical and/or mental disability, genetic information, gender identity, gender expression, marital status, medical condition, military and/or veteran status, national origin, race, religion, sex/gender, or sexual orientation.
- IV. **PROTECTION OF RESIDENT WORKERS:** Protection of Resident Workers: The Village of Indiantown actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Contractor shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.



**VILLAGE OF INDIANTOWN**  
**P.O Box 398**  
**Indiantown, FL 34956**  
**TEL (772) 597-9900**  
**FAX (772) 597-9910**

**PREPARATION OF  
CONTRACT #2020-XXX-HB**

This Contract is made as of the XXX day of XXX, 2020 by and between THE VILLAGE OF INDIANTOWN, a municipal corporation existing under the laws of the State of Florida, ("VILLAGE"), and \_\_\_\_\_ a corporation authorized to do business in the State of Florida, ("CONSULTANT"), whose Federal I.D. number is \_\_\_\_\_.

WHEREAS, the Village of Indiantown solicited proposals from qualified professional planning consultants or firms to prepare the Village's \_\_\_\_\_, and

WHEREAS, at its meeting of July 25, 2019, the VILLAGE COUNCIL authorized the Village Manager to negotiate this Contract hereinafter referred to as Contract #2020-XXX-HB, and to bring this Contract before them for approval; and

WHEREAS, the CONSULTANT is highly competent and able to perform the required services of preparing the VILLAGE'S \_\_\_\_\_; and

WHEREAS, the CONSULTANT understands that its role as professional planning consultant is to adhere to standards of care and to provide services detailed in the Request for Proposal 2020-XXX-HB.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, agreements, terms, and conditions contained herein, do agree as follows:

**ARTICLE 1 - SERVICES**

The CONSULTANT'S responsibility under this Contract is to provide professional planning consultant services to the VILLAGE to prepare the VILLAGE's \_\_\_\_\_, as more specifically set in Proposal No. XXX, attached hereto as Exhibit "A" and incorporated herein, and the scope of work detailed in Request for Proposal 2020-XXX-HB, incorporated herein, all of which taken together shall constitute the Scope of Work.

The VILLAGE's Representative/Liaison during the performance of this Contract shall be Daniel Eick, 772-233-0713.

**ARTICLE 2 - TERM**

The contract term shall be effective upon execution through the completion of the \_\_\_\_\_ and distribution of final documents to the VILLAGE.

Reports, responses, submittals, and other items shall be delivered or completed in accordance with the detailed schedule set forth in Request for Proposal 2020-XXX-HB and CONSULTANT's response thereto, which is attached hereto and made part hereof.

### **ARTICLE 3 - PAYMENTS TO CONSULTANT**

The total amount to be paid by the VILLAGE under this Contract for all services and materials shall be pursuant to the fee schedule set forth in Exhibit "A". Such payment shall be made within thirty (30) days from the last day of each respective month in which CONSULTANT has performed the Services and issued an invoice to the VILLAGE's Accounts Payable Department.

CONSULTANT, as appropriate, shall invoice the VILLAGE for the work performed under this Contract. Invoices received from the CONSULTANT pursuant to this Contract shall be reviewed and approved by the VILLAGE's Representative. If there is no objection to the invoice, the VILLAGE shall pay the full invoice amount within thirty (30) days of the VILLAGE's receipt of the invoice. If there is a dispute as to the invoiced amount, the VILLAGE shall notify the CONSULTANT of the dispute within fifteen (15) days of the VILLAGE's receipt of the invoice. The VILLAGE shall pay the CONSULTANT the undisputed invoiced amount within thirty (30) days of its receipt of the invoice. The disputed amount of the invoice shall not be paid by the VILLAGE until a resolution has been reached between the VILLAGE and the CONSULTANT as to the disputed portions of the invoice.

Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the VILLAGE. The final invoice certifies that all services have been properly performed and all charges and costs have been invoiced to the VILLAGE. Since this account will thereupon be closed, and any other further charges if not properly included on this invoice are waived by the CONSULTANT.

Approval by the VILLAGE shall not constitute nor be deemed a release of the responsibility and liability of the CONSULTANT, his employees, sub-CONSULTANTS, agents and CONSULTANTS for the accuracy and competency of their designs, working drawings, and specifications or other documents and works; nor shall such approval be deemed to be an assumption of such responsibility by the VILLAGE for a defect or omission in designs, working drawings, and specifications or other documents prepared by the CONSULTANT, his employees, sub-CONSULTANTS, agents and CONSULTANTS.

Appropriations: Payment under this Contract is subject to annual appropriations of the governing body. The VILLAGE will immediately notify the CONSULTANT to stop work if funds are not appropriated and will pay CONSULTANT for all work performed up to the time of the stop work notice.

### **ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, overhead charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

Said rates and cost shall be adjusted to exclude any significant sums should the VILLAGE determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates. The VILLAGE shall exercise its rights under this Article 4 within one (1) year following the rendering of the final invoice. Said date shall be extended if the Contract is renewed.

### **ARTICLE 5 - TERMINATION**

This Contract may be cancelled by the CONSULTANT upon ninety (90) days prior written notice to the VILLAGE's representative in the event of substantial failure by the VILLAGE to perform in accordance with this Contract through no fault of the CONSULTANT. The Contract may also be terminated, in whole or in part, by the VILLAGE, with or without cause, immediately upon written Termination Notice to the



CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the VILLAGE's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the VILLAGE, the CONSULTANT shall:

- A. Stop work on the date to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work and other materials related to the terminated work to the VILLAGE.
- D. Continue and complete all parts of the work that have not been terminated.

Termination for Convenience: The VILLAGE, by written notice, may terminate this Contract, in whole or in part, when it is in the VILLAGE's best interest. If this Contract is terminated, the VILLAGE shall be liable only for the goods and services delivered and accepted. The VILLAGE may provide the CONSULTANT thirty (30) days prior notice before said termination becomes effective. However, at the VILLAGE's prerogative, a termination for convenience may be effective immediately and may apply to release orders (if applicable) or to the Contract in whole.

#### **ARTICLE 6 - PERSONNEL**

The CONSULTANT represents that it has or will secure at its own expense all necessary personnel required to perform this Contract. Such personnel shall not be employees of or have any contractual relationship with the VILLAGE.

All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under State and local laws to perform such services.

Any changes or substitutions in the CONSULTANT's key personnel must be made known to the VILLAGE's Representative and written approval must be granted by the VILLAGE's Representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel.

#### **ARTICLE 7 - SUBCONTRACTING**

The VILLAGE reserves the right to accept the use of a sub-Consultant or to reject the selection of a particular sub-Consultant and to inspect all facilities of any sub-Consultants in order to make a determination as to the capability of the sub-Consultant to perform properly under this Contract. The CONSULTANT is encouraged to seek local vendors for participation in subcontracting opportunities. If the CONSULTANT uses any sub-Consultant on this project the following provisions of this Article shall apply:

If a sub-Consultant fails to perform or make progress, as required by this Contract, and it is necessary to replace the sub-Consultant to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new sub-Consultant by the VILLAGE. The substitution of a sub-Consultant shall not be adequate cause to excuse a delay in the performance any portion of this Contract as set forth in the Scope of Work.

The CONSULTANT, its sub-Consultants, agents, servants, or employees agree to be bound by the Terms and Conditions of this Contract and its agreement with the sub-Consultant for work to be performed for the VILLAGE the CONSULTANT must incorporate the terms of this Contract.

## **ARTICLE 8 – INSURANCE**

- A. The CONSULTANT shall not commence work under this Contract until it has obtained all insurance required under this paragraph and such insurance has been approved by the VILLAGE.
- B. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The CONSULTANT shall furnish Certificates of Insurance to the VILLAGE's Representative prior to the commencement of operations. The Certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the VILLAGE'S Representative. Compliance with the foregoing requirements shall not relieve the CONSULTANT of its liability and obligations under this Contract.
- C. The CONSULTANT shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000 per occurrence.
- D. The CONSULTANT shall maintain, during the life of this Contract, Comprehensive General Liability Insurance in the amount of \$1,000,000 per occurrence to protect the CONSULTANT from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONSULTANT or by anyone directly employed by or contracting with the CONSULTANT.
- E. The CONSULTANT shall maintain, during the life of this Contract, Comprehensive Automobile Liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damage liability to protect the CONSULTANT from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use or maintenance of owned and non owned automobiles, including rented automobiles whether such operations be by the CONSULTANT or by anyone directly or indirectly employed by the CONSULTANT.
- F. The CONSULTANT shall maintain, during the life of this Contract, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees per Florida Statute 440.02.
- G. It shall be the responsibility of the CONSULTANT to insure that all sub-Consultants comply with the same insurance requirements referenced above.
- H. Compliance with the foregoing requirements shall not relieve the CONSULTANT of its liability and obligation under this section or under any other section if this Section or under any other section of the Contract.
- I. CONSULTANT shall be responsible for assuring that the insurance certificate required in conjunction with this Section remain in force for the duration of the period of performance for any contractual agreement(s) resulting from this solicitation. If insurance certificates are scheduled to expire during the term hereof, the CONSULTANT shall be responsible for submitting new or renewed insurance certificates to the VILLAGE at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the term hereof, the VILLAGE shall suspend the Contract until such time as the new or renewed certificates are received by the VILLAGE in a manner prescribed in this Section; provided however, that this suspension period does not exceed thirty (30) days, the VILLAGE may at its sole discretion, terminate the Contract and seek re-purchasing charges from the CONSULTANT.
- J. If, in the judgment of the VILLAGE, prevailing conditions warrant the provision by CONSULTANT of additional liability insurance coverage or coverage which is different in kind, the VILLAGE reserves the right to require the provision by CONSULTANT of an amount of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements



thirty (30) days prior to the date on which the requirements shall take effect. Should the CONSULTANT fail or refuse to satisfy the requirement of changed coverage within thirty (30) days following the VILLAGE's written notice, the VILLAGE, at its sole option, may terminate the Contract upon written notice to the CONSULTANT, said termination taking effect on the date that the required change in policy coverage would otherwise take effect.

- K. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the CONSULTANT shall specifically include the Village of Indiantown as "Additional Insured" and shall unequivocally provide thirty (30) days written notice to the VILLAGE prior to any adverse changes, cancellation or non-renewal of coverage thereunder.

#### **ARTICLE 9 - INDEMNIFICATION**

The CONSULTANT shall indemnify and hold harmless the VILLAGE and its officers and employees, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT, and other persons employed or utilized by CONSULTANT in the performance of this Contract.

The parties agree that 1% of the total compensation paid to the CONSULTANT for performance of this Contract shall represent the specific consideration for the CONSULTANT's indemnification of the Owner. It is the specific intent of the parties hereto that the foregoing indemnification complies with applicable Florida Statutes.

The CONSULTANT, without exemption, shall indemnify and hold harmless the VILLAGE, its employees, representatives and elected officials from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or item manufactured by the CONSULTANT. Further, if such a claim is made, or is pending, the CONSULTANT may, at its option and expense, procure for the VILLAGE the right to use, replace, or modify the item to render it non-infringing. If none of the alternatives are reasonably available, the VILLAGE agrees to return the article on request to the CONSULTANT and receive reimbursement. If the CONSULTANT used any design, device or materials covered by letters, patent or copyright, it is mutually agreed and understood, without exception, that the Contract prices shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the work.

It is further the specific intent of the parties that all of the Contract Documents on this Project are hereby amended to include the foregoing indemnification and the "Specific Consideration" thereof.

#### **ARTICLE 10 - SUCCESSORS AND ASSIGNS**

The VILLAGE and the CONSULTANT each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Contract to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Contract. Except as above noted, neither the VILLAGE nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract. Nothing herein shall be construed as creating any rights or benefits hereunder to anyone other than the VILLAGE and the CONSULTANT.

#### **ARTICLE 11 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. The venue of all actions in State or Federal Court relating to this Contract will be held in Martin County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity. No single or partial exercise by any part of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **ARTICLE 12 - CONFLICT OF INTEREST**

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, in the VILLAGE, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes 112.311. The CONSULTANT further represents that no person having such interest shall be employed in the performance hereof.

The CONSULTANT shall promptly notify the VILLAGE's Representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT undertakes and request an opinion of the VILLAGE, whether or not such association, interest or circumstances will in the VILLAGE's opinion constitute a conflict of interest if entered into by the CONSULTANT. The VILLAGE agrees to notify the CONSULTANT of its opinion by certified mail within 30 days of receipt of notification by the CONSULTANT. If, in the opinion of the VILLAGE, the prospective business association, interest or circumstances would not constitute a conflict of interest by the CONSULTANT, the VILLAGE shall so state in the notification and the CONSULTANT may enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the VILLAGE by the CONSULTANT under the terms of this Contract.

#### **ARTICLE 13 - EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises as a result of a "Force Majeure." Force Majeure shall mean any delay occasioned by superior or irresistible force occasioned by violence in nature without the interference of human agency such as hurricanes, tornados, flood and total loss caused by fire and other similar unavoidable casualties, changes in federal, state or local laws, ordinances, codes or regulations, enacted after the date of this Agreement and having a substantial impact on the project, or other causes beyond the CONSULTANT's control or by any other such causes which the CONSULTANT and the VILLAGE Commission decide in writing justify the delay. Provided, however, that market conditions, labor conditions, construction industry price trends and similar matters which normally impact on the bidding process shall not be considered a Force Majeure.

#### **ARTICLE 14 - PLEDGE OF CREDIT, ARREARS**

The CONSULTANT shall not pledge the VILLAGE's credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

#### **ARTICLE 15 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall deliver to the VILLAGE for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials, in both hard copy and electronic mail, prepared by and for the VILLAGE under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the VILLAGE or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party directly or indirectly, without the VILLAGE's prior written consent, unless required by a lawful order. All drawings, maps, sketches, programs, database, reports and other data developed or purchased under this Contract for or at the VILLAGE's expense shall be and remain the VILLAGE's property and may be reproduced and reused at the discretion of the VILLAGE.

The VILLAGE and the CONSULTANT shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).



All covenants, contracts, representations and warranties made herein, or otherwise made in writing by any party hereto including, but not limited to, representations herein related to the disclosure or ownership of documents, shall survive this Contract and the consummation of the transactions contemplated hereby.

#### **ARTICLE 16 - INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONSULTANT and all employees and/or agents of the CONSULTANT are, and shall be, in the performance of all work services and activities under this Contract, an independent contractor, and not an employee, agent, or servant of the VILLAGE. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times and in all places be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work and in all respects the CONSULTANT'S relationship and the relationship of its employees to the VILLAGE shall be that of an independent contractor and not as employees or agents of the VILLAGE.

The CONSULTANT does not have the power or authority to bind the VILLAGE in any promise, agreement or representation other than specifically provided for in this Agreement. The CONSULTANT shall be responsible to the VILLAGE for all work or services performed by the CONSULTANT or any person or entity on the CONSULTANT'S behalf, in fulfillment of this Contract.

#### **ARTICLE 17 - CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than it's bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon resulting from the Award or making of this Contract.

#### **ARTICLE 18 - ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The VILLAGE shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

#### **ARTICLE 19 - NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

#### **ARTICLE 20 - ENFORCEMENT COSTS**

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, expenses and court costs, including appellate fees incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

#### **ARTICLE 21 - AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the VILLAGE'S Representative on an annual basis.

#### **ARTICLE 22 - SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

### **ARTICLE 23 - ENTIRETY OF CONTRACTUAL CONTRACT**

The VILLAGE and the CONSULTANT agree that this Contract sets forth the entire Contract between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 24- Modifications of Work.

### **ARTICLE 24 - MODIFICATIONS OF WORK**

The VILLAGE reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the VILLAGE's notification of a contemplated change, the CONSULTANT shall, **in writing**:

- (1) Provide a detailed estimate for the increase or decrease in cost due to the contemplated change,
- (2) Notify the VILLAGE of any estimated change in the completion date, and
- (3) Advise the VILLAGE if the contemplated change shall effect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the VILLAGE so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the VILLAGE's decision to proceed with the change.

If the VILLAGE elects to make the change, the VILLAGE shall initiate a contract amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the authorized representative for the VILLAGE.

Such changes, if any, shall be set forth in writing, which may be transmitted, at the VILLAGE'S discretion, digitally.

### **ARTICLE 25 - NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the VILLAGE shall be mailed to:

Attn: Village Clerk  
Village of Indiantown  
P.O. Box 398  
Indiantown, FL 34956  
Tel (772) 597-8268  
Fax (772) 597-9910

Copy to: Village Manager  
Village of Indiantown  
P.O. Box 398  
Indiantown, FL 34956  
Tel (772) 597-8282  
Fax (772) 597-9910

and if sent to the CONSULTANT shall be mailed to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### **ARTICLE 26 - CAPTIONS AND PARAGRAPH HEADINGS**



Captions and paragraph headings contained in this Contract are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Contract, nor the intent of any provisions hereof.

#### **ARTICLE 27 - JOINT PREPARATION**

The preparation of this Contract has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. It is the parties' further intention that this Contract be construed liberally to achieve its intent.

#### **ARTICLE 28 - WAIVER**

No waiver by the VILLAGE of any provision of this Contract shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach of the same or any other provision or the enforcement hereof. VILLAGE's consent to or approval of any act by CONSULTANT requiring consent or approval shall not be deemed to render unnecessary the obtaining of VILLAGE's consent or approval of any subsequent act by CONSULTANT requiring the VILLAGE'S consent or approval, whether or not similar to the act so consented to or approved.

#### **ARTICLE 29 - COUNTERPARTS**

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Contract.

#### **ARTICLE 30 - EXHIBITS ARE INCLUSIONARY**

All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

#### **ARTICLE 31 - CONTRACT DOCUMENTS**

The Contract documents are as follows: Request for Proposals, CONSULTANT's Response to the Request for Proposals, Contract, Exhibits, Addenda, All Representations, and Warranties, to make this Contract.

#### **ARTICLE 32 – PUBLIC RECORDS COMPLIANCE**

CONSULTANT agrees that, to the extent that it may "act on behalf" of the Village within the meaning of Section 119.071(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency 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 in this chapter or as otherwise provided by law.
- (c) 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 contract term and following completion of the contract if the CONSULTANT does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the CONSULTANT or keep and maintain public records required by the public agency to perform the service. If the CONSULTANT transfers all public records to the public agency upon completion of the contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Village's

custodian of public records, in a format that is compatible with the information technology systems of the Village.

- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., 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: Susan A. Owens, MPA, MMC, Village Clerk, (772) 597-8268, sowens@indiantownfl.gov, P.O. Box 398, Indiantown, Florida 34956.

CONSULTANT agrees to indemnify and hold the Village harmless against any and all claims, damage awards, and causes of action arising from the CONSULTANT's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by CONSULTANT's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. CONSULTANT authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against CONSULTANT in Martin County Circuit Court on an expedited basis to enforce the requirements of this section.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract in multiple copies, each of which shall be considered an original on the following dates:

As to the CONSULTANT on the \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
A  
\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

As to the VILLAGE on the \_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:

VILLAGE OF INDIANTOWN, FLORIDA

\_\_\_\_\_  
SUSAN OWENS  
VILLAGE CLERK

\_\_\_\_\_  
GUYTON STONE  
MAYOR

REVIEWED FOR FORM  
AND CORRECTNESS:

\_\_\_\_\_  
WADE C. VOSE  
VILLAGE ATTORNEY



**VILLAGE OF INDIANTOWN, FLORIDA**  
**STANDARD CONTRACT ADDENDUM**

**THIS STANDARD CONTRACT ADDENDUM** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the VILLAGE OF INDIANTOWN, a Florida municipality, hereinafter referred to as the "Village", and \_\_\_\_\_, hereinafter referred to as "Contractor", concerning that certain agreement entitled \_\_\_\_\_, dated \_\_\_\_\_ ("Agreement").

**WITNESSETH:**

**WHEREAS**, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor's compliance for Florida's Public Records Act; and

**WHEREAS**, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

**WHEREAS**, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency's statutorily mandated annual budget approval process.

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

**1. Amendment.** This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

**2. Public Records Compliance.** Contractor agrees that, to the extent that it may "act on behalf" of the Village within the meaning of Section 119.071(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency 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 in this chapter or as otherwise provided by law.
- (c) 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 contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Village's custodian of public records, in a format that is compatible with the information technology systems of the Village.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Susan A. Owens, MPA, MMC, Village Clerk, (772) 597-8268, sowens@indiantownfl.gov, P.O. Box 398, Indiantown, Florida 34956.

**3. Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the Village harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Martin County Circuit Court on an expedited basis to enforce the requirements of this section.

**4. Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by Village specified in the Agreement shall not be construed as a waiver of Customer's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Village in the Agreement in derogation hereof shall be void and of no force or effect.

**5. Non-appropriation.** Village's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Village's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Village Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Village subject to the Village paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**6. Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Martin County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

**Contractor:**

\_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Company:** \_\_\_\_\_

**Village of Indiantown**

\_\_\_\_\_

**Print Name:** \_\_\_\_\_