



PORT OF PALM BEACH DISTRICT

REQUEST FOR QUALIFICATIONS

For

PROFESSIONAL SERVICES
Florida Statutes Chapter 287.055
Bulkhead Cathodic Protection Services
RFQ 2021-08-2

RFQ Issue Date: August 2, 2021

Sealed Qualifications Due Date: Friday August 27, 2021
3:00 PM

Title: Request For Qualifications For Professional Services under Florida Statutes Chapter 287.055, Bulkhead Cathodic Protection Services

Term of Agreement Beginning as set forth in the Contract, for Project as defined in 287.055 (2) (f). This is a project specific solicitation and not for a continuing contract.

Inquiries: This RFQ is determined to be complete. Please limit your inquiries to one e-mail inquiry prior to the Sealed Qualifications Due Date. Please contact Ronald Coddington, Port Engineer, at RCoddington@portofpalmbeach.com

Responses to this shall be delivered to: Purchasing Department
Port of Palm Beach District
Maritime Office Complex
6th Floor
One East 11th Street
Riviera Beach, FL 33404
The outside envelope or mailing container must be labeled RESPONSE TO REQUEST FOR QUALIFICATIONS

NOTICE: IT IS THE RESPONSIBILITY OF THE SUBMITTER TO HAVE THEIR QUALIFICATIONS AT THE PORT OF PALM BEACH DISTRICT BY SEALED QUALIFICATIONS DUE DATE AND TIME. THE SUBMITTER CANNOT RELY ON THE MAILS OR ANY PRIVATE CARRIER

The time/date stamp located at the District's Reception Area on the 6th Floor of the Maritime Office Complex will be the official authority for determining late submissions.

PROFESSIONAL SERVICES NOTICE/REQUEST FOR QUALIFICATIONS
for
Bulkhead Cathodic Protection Services
Port of Palm Beach District
Riviera Beach, Florida

The Port of Palm Beach is requesting qualifications from consulting firms interested in providing services in the practice of professional architecture, professional engineering, landscape architecture, and registered surveying and mapping, as defined by the laws of the State of Florida, on a non-exclusive task/work order basis. These services are to be procured in accordance with the Consultants Competitive Negotiations Act, Florida Statutes Chapter 287.055.

Section 1 Services Requested

The purpose of this RFQ is to solicit sealed proposals to establish an agreement under Florida Statutes §287.055. The Scope of Services for the Port of Palm Beach District. The Scope of Services is described on Exhibit A attached hereto.

Qualified candidates will be experienced in the design and specification of sacrificial anodes system design and specification for the Port's sheet pile bulkheads. The Port has approximately 6,000 linear feet of steel sheet pile bulkhead and only 450 feet have installed sacrificial anode CP systems. This RFQ is for the contracting of this design in accordance with the State of Florida CCNA.

Background

The Port of Palm Beach is an Independent Special Purpose District located in Palm Beach County Florida.

The Port of Palm Beach is a landlord port with marine cargo and passenger operations of significant impact on the local area and the State of Florida

The port includes approximately 167 acres of real estate property. The tenants provide for operation of marine cargo operations as import and export of various products.

Section 2 Addenda

If revisions become necessary, District will provide written addenda through the District website at <https://www.portofpalmbeach.com/> at least five working days prior to the opening date. This will be adhered to even if the opening date must be postponed in order to observe the time requirements. Any changes to the RFQ will be made available for all prospective Submitters to receive. Although we will make an attempt to notify you of the addendum, it is the sole responsibility of the Submitter to ensure it is received.

Section 3 Definitions

- 3.1 "Submitter" refers to any individual, corporation, partnership or agency which responds, in writing, to this RFQ.
- 3.2 "District" is the Port of Palm Beach District - a Special Taxing District of the State of Florida, established under Chapter 7081, Law of Florida.
- 3.3 "CCNA Agreement" means the agreement provided for in Section 7.

Section 4 Submissions

At a minimum, all responding consulting firms shall have demonstrated experience in the Scope of Services set forth on Exhibit A (“Services”), attached hereto. The day to day project manager for the consulting firm shall have a minimum of ten years’ experience in the Services.

Each responding consulting firm shall provide six (6) copies of their qualifications (“Statement of Qualifications”). An additional copy of the Statement of Qualifications shall be submitted on a USB Flash Drive. The Statement of Qualifications shall be on 8½” by 11” paper, neatly typed, with normal margins and spacing. The Statement of Qualifications should not exceed 40 pages and should include the following information:

- 4.1 Ability of Professional Personnel, including firm history resumes of key individuals, staff and capabilities.
- 4.2 Whether the firm is a Certified minority business enterprise. A “Certified minority business enterprise” means a business which has been certified by the certifying organization or jurisdiction in accordance with Florida Statutes §287.0943(1) and (2). The District has an overall goal to provide 12% Certified minority business enterprise participation in professional services. Describe your approach to help the District achieve its Certified minority business enterprise goal.
- 4.3 Location of the firm.
- 4.4 Recent, current and projected workloads of the firm.
- 4.5 Previous experience where the firm provided similar services. Please provide a brief description of the services performed and contact information for references;
- 4.6 A listing of the services outlined above that will NOT be performed in-house and a list of sub-consultants that will be or are available to the consultant to provide these services;
- 4.7 Evidence of professional liability coverage insurance with coverage of at least one million dollars (\$1,000,000).
- 4.8 Any other matter deemed relevant by the Submitter with respect to the items described in the table in 5.

DO NOT INCLUDE INFORMATION REGARDING THE BASIS OF COMPENSATION.

The Statement of Qualifications must be signed in ink by an authorized officer of the Submitter, who is legally authorized to enter into a contractual relationship in the name of the Submitter. The submittal of a Statement of Qualifications by the Submitter will be considered by the District as constituting an offer by the Submitter to perform the required services.

Section 5 Evaluation

Preliminary evaluation by District staff will be based upon the following scoring factors:

Description	Maximum Score
1. Qualification and Experience of Firm with Design and Testing of CP systems	25

2. Composition of the respondents team and NACE qualified members	25
3. Organization and Management Location relative to Port of Palm Beach	20
4. Submitter or its subcontractors are a Certified minority business enterprise	5
5. Responsiveness to District's Requirements	10
6. References on installed CP systems	15
<i>Total Maximum Score</i>	<hr/> 100

The above criteria are for use by the Ranking Committee in the final evaluation and ranking of the firms. The District may, but is not required to, do such additional research as they deem appropriate.

Section 6 Ranking

The Ranking Committee shall be comprised of Manuel Almira (Executive Director), Carl Baker (Director of Planning), and Ron Coddington (P.E. Port Engineer) who are referred to herein as “Committee Members”). Ranking by each member of the Ranking Committee shall be conducted independently. The Committee Members shall not discuss the submissions except at a public meeting at the time of ranking, however, the Committee Members may discuss whether they deem it necessary or appropriate to request additional or clarifying information from any or all Submitters to remedy any incomplete response, but will not be obligated to do so. Failure to provide such additional or clarifying information could result in the rejection of the Submitter’s Statement of Qualifications.

The Ranking Committee shall rank the Submitters after discussion of submittals, and presentations by the submitters, all of which shall be in a public (non-virtual) meeting. The Ranking Committee shall list, in order, no fewer than three firms (or the actual number of firms, if there are less than three firms) deemed to be the most highly qualified to perform the required services. Competitive negotiation shall proceed as provided in Florida Statutes §287.055(5) with the highest ranked firm under the direction of the Executive Director.

The results of the competitive negotiation shall be present to the Board of Commissioners for approval.

Section 7 CCNA Agreement

A draft of a proposed CCNA Agreement is attached hereto as Exhibit C. The CCNA Agreement will provide that the District does not exculpate individual engineers under Florida Statute 558.0035.

Any final agreement will contain the following language, in accordance with Florida Statutes §287.055(6)(a): “The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not

paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.”

The Contract will be non-exclusive as to performance of the Services or matters described in the Scope of Services.

Section 8 Miscellaneous

8.1 Neither the District nor its representatives shall be liable for any expenses incurred in connection with preparation of a response to this RFQ.

8.2 Waiver of Technicalities

The Port reserves the right to waive any technicalities/irregularities and/or to reject any and/or all submissions. The Port of Palm Beach further reserves the right to award a contract to that consulting firm whose submittal best serves the interests of the Port of Palm Beach, in the sole discretion of the Port of Palm Beach.

8.3 Florida Convicted Vendor List

A person who has been placed on the Convicted Vendor List (or an Affiliate of that person) following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public work, may not submit bids on leases of real property to a public entity, may not be awarded and may not perform work as a contractor, supplier, subcontractor, vendor, or consultant under a contract with any public entity, for a period of thirty-six months from the date of being placed on the convicted vendor list. The term Convicted Vendor List means that list referenced in Section 287.133(3)(d), Florida Statutes. The term “Affiliate” means:

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

8.4 Florida Public Records Act Notice

Pursuant to the Florida Public Records Act, materials submitted by all respondents and the results of the District’s evaluation may be open to public inspection. Submitters should take special note of this as it relates to any proprietary information that may be included in submissions. Any Submitter wishing to receive a copy of the List of Submitters is required to enclose a stamped, self-addressed envelope with their response to the Request for Qualifications.

8.5 Cone of Silence

The "Cone of Silence" is in effect from the date and time of the deadline for submission of the response, and terminates at the time that the Board of Commissioners awards or approves a contract, rejects all responses, or otherwise takes action which ends the solicitation process. During the period of the Cone of Silence, there shall be no oral or written communications with any District Commissioner or employee regarding the subject matter of this Request for Qualifications.

Section 9 TABLE OF EXHIBITS AND ATTACHMENTS

EXHIBIT A	SCOPE OF SERVICES
EXHIBIT B	PUBLIC ENTITY CRIMES AFFIDAVIT
EXHIBIT C	CCNA AGREEMENT

EXHIBIT A

A. Background

This RFQ is to provide for a qualified professional engineering firm with specialty in Marine Cathodic Protection systems.

B. Scope of Services

The scope of the required services is for the selected firm to provide for an analysis of the existing steel sheet pile bulkhead structure as requested by separate work orders.

Scope of services shall include the design preparation of bulkhead sacrificial anodes CP design and purchase documents prepared by the Port Engineer within the template of the Port of Palm Beach standard "Request for Proposal" (RFP). Services shall include services during bidding, recommendation of award after receipt of the proposals, and complete services during construction as requested by the Port Engineer.

Services will include survey and verification and monitoring of the CP system after installation.

EXHIBIT B

SWORN STATEMENT

(SECTION 287.133(3)(A)) FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES)
(NOTE: THIS MUST BE COMPLETED WITHOUT ALTERATION OR QUALIFICATION
OR YOUR RESPONSE TO THE RFQ WILL BE REJECTED)

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

1. This sworn Statement is submitted to the PORT OF PALM BEACH DISTRICT ("PORT") by _____ whose business address is _____, and (if applicable) its Federal Employer Identification Number (FEIN) is: _____. (If the entity has no FEIN, include the Social Security Number of the individual signing this Sworn Statement: _____).

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

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

I understand that an "affiliate" as defined in Florida Statutes §287.133(1)(a),

Means:

- a) A predecessor or successor of a person convicted of a public entity crime: or
- b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

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

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this Sworn Statement. [Indicate which statements apply.]

- (A) _____ (No Convictions) Neither the entity submitting this Sworn Statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of this entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

(B) _____ (**Convictions**) The entity submitting this Sworn Statement or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of this entity, or any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989, but the entity and no such person is on the Convicted Vendor List as defined in Florida Statute §287.133. **[PORT STAFF – If this item is checked, you must consult with the District Executive Director or CFO]**

(C) I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PORT IS FOR THAT PUBLIC ENTITY ONLY AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PORT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO.

(Signature of person signing)
(Printed name of person signing)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, on this _____ day of _____, 2021 by _____, who is personally known to me or who produced Florida Driver's license _____ as identification, as _____ (Title) of XCONSULTANTX (Company).

Notary Public, Commission No. _____

SEAL

Name of Notary, typed, printed or stamped

EXHIBIT C
CCNA Agreement

**CCNA CONTRACT UNDER FLORIDA STATUTE
§287.055**

Between

PORT OF PALM BEACH DISTRICT

and

XXXFirm

RFQ Issue Date: XISSUE DATEX

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CCNA CONTRACT UNDER FLORIDA STATUTE §287.055

This agreement (“Agreement”), effective this _____, 2021, is by and between PORT OF PALM BEACH DISTRICT (“Client”), 1 East 11th Street, Riviera Beach, Florida 33404 and XXXFIRM (“Firm”), having an address of _____.

This is a non-exclusive agreement for both parties, as to the Services and otherwise. CLIENT reserves the right to go through the CCNA Process (if required) or use any existing Continuing Contract, or any other method of contracting as to any or all of the Services.

PROHIBITION AGAINST CONTINGENT FEES

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.” For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

Article One Project

The project is the existing steel sheet pile bulkhead structure as and when requested by separate work orders. Scope of services shall include the design preparation of bulkhead sacrificial anodes CP design and purchase documents prepared by the Port Engineer within the template of the Port of Palm Beach standard “Request for Proposal” (RFP). Services shall include services during bidding, recommendation of award after receipt of the proposals, and complete services during construction as requested by the Port Engineer.

Services will include survey and verification and monitoring of the CP system after installation.

Article Two Services

Under this Agreement FIRM shall perform the following services (“Services”) when and as authorized by the CLIENT on a Work Order basis for the Project. The Scope of Services required for the Project may be issued in two or more parts (each, a “Part”), as described in the RFQ and amendments thereto.

Article Three Compensation Schedule

Section 3.01 Compensation for Services

For all “Services” outlined above and below within the agreed to and established Work Orders, FIRM shall be paid on either a Lump Sum or Time and Materials basis, as determined by CLIENT. Lump Sum Work Orders shall be developed based on time estimates showing the applicable hourly rates contained in the Fee Schedule, which estimates shall be provided to CLIENT for CLIENT’s evaluation, however, the Lump Sum, once agreed, shall be fixed, based on the agreed upon scope of services, regardless of time expended. Time and Materials Work Orders shall include a “Not to Exceed Amount”.

The agreed to basis of compensation will be written into each Work Order. The Lump Sum basis of compensation will generally be used for tasks within Work Orders that have a well-defined scope of services. The Time and Materials basis of compensation will generally be used for tasks within Work Orders where the scope of services is not well-defined prior to the execution of the Work Order.

All Work Orders shall be limited, either by the Lump Sum amount agreed by CLIENT and FIRM, or by the “Not to Exceed” Amount. The Lump Sum amount shall be determined based on time estimates based the hourly rates in the Fee Schedule, however, the Lump Sum, once agreed, shall be fixed, based on the agreed upon scope of services, regardless of time expended.

FIRM shall NOT be reimbursed for travel expenses, mileages, subsistence, field equipment costs, reproduction, postage and any other expense related to the “Services” rendered, unless approved in advance by CLIENT.

Compensation shall be based on the Fee Schedule attached as ATTACHMENT B. The hourly rates contained in the Fee Schedule. Regardless of any language in the Fee Schedule, the rates shall be fixed and shall not be subject to escalation.

Section 3.02 Compensation for Reproduction Services

CLIENT shall be responsible only for the cost of reproduction of review and final surveys, review and final bid documents and review and final contract sets. CLIENT, at election of the Executive Director or Deputy Director or Port Engineer, may have an outside third party vendor provide reproduction services, and either pay such vendor directly or have the cost as a straight

FIRM pass-through. All other copying costs shall be at the expense of the FIRM, unless written approval for the copy cost is given by the Executive Director or Deputy Director or Port Engineer. There shall be no charge to CLIENT for scanning of documents.

Article Four Terms of Payment

Section 4.01 Invoices

FIRM will submit invoices for each Work Order to CLIENT each month covering Services completed to date and, as applicable, for materials and equipment delivered and stored on-site or off-site. Each invoice will be prepared in FIRM's standard form and supported by documentation according to FIRM's standard practice. Within 30 (thirty) days of receipt of the invoice, CLIENT shall give detailed, written notice of any sums which it may reasonably dispute or contest. If the parties are unable to resolve the matter within 15 days, only that portion so reasonably contested may be withheld from payment.

Section 4.02 Time of Payment

Invoices are due and payable within 30 days after receipt by CLIENT.

Section 4.03 Delay in Payment

If CLIENT fails to pay FIRM within 30 calendar days after receipt of any invoice, FIRM will be entitled any or all to the following:

(a) Interest: CLIENT will be charged interest at the rate of 1/2% per month, or that permitted by law if lesser, on all past-due amounts starting 30 calendar days after receipt of invoice. Payments will first be credited to interest and then to principal; provided, that in the event that the invoice has been disputed, interest will only apply as to that portion of the invoice with respect to which FIRM has prevailed.

(b) Suspension of Work: If CLIENT fails to make payment in full within 30 calendar days of the date due for any undisputed billing, FIRM may, after giving 7 calendar days' written notice to CLIENT, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, FIRM will have no liability to CLIENT for delays or damages caused by CLIENT because of such suspension. FIRM shall be entitled to an adjustment in compensation and the work schedule for the affected Work Order pursuant to Article Seven.

Article Five Obligations of Firm

Section 5.01 Independent Contractor; Subcontracts

(a) FIRM represents that it is an independent contractor and will perform services pursuant to each Work Order as an independent contractor and not as an agent or employee of CLIENT.

(b) With prior written consent of Executive Director of CLIENT on a project by project (“Project”) basis or through indication in a Work Order, FIRM may retain such other subconsultants or subcontractors as it may deem desirable for proper and timely performance of Services. FIRM shall be responsible for the management of the subcontractors and subconsultants in the performance of their work fully as though such work had been performed directly by FIRM.

Section 5.02 Standard of Care:

The standard of care applicable to FIRM's engineering or related services will be the degree of skill and diligence normally employed by reputable professional engineers or consultants performing the same or similar Services in Palm Beach County, Florida, at the time said services are performed. FIRM will reperform any engineering or related services not meeting this standard without additional compensation.

Section 5.03 Subsurface Investigations

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Work Order cost and/or execution. These conditions and cost/execution effects are not the responsibility of FIRM.

Section 5.04 MWBE Representations

During the selection process through which FIRM was selected for this Agreement, FIRM made representations as to how it would assist the Port of Palm Beach District in meeting or exceeding District's goal of 12% M/WBE participation in professional services. Within thirty days of request by District, FIRM shall provide such records as requested by District as will enable District to determine FIRM's success in assisting District with its M/WBE goals.

Section 5.05 FIRM's Personnel at Construction Site

(a) The presence or duties of FIRM's personnel at a construction site, whether as onsite representatives or otherwise, do not make FIRM or FIRM's personnel in any way responsible for those duties that belong to CLIENT and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the

construction work in accordance with the construction contract documents and any health or safety precautions required by such construction work; however, if FIRM has a Work Order with respect to the project that includes in its scope of work, observation of construction contractor's work, FIRM's duties do include providing immediate written notice to CLIENT of failure of such construction contractors to abide by their obligations, duties and responsibilities related to compliance to the design documents and construction quality to the extent that FIRM observes such failures.

(b) FIRM and FIRM's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except FIRM's own personnel.

(c) The presence of FIRM's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). FIRM neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents; however, if FIRM has a Work Order with respect to the project that includes in its scope of work, observation of construction contractor's work, FIRM's duties do include providing immediate written notice to CLIENT of failure of such construction contractors to abide by their obligations, duties and responsibilities related to compliance to the design documents and construction quality to the extent that FIRM observes such failures.

Section 5.06 Opinions of Cost, Financial Considerations, and Schedules

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, FIRM has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, FIRM makes no warranty that CLIENT's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from FIRM's opinions, analyses, projections, or estimates. If CLIENT wishes greater assurance as to any element of Project cost, feasibility, or schedule, CLIENT will employ an independent cost estimator, contractor, or other appropriate advisor.

Section 5.07 Construction Progress Payments

Recommendations by FIRM to CLIENT for periodic construction progress payments to the construction contractor(s) will be based on FIRM's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by FIRM to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that FIRM has made an examination to ascertain how or for what purpose the construction contractor(s) have used the

moneys paid; that title to any of the work, materials, or equipment has passed to CLIENT free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between CLIENT and the construction contractors that affect the amount that should be paid.

Section 5.08 Reliance on Third Party Work

It is intended that FIRM's work be relied upon by CLIENT and CLIENT's contractors. Thus, if FIRM's work relies on information supplied by third parties or CLIENT, FIRM cannot raise the defense that the information was provided by others (including by CLIENT), and FIRM shall be responsible for any damages resulting from such reliance if the information is incorrect. If FIRM believes that any third party information should be verified before incorporation into FIRM's work product, then FIRM shall separately list all information provided by third parties or CLIENT, and CLIENT will have responsibility for advising FIRM whether the information should be relied on or whether further verification is required. Should further verification become necessary CLIENT shall compensate FIRM for this verification as part of a Work Order. Anyone and any entity hired or paid by FIRM (i.e. any of FIRM's subcontractors) shall be considered the FIRM, and not considered a "third party" for purposes of this Section. Further, the accuracy of any information arising from work previously performed by FIRM, under this Contract or any other contract between FIRM and CLIENT (and any work performed by FIRM as a subcontractor of another contractor of CLIENT), shall be the responsibility of FIRM as it relates to the scope of work performed on a project. Third party items not verified by FIRM will not be the responsibility of the FIRM if used by others. For Design work performed by FIRM and constructed by others where FRIM was not contracted by CLIENT or CLIENT's contractor to prepare record information, FIRM shall not be responsible for the accuracy of the record information.

Section 5.09 Access to FIRM's Accounting Records

FIRM will maintain accounting records, in accordance with generally accepted accounting principles. Records relating to a Work Order will be available to CLIENT during FIRM's normal business hours for a period of 2 years after FIRM's final invoice pursuant to that Work Order for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. Only audit cost-reimbursable items will be subject to audit.

Section 5.10 FIRM's Insurance

FIRM will maintain throughout this Agreement the following insurance:

- (a) Worker's compensation employer's liability insurance as required by the state where the work is performed and Employer's Liability with a limit of \$1,000,000.
- (b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, nonowned, or hired vehicles, with \$5,000,000 combined single limits.
- (c) Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of

FIRM or of any of its employees, agents, or subcontractors, with \$5,000,000 per occurrence and in the aggregate.

(d) When furnishing engineering or engineering related services, professional liability (aka errors and omissions insurance) of \$5,000,000 per occurrence and in the aggregate.

CLIENT will be named as an additional insured with respect to FIRM's liabilities hereunder in insurance coverages identified in items (b) and (c) and FIRM waives subrogation against CLIENT as to said policies, except as to the coverages in (a) and (d). FIRM shall provide certificates on insurance evidencing the coverages in (a) though (d) to CLIENT within ten (10) business days after execution of this Agreement. Should any of the above-described policies be cancelled before the expiration date thereof, FIRM shall cease all Work under any Work Order until further written notice from CLIENT, and written notice of the cancellation will be delivered to CLIENT within ten (10) business days of the cancellation.

Article Six Obligations of Client

Section 6.01 CLIENT-Furnished Data

CLIENT will provide to FIRM all data in CLIENT's possession relating to FIRM's Services. FIRM shall not rely upon the accuracy, timeliness, and completeness of the information provided by CLIENT, and shall conduct such testing and evaluations as it deems necessary to comply with the standard of care provided for under this Agreement.

Section 6.02 Access to Facilities and Property

CLIENT will make its facilities accessible to FIRM as required for FIRM's performance of its services and will provide labor and safety equipment as required by FIRM for such access. CLIENT will perform, at no cost to FIRM, such tests of equipment, machinery, pipelines, and other components of CLIENT's facilities as may be required in connection with FIRM's services; provided, that FIRM shall, at its sole expense, be responsible for complying with all security requirements, including without limitation, badging.

Section 6.03 Advertisements, Permits, and Access

Unless otherwise agreed to in the Work Order, CLIENT will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for FIRM's services or Project construction.

Section 6.04 Timely Review

CLIENT will examine FIRM's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CLIENT deems appropriate; and render in writing decisions required by CLIENT in a timely manner.

Section 6.05 Prompt Notice

CLIENT will give prompt written notice to FIRM whenever CLIENT observes or becomes aware of any development that affects the scope or timing of FIRM's Services, or of any defect in the work of FIRM or construction contractors.

Section 6.06 Asbestos or Hazardous Substances

(a) If asbestos or hazardous substances in any form are encountered or suspected, FIRM will stop its own work in the affected portions of the Project to permit testing and evaluation.

(b) CLIENT recognizes that FIRM assumes no risk and/or liability for a waste or hazardous waste site originated by other than FIRM.

Section 6.07 Litigation Assistance

Article One, Services generally, does not include costs of FIRM for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CLIENT. All such Services required or requested of FIRM by CLIENT, except for suits or claims between the parties to this Agreement, will be reimbursed as mutually agreed.

Section 6.08 Changes

CLIENT may make or approve changes within the scope of Services under a Work Order. If such changes affect FIRM's cost of or time for performance of the Services, an equitable adjustment will be made through an amendment to the affected Work Order.

Article Seven Termination for Convenience

CLIENT may, for any reason whatsoever, terminate performance by the FIRM under this Agreement, and under any Work Order or portion thereof, for convenience. CLIENT shall give written notice of such termination to the FIRM specifying when termination becomes effective, which may be immediately. The FIRM shall incur no further obligations in connection with the Work and the FIRM shall stop Work when such termination becomes effective. The FIRM shall also terminate outstanding orders and subcontracts. The FIRM shall transfer title and deliver to CLIENT such completed or partially completed Work and materials, equipment, parts, fixtures, information and contract rights as the FIRM has. When terminated for convenience, the FIRM shall be paid for portions of the Work completed through the date of notice of Termination.

Article Eight

General Legal Provisions

Section 8.01 Authorization to Proceed

Execution of the Work Order by CLIENT will be authorization for FIRM to proceed with the Services, unless otherwise provided in the Work Order.

Section 8.02 Reuse of Project Documents

All reports, drawings, specifications, documents, and other deliverables of FIRM, whether in hard copy or in electronic form, are instruments of service for the pertinent Work Order, whether the Work Order is completed or not; however, all such materials shall be the property of the CLIENT and can be reused by CLIENT in whole or in part, at CLIENT's own risk without cost to CLIENT or liability to FIRM. CLIENT agrees to indemnify FIRM and FIRM's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to the reuse, change or alteration of these Work Order documents, unless such reuse, change or alteration has been approved by FIRM in writing.

Section 8.03 Delay

In the event that a party ("Delayed Party") is delayed in performance of its obligations hereunder, by any act or neglect of the other party ("Other Party") or for whom such Other Party is responsible or by Acts of God, strikes, lockouts, accidents, or other events beyond the control of the Other Party, then FIRM's compensation and the work schedule for an affected Work Order shall be equitably adjusted. In the event delays to the Work Order work is encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

Section 8.04 No Third-Party Beneficiaries

This Agreement gives no rights or benefits to anyone other than CLIENT and FIRM and has no third-party beneficiaries.

Section 8.05 Indemnification

(a) FIRM agrees to indemnify CLIENT for any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of FIRM, FIRM's employees, affiliated corporations, and subcontractors in connection with Services performed under Work Order issued hereunder, with the foregoing limited as provided by Florida Statute and Constitution.

(b) CLIENT agrees to indemnify FIRM from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of CLIENT, or its employees or contractors in connection

with Work Orders issued hereunder, with the foregoing limited as provided by Florida Statute and Constitution.

Section 8.06 Assignment

Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement or Work Order issued pursuant to it, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

Section 8.07 Jurisdiction

The substantive law of the state of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. Venue in any action hereunder shall be state court in Palm Beach County, Florida.

Section 8.08 Severability and Survival

If any of the provisions of this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.

Section 8.09 Materials and Samples

Any items, substances, materials, or samples removed from the Project site for testing, analysis, or other evaluation will be returned to the Project site within 60 calendar days of Work Order close-out unless agreed to otherwise. CLIENT recognizes and agrees that FIRM is acting as a bailee and at no time assumes title to said items, substances, materials, or samples.

Section 8.10 FIRM's Deliverables

FIRM's deliverables, including record drawings, are limited to the sealed and signed hard copies. Computer-generated drawing files furnished by FIRM are for CLIENT or others' convenience, but shall always be available to CLIENT upon request. Any conclusions or information derived or obtained from these files will be at user's sole risk.

Section 8.11 Dispute Resolution

Any controversy, dispute or claim arising hereunder or out of, or relating to this Agreement, or the breach hereof, or regarding the failure or refusal to perform the whole or any part of this Agreement, shall be settled by "fast track" arbitration in Palm Beach County, Florida, in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Any decision made by an arbitrator or by arbitrators under this provision shall be enforceable as a final and binding decision as if it were a final decision or decree of a court of competent jurisdiction. This Agreement does not provide for attorneys' fees, and the arbitration award shall not include attorneys' fees.

Section 8.12 Entire Agreement

This Agreement, including its attachments and schedules, if any, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

Section 8.13 Jury Trial

The parties each waive trial by jury with regard to any matter arising hereunder or in connection herewith, as against each other, regardless of whether any third party to such matter shall have a right to trial by jury.

Section 8.14 Non-Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any other breach or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; this is, in addition to every other remedy provided therein or by law. The failure of either party to enforce, at any time, any of the provisions of this Agreement, or to exercise any option which is herein provided, or to require, at any time, performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver or create an estoppel from enforcement of such provisions, or in any way affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every such provision, or to seek relief as a result of the prior breach.

ATTACHMENTS	
Attachment A	Form of Work Order
Attachment B	Firm's Fee Schedule

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the date first above written.

WITNESSES:

DISTRICT:
PORT OF PALM BEACH DISTRICT

BY _____

Printed Name of
Witness: _____

Printed Name of
Witness: _____

FIRM:
XXXFirm

Printed Name of
Witness: _____

BY _____
_____, President

Printed Name of
Witness: _____

STATE OF FLORIDA]
COUNTY OF PALM BEACH]

The foregoing instrument was acknowledged before me by means of physical presence this _____ day of _____, 2021 by _____, who is personally known to me or who produced Florida Driver’s license as identification, as Chairman of PORT OF PALM BEACH DISTRICT, a Political Subdivision of the State of Florida.

[SEAL]

NOTARY PUBLIC
My commission expires:

STATE OF FLORIDA]
COUNTY OF PALM BEACH]

The foregoing instrument was acknowledged before me by means of physical presence this _____ day of _____, 2021 by _____, who is personally known to me or who produced Florida Driver’s license _____ as identification, as President of XXXFirm.

[SEAL]

NOTARY PUBLIC
My commission expires:

APPROVED FOR LEGAL SUFFICIENCY:

Gregory C. Picken, Esq.
Gary, Dytrych & Ryan, P.A.

**Attachment A
(Form of Work Order)
PORT OF PALM BEACH DISTRICT
CONSULTANT WORK ORDER
PREPARED BY XXXFirm**

WORK ORDER NO: 20__-XXX

JOB NAME: *[INSERT PROJECT NAME]*

This Work Order is issued by The Port of Palm Beach District pursuant to the CCNA Contract issued under Florida Statute §287.055 for the Maritime Operations Complex Chiller Plant, between XXXFirm and the Port of Palm Beach District, RFQ Issue Date June 27, 2021, which is incorporated herein by this reference, for the below SERVICES:

BACKGROUND

[INSERT PROJECT DESCRIPTION AND BACKGROUND]

1. SCOPE OF WORK

CONSULTANT will perform the following service:

[INSERT WORK ORDER SPECIFIC SCOPE OF WORK / SERVICES]

2. TIME OF COMPLETION

All Times of Completion are subject to exceptions for delays which are beyond the control of CONSULTANT.

[INSERT WORK ORDER SPECIFIC SCHEDULE FOR THE SCOPE OF WORK / SERVICES]

3. ASSUMPTIONS

[INSERT WORK ORDER SPECIFIC ASSUMPTIONS AND/OR EXCLUSIONS FOR THE SCOPE OF WORK / SERVICES IF ANY]

4. COMPENSATION

CONSULTANT will be compensated under the terms of the **This Work Order is issued by The Port of Palm Beach District pursuant to the CCNA Contract issued under Florida Statute §287.055 for the Maritime Operations Complex Chiller Plant, between XXXFirm and the Port of Palm Beach District, RFQ Issue Date June 27, 2021, for the below SERVICES.**

CHECK ONE ONLY:

- THIS IS A FIXED LUMP SUM WORK ORDER: THE LUMP SUM IS \$ _____.

- THIS IS A TIME AND MATERIALS WORK ORDER WITH A SUM NOT TO EXCEED AMOUNT. THE NOT TO EXCEED AMOUNT IS \$ _____.

The Authorized Representatives designated below are authorized to act with respect to the Work Order. Communications between the parties shall be between parties and their consultants or subcontractors shall be through the Authorized Representatives:

For the CLIENT:	For FIRM
Name:	Name:
Address:	Address:
Telephone:	Telephone

This Work Order No. _____ is effective this (date)	
Accepted for FIRM by:	Accepted for CLIENT by:
Name	Name
Title	Title

Attachment B
(Firm's Fee Schedule)