**PROFESSIONAL SERVICES AGREEMENT**
**PROFESSIONAL SURVEYOR SERVICES**
**RFQ 24-DS-07**

**THIS AGREEMENT** is made and entered into this_____day of_____, 20___, by and between Mark Dowst & Associates, Inc., duly authorized to conduct business in the State of Florida and whose address is 536 N. Halifax Ave., Suite 100, Daytona Beach, FL 32118, hereinafter, called "CONSULTANT" and the **CITY OF EDGEWATER**, a political subdivision of the State of Florida, whose address is 104 North Riverside Drive, Edgewater, FL 32132, hereinafter called "CITY".

**SECTION 1. AGREEMENT.** The terms of this Agreement, together with the incorporation of the terms and conditions of the Request for Qualifications (RFQ #24-DS-07), and any exhibits, schedules and attachments hereto, and any and all amendments relating to same, and any and all submittals from CONSULTANT, constitute the entire Agreement between CITY and CONSULTANT. This Agreement is the final, complete and exclusive expression of the terms and conditions of the parties' Agreement. Any and all prior agreements, representations, negotiations, and understandings made by the parties, oral or written, expressed or implied, are hereby superseded and merged herein.

**SECTION 2. TERM OF AGREEMENT.** The term of this Agreement shall be for an initial period of three (3) years from the date of award. At the option of the parties, this Agreement may be renewed for two (2) additional one (1) year terms. Renewal options may be exercised at the discretion of the CITY based on performance of the company and adherence to the terms and conditions set forth in the RFQ documents. The CITY retains the sole right to determine whether the renewal option shall be granted.

**SECTION 3. COMPENSATION.** For Services rendered, The CITY shall pay the CONSULTANT based on actual time spent per position and established hourly billing rate for tasks, including or excluding reimbursable expenses as mutually agreed upon. Unless otherwise agreed in a Scope of Services, the CONSULTANT will invoice the CITY monthly based upon the CONSULTANT's actual time spent and provide an estimate of the portion of the total services actually completed at the time of billing.

**SECTION 4. REIMBURSABLE EXPENSES.** "Reimbursable Expenses" means the actual, necessary and reasonable expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto for travel; toll telephone calls and facsimiles; reproduction of reports, drawings and specifications, and similar Project-related items; as provided in the CITY's Purchasing Policy.

**SECTION 5. NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, return receipts requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

**For CITY:**
Bonnie Zlotnik, City Clerk
City of Edgewater
104 N. Riverside Drive
Edgewater, FL 32132
(386)424-2400 ext. 1101

**For CONSULTANT:**
Mark S. Dowst, President (Name, Title)
Mark Dowst & Associates, Inc. (Company)
536 N. Halifax Ave., Suite 100 (Address)
Daytona Beach, FL 32118 (City, State, Zip)
(386) 258-7999 (Phone)

**SECTION 6. RIGHTS AT LAW RETAINED.** The rights and remedies of CITY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

**SECTION 7. CONTROLLING LAW, VENUE, ATTORNEY'S FEES.** This Agreement is to be governed, construed, and interpreted by, through and under the laws of Florida. Venue for any litigation between the parties to this Agreement shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorney's fees relating to any dispute arising under this Agreement.

**SECTION 8. MODFICATIONS TO AGREEMENT.** This Agreement and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto of equal dignity herewith.

**SECTION 9. SEVERABILITY.** If, during the term of this Agreement, it is found that a specific clause or condition of this Agreement is illegal under federal or state law, the remainder of the Agreement not affected by such a ruling shall remain in force and effect.

**SECTION 10. WAIVER OF JURY TRIAL.** THE CITY AND CONSULTANT HAVE SPECIFICALLY WAIVED THE RIGHT TO A JURY TRIAL CONCERNNG ANY DISPUTES WHICH MAY ARISE CONCERNING THIS AGREEMENT.

**SECTION 11. NON-WAIVER**. No indulgence, waiver, election or non-election by CITY under this Contract shall affect CONSULTANT's duties and obligations hereunder.

**SECTION 12. ASSIGNMENT.** This Contract, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith. However, this Contract shall run to the Edgewater City Government and its successors.

**SECTION 13. INDEPENDENT CONSULTANT.** It is the intent of the parties hereto that CONSULTANT shall be legally considered an independent CONSULTANT and that neither CONSULTANT nor its employees shall under any circumstances be considered employees or agents of the CITY and that the CITY shall be at no time legally responsible for any negligence on the part of CONSULTANT, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, CONSULTANT or corporation.

**SECTION 14. NO THIRD-PARTY BENEFICIARIES.** The agreements contained herein are for the sole benefit of the parties hereto and their successors and permitted assigns and no other party shall have the right to enforce any provision of this Contract or to rely upon the provisions of this Contract.

**SECTION 15. WARRANTY OF TITLE OF CONSULTANT.** CONSULTANT warrants to the CITY that all goods and materials furnished under the Contract will be new unless otherwise specified and that CONSULTANT possess good, clear, and marketable title to said goods and there are no pending liens, claims or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. If at any time there shall be evidence of any claim for which, if established, the CITY might become liable, and which may be chargeable to the CONSULTANT, or if the CONSULTANT shall incur any liability to the CITY, or the CITY shall have any claim or demand against the CONSULTANT, of any kind or for any reason, whether related to or arising out of CONSULTANT's negligence in the provision of goods, materials, or services under this Agreement or any other agreement between the CONSULTANT and the CITY, and whether or not reduced to judgment or award, the CITY shall

have the right to retain out of any payment due the CONSULTANT, or which may become due to the CONSULTANT, under this Contract or any other Contract between the CONSULTANT and the CITY, an amount sufficient to indemnify the CITY against such claim, and/or to compensate the CITY for, and fully satisfy, such liability, claim or demand, and to charge or deduct all cost of defense or collection with respect thereto, including, but not limited to, reasonable attorneys' fees, expert CONSULTANT fees, and expert witness fees. Should any claim develop after final payment has been made, the CONSULTANT shall refund to the CITY all monies that the latter may be compelled to pay in discharging such claims, or that the latter may have incurred in collecting said monies from the CONSULTANT.

**SECTION 16. TERMINATION FOR CAUSE OR CONVENIENCE.** (a) The parties agree that the CITY may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or part, whenever the City Manager of Edgewater shall determine that such termination is in the best interest of the CITY. (b) Termination, in whole or in part, shall be affected by delivery of a Notice of Termination signed by the City Manager or his designee, mailed or delivered to the CONSULTANT, and specifically setting forth the effective date of termination. (c) Upon receipt of such Notice, the CONSULTANT shall: (i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice; (ii) place no further orders with any sub-contractors except as may be necessary to perform that portion of this Contract not subject to the Notice; (iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice; (iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Edgewater; and (v) use best efforts to mitigate any damages which may be sustained by the CONSULTANT as a consequence of termination under this clause. (d) After complying with the provisions of subparagraph (c), above, the CONSULTANT shall submit a termination claim, in no event later than six (6) months after the effective date of termination, unless one or more extensions of three (3) months each are granted by the Finance Director. (e) The Finance Director, with the approval of the City Manager, shall pay from the using department's budget, reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or work completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered or the services not provided. This Contract shall be amended accordingly, and the CONSULTANT shall be paid the agreed amount. (f) In the event that the parties cannot agree on the whole amount to be paid to the CONSULTANT by reason of termination under this clause, the Finance Director shall pay the CONSULTANT the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause: (i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of: (1) the cost of work performed or supplies delivered; (2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above; (3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable. (ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated. (g) In the event that the CONSULTANT is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the CONSULTANT may appeal any claim to the City Council in accordance with Paragraph 23 of this contract concerning disputes.

**SECTION 17. TERMINATION FOR DEFAULT.** Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein. In the event of default by the CONSULTANT, the CITY reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result.

**SECTION 18. EXAMINATION OF RECORDS.** (a) The CONSULTANT agrees that the CITY, or any duly authorized representative, shall, until the expiration of five (5) years after closeout of the

FEMA grant, have access to and the right to examine and copy any pertinent books, documents, papers and records of the CONSULTANT involving transactions related to this Contract. (b) The CONSULTANT further agrees to include in any subcontract for more than $10,000 entered into as a result of this Contract, a provision to the effect that the sub-contractor agrees that the CITY or any duly authorized representative shall, until the expiration of five (5) years after closeout of the FEMA grant under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such CONSULTANT involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public. (c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

**SECTION 19. MODIFICATIONS OR CHANGES TO THIS CONTRACT.** (a) Change Orders. The Department Head, with the concurrence of the CITY's signatory as required by the CITY's Purchasing Policy, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance. The CITY will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract. (b) If any change under this clause causes an increase or decrease in CONSULTANT's cost of, or time required for the performance of the work hereunder, CONSULTANT shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the CONSULTANT, or the CITY, of any kind in connection with such change, including all costs and damages related to or incidental to such change. (c) CONSULTANT need not perform any work described in any change order unless it has received a certification from the CITY that there are funds budgeted and appropriated sufficient to cover the cost of such changes. (d) No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

**SECTION 20. SOVEREIGN IMMUNITY.** The CITY expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the CITY beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the CITY for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the CITY which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

**SECTION 21. LIABILITY FOR LOSS OR DAMAGE.** Consultant shall indemnify and hold harmless the City 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 the Consultant, in the performance of the Agreement.

**SECTION 22. NON-DISCRIMINATION.** During the performance of this Contract, CONSULTANT agrees as follows: (a) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of CONSULTANT. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. CONSULTANT agrees and fully supports and complies with the Americans with Disabilities Act of 1990. (b) CONSULTANT shall state in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT that CONSULTANT is an equal opportunity employer. (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. CONSULTANT shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon each sub-contractor or vendor.

**SECTION 23. DISPUTES.** The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to CONSULTANT, shall decide disputes with respect to this Agreement. The decision by the City Manager shall be final and binding unless, within five (5) business days from the date of delivery of the decision of the City Manager, appeal is made to the City Council in writing and delivered to the City Clerk. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence.

**SECTION 24. FORCE MAJEURE.** Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

**SECTION 25. CONTROLLING LAW.** This agreement contains important matters affecting legal rights and is accepted and entered into in Florida and any question regarding its validity, construction, enforcement of performance shall be governed by Florida Law. Any legal proceeding arising from or in any way regarding the agreement shall have its venue located exclusively in the Circuit Court of Volusia County, Florida and the parties hereby expressly consent and submit themselves to the personal jurisdiction and venue of the court.

**SECTION 26. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS** "The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT's actions pertaining to this contract."

**SECTION 27. ADMINISTRATIVE, CONTRACTUAL, OR LEGAL REMEDIES.** Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the CITY and the CONSULTANT, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction pursuant to Section 7 of this agreement.

**SECTION 28. COMPLIANCE WITH OTHER FEDERAL STANDARDS.**

1) Compliance with Federal Laws, Regulations and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund the agreement. The CONSULTANT will comply with all applicable federal laws, regulations, and Executive Orders, including FEMA policies, procedures, and directives. The CONSULTANT shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. CONSULTANT shall ensure that all subcontracts comply with FEMA requirements.

2) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub l 100-690, Title V, Subtitle D). All CONSULTANTs entering into Federal funded

contracts over $100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The CONSULTANT shall comply with this requirement.

3) Mandatory Disclosures: The CONSULTANT must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

4) Utilization of Minority and Women Firms (M/WBE): The CONSULTANT must take all necessary affirmative steps to assure that small, minority, and women-owned businesses are utilized, when possible, in accordance with 2 CFR 200.321. If subcontracts are to be let, prime CONSULTANT will require compliance of this provision by all sub-CONSULTANTs. Prior to contract award, the CONSULTANT shall document efforts to assure that such businesses are solicited when there are potential sources; that the CONSULTANT made an effort to divide total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses; and, that the CONSULTANT has established delivery schedules, where permitted, to encourage such businesses to respond. CONSULTANT and sub-CONSULTANT shall utilize service and assistance from such organizations as SBA, Minority Business Development Agency of the Department of Commerce, the Florida Department of Management Services (Office of Supplier Diversity), the Florida Department of Transportation, Minority Business Development Center, and Local Government M/DBE programs, available in many large counties and cities. Documentation, including what firms were solicited as suppliers and/or sub- CONSULTANTs, as applicable, shall be included with the bid proposal.

Equal Employment Opportunity: (i) The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (ii) The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (iii) The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT's legal duty to furnish information. (iv) The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (v) The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (vi) In the event of the CONSULTANT's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (vii) The CONSULTANT will include the portion of

the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub- contractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by the administering agency, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States. The CONSULTANT further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The CONSULTANT agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of CONSULTANTs and sub-contractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The CONSULTANT further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a CONSULTANT debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon CONSULTANTs and sub-contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the CONSULTANT agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the CONSULTANT under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such CONSULTANT; and refer the case to the Department of Justice for appropriate legal proceedings.

5) Davis-Bacon Act: If applicable to this contract, the CONSULTANT agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. CONSULTANT is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, CONSULTANT must be required to pay wages not less than once a week. This contract was conditioned upon the acceptance of the Department of Labor Wage Determination.

6) Copeland Anti Kick Back Act: (i) CONSULTANT. The CONSULTANT shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, if applicable, which are incorporated by reference into this contract. (ii) Subcontracts. The CONSULTANT or sub-contractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and

also, a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for the compliance by any sub- contractor or lower tier sub-contractor with all of these contract clauses. (iii) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a CONSULTANT and sub-contractor as provided in 29 C.F.R. § 5.12.

7) Contract Work Hours and Safety Standards Act: (i) Overtime requirements. No CONSULTANT or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. (ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (i) of this section the CONSULTANT and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such CONSULTANT and sub-contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (i) of this section, in the sum of
$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (i) of this section. (iii) Withholding for unpaid wages and liquidated damages. The CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONSULTANT or sub- contractor under any such contract or any other Federal contract with the same prime CONSULTANT, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONSULTANT, such sums as may be determined to be necessary to satisfy any liabilities of such CONSULTANT or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (ii) of this section. (iv) Subcontracts. The CONSULTANT or sub-contractor shall insert in any subcontracts the clauses set forth in paragraph (i) through (iv) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (i) through (iv) of this section.

8) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387) as amended. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

9) Suspension and Debarment. (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the CITY. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an

employee of a Member of Congress in connection with obtaining any Federal contract,

grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient who in turn will forward the certification(s) to the awarding agency. CONSULTANT agrees to comply with this provision. CONSULTANT shall file the required certification.

11) Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of ''funding agreement'' under 37 CFR § 401.2 (a) and the CONSULTANT wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that ''funding agreement,'' the CONSULTANT must comply with the requirements of 37 CFR Part 401,''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

12)Procurement of Recovered Materials: CONSULTANT must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. In the performance of this contract, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg- program. The CONSULTANT also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

13) Access to Records and Reports: The CONSULTANT agrees to provide CITY, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The CONSULTANT agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. In compliance with the Disaster Recovery Act of 2018, the CITY and the CONSULTANT acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

14)Record Retention: CONSULTANT will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2
C.F.R. §200.333 and retained in compliance with 2 C.F.R. §200.333. This provision is supplemental to other provisions in this Agreement.

15) Federal Changes: CONSULTANT shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the contract.

16) Safeguarding Personal Identifiable Information: CONSULTANT will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

17) DHS Seal, LOGO, and Flags: The CONSULTANT shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific

FEMA preapproval.

18) No Obligation by Federal Government. The Federal Government is not a party to this agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT, or any other party pertaining to any matter resulting from the contract.

20) PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services As used in this clause—

b) Prohibitions.

i) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

ii) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(1) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(2) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(3) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(4) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

c) Exceptions.

i) This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

ii) By necessary implication and regulation, the prohibitions also do not apply to:

(1) Covered telecommunications equipment or services that:

(a) Are not used as a substantial or essential component of any system; and

(b) Are not used as critical technology of any system.

(2) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

d) Reporting requirement.

i) In the event the Consultant identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the Consultant shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

ii) The Consultant shall report the following information pursuant to paragraph (d)(1) of this clause:

(1) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known);

supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(2) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Subcontractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

e) Subcontracts. The Consultant shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

2) DOMESTIC PREFERENCE FOR PROCUREMENTS.

a) As appropriate, and to the extent consistent with law, Consultant should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

b) For purposes of this clause:

i) Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

ii) Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3) AFFIRMATIVE SOCIOECONOMIC STEPS. If subcontracts are to be let, the CONSULTANT is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

**SECTION 29. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS.** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The CONSULTANT will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**SECTION 30. AUTHORITY TO SIGN.** Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**IN WITNESS WHEREOF,** the parties hereto have made and executed this Agreement on the date written above for execution by the CITY.

ATTEST:

**Bonnie Zlotnik, City Clerk**

**Dated:** _____

**CITY OF EDGEWATER**

**Glenn A. Irby, City Manager**

WITNESSES:

Lee A. Thibodeau

Lee A. Thibodeau

Mark Dowst & Associates, Inc.

**(Firm Name)**

**By:** _____

**(Authorized Officer)**

Mark S. Dowst, President

**(Print Name and Title)**

Approved by the City Council of the City of Edgewater at a meeting held on this _____ day of _____, 2024 under Agenda Item No._____.

Attachments: A. Certification Regarding Lobbying

**ATTACHMENT A (EMERGENCY CONTRACTS)**
**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

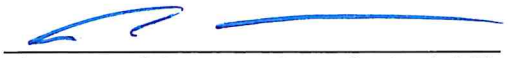
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Contractor, Mark S. Dowst & Associates, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Mark S. Dowst, President

Name and Title of Contractor's Authorized Official

07/16/2024

Date