

* REQUEST FOR QUALIFICATIONS *

- I. The CITY OF KISSIMMEE is seeking SEALED QUALIFICATIONS on the following:
Request for Qualifications **RFQ 2021-001 Continuing Services for Professional Planning Consulting**
- II. All qualifications must be submitted in a SEALED envelope and plainly marked with the qualification number on the exterior of the qualification envelope, one (1) original, one (1) copies and one (1) electronic copy on CD or Flash drive.
- III. To be considered qualifications MUST be delivered OR mailed to:

**City of Kissimmee
Finance Department 4th Floor
Attn: Purchasing Division
101 Church Street
Kissimmee, FL 34741**

And time stamped on or before 2:00 PM, February 22, 2021.

- IV. All qualifications shall be opened and read publicly in the City of Kissimmee Finance Department 4th Floor Attn: Purchasing Division, Allendale Conference Room, 101 Church Street, Kissimmee, Florida at 2:30 PM, February 22, 2021.
- V. All qualifications must be according to specifications and conditions, and on the forms provided herein.
- VI. The submitter's name and address shall be clearly shown on the exterior of the sealed envelope.
- VII. The City of Kissimmee reserves the right to accept and/or reject any or all qualifications, with or without cause, to waive technicalities or to accept the qualification which, in its judgment, best serves the interest of the City of Kissimmee. Persons are advised that, if they decide to appeal any decision made concerning the award of this qualification, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be made. Qualification results other than the apparent low offer will not be provided in response to telephone inquiries. Submitters desiring a copy of the Abstract of Offers should include such request with a self addressed stamped envelope in their qualifications submission.


Brandon Durango
Procurement Manager

General Requirements:

1.1 QUALIFICATION PREPARATION

Submission of a qualifications in response to this solicitation shall evidence the submitters acknowledgement that it is cognizant of all the conditions and specifications contained herein and that any offer made is in accordance with the contained specifications and conditions unless, specifically identified and explained as exceptions on the qualifications schedule. Each submitter is responsible for the completeness and accuracy of their qualifications. Submitters must show manual signatures by an individual authorized to undertake such obligations, and shall contain evidence of that person's authority to make such offers. Unsigned qualifications will be rejected. Stamped or otherwise reproduced signatures are not acceptable. Erasures or other changes must be initialed by the person signing the submission. Submitters should include all descriptive literature specifications, or catalogs or cuts necessary to specifically identify and describe the item(s) being offered. Failure to do so may result in the submission being declared non-responsive.

1.2 SUBMISSION OF QUALIFICATIONS

All bids shall be submitted in a sealed envelope on the forms included with this solicitation with the bidders name and address and bid number plainly marked on the exterior of the envelope. Timely submission of a bid is important. Official receipt is acknowledged using an atomic date/time stamp interfaced with the U.S. Government's National Institute of Standards and Technology (NIST) which is the official time keeper for the U.S. Facsimile or telegraphed bids will not be accepted.

1.3 PRICING

The unit price for each item being submitted will be shown on the Qualification Schedule and will include all costs for or associated with the item. A total for each line item will be entered on the Qualification Schedule. In case of a discrepancy between unit price and extended price, the unit price shown shall prevail.

1.4 DELIVERY

Exact delivery times frames or dates must be shown on the qualification, such as, "(x) days after receipt of order". Number of days for delivery shall be presumed to include all weekends or holidays in the period. All offers shall be FOB Destination and shall include inside delivery to the delivery point specified.

1.5 DEFAULT

Should the successful submitter for any award made as a result of this solicitation fail to deliver a product in accordance with the specifications contained herein and within the time frame promised, the City of Kissimmee reserves the right to cancel the contract for default and to award this contract to the next most qualified offer. The submitter in default may be held liable for any added cost to the City of Kissimmee incurred as a result of such action.

1.6 LATE QUALIFICATIONS AND WITHDRAWAL OF OFFERS

No qualifications will be accepted after the published deadline for accepting qualifications in response to this solicitation. Qualifications may be withdrawn at any time prior to the official time set for the qualifications opening. No modification or withdrawal of any offer received will be allowed after the time and date set for the official qualifications opening.

1.7 DISCOUNTS

Submitters may offer cash discounts for prompt payment, however, any such discount offered will not be considered as a factor in determining the lowest submittal offered. Any other discounts should be reflected in the unit price qualification.

1.8 QUALIFICATIONS EVALUATION AND AWARD

All submissions received will be evaluated based on one or more of the following factors: price; quality of product offered; compliance with specifications; delivery; reputation of the submitter; previous contract's proximity of service; and any other factors detailed in the specifications. Award will be made to the lowest responsive and responsible submitter complying with the provisions of the Request for Qualifications, provided that such award is in the best interests of the City of Kissimmee.

The City of Kissimmee reserves the right to accept and /or reject any or all qualifications in whole or in part with or without cause; to waive technicalities; to make multiple awards on a line item basis; and accept the submission which in its judgment, best services the interest of the City of Kissimmee. Submitters are cautioned that no communication with any City of Kissimmee employees involved in the evaluation process is authorized during the qualifications evaluation process unless such communication is originated by the City of Kissimmee for the purpose of clarifying the qualifications or proposal. Questions regarding the status of any submission should be directed to the Purchasing Coordinator. The award(s) will be posted in the Purchasing Office after Commission Approval. Submitters are responsible for following up on the status of any submission. The City of Kissimmee will only notify successful submitter(s).

1.9 BILLING AND PAYMENT

The City of Kissimmee will pay all proper invoices submitted for supplies and/or services within 30 calendar days. To be considered a proper invoice it must be submitted in 2 copies to the City of Kissimmee Accounting Department, 101 Church Street Kissimmee, FL 34741, show the Vendor FEID Number, the purchase order number and be based on proper delivery installation or provision of goods or services to and accepted by The City of Kissimmee. The payment cycle will not start until all the above requirements are met.

1.10 SAMPLES

The City of Kissimmee may, at its discretion, require submission of samples for inspection and testing. When specifications require such submissions, all costs for such samples, including postage, will be the responsibility of the submitter. Samples that are not destroyed in the evaluation process or determined necessary for comparison with future deliveries may be returned at the submitters request and at the submitter's expense. The City of Kissimmee will not be held liable for any sample provided.

1.11 SILENCE OF SPECIFICATIONS

The silence of these specifications regarding exact details of any product or service required shall be regarded as meaning that only the best commercial practices will prevail and that only materials of first quality and correct type, size, or design are to be used. All workmanship will be first quality. Unless otherwise specified all products provided as a result of this solicitation will be new, unused, the latest model in production, and in compliance with the enclosed specifications.

1.12 USE OF BRAND NAMES

Unless otherwise stated, the use of brand names in specifications is not intended to restrict any offer. Brand names are only used to illustrate the type and quality of product acceptable for this solicitation and to provide a simplified specification. Submitters should feel free to propose any equal item provided that all exceptions to these specifications are clearly identified and explained and definitive specifications for the item being proposed including product literature, cuts or samples are included with the submission. The City of Kissimmee reserves the sole right of final determination of product equivalency.

1.13 WARRANTY

All warranties for products or services provided under any contract resulting from this solicitation will meet or exceed that warranty offered the providers most favored customer and in no instance will be less than unlimited twelve month non-prorated warranty. If individual specifications contained herein require a warranty in conflict with this provision, the warranty provisions of the individual specification shall prevail.

1.14 ADDENDUMS

In the event any modifying addenda to the basic solicitation are issued, the City of Kissimmee will attempt to provide such addenda to all submitters who have been furnished qualifications packages. However it shall be the submitter's responsibility to verify with the Purchasing Office before the qualifications packages are submitted whether or not addenda have been issued and to obtain such addenda for submission with the qualifications. Receipt of any addenda issued must be acknowledged on the qualifications schedule.

1.15 QUALIFICATIONS CERTIFICATION

By signature on this submission, submitter certifies or in the case of a joint submission each party certifies that:

- A. It has not given, offered nor intends to give at any time economic opportunity, future employment, favor or gratuity of any kind to any employee of the City of Kissimmee in connection with this submission.
- B. That the submitter has not divulged or discussed his offer with other submitters.
- C. Prices offered have been determined independently without collusion with other submitters for the purpose of restricting competition.
- D. No attempt has been made to induce any potential submitter to submit or decline to submit an offer in response to this solicitation.

1.16 "NO QUALIFICATIONS" RESPONSE

Vendors electing to not submit qualifications in response to this solicitation should complete the attached "Notice to Submitters" form. Failure to return the form may result in your omission from future qualifications lists.

1.17 CFPC

The City of Kissimmee participates in a Central Florida Purchasing Cooperative (CFPC). All bidders awarded contracts from this request are encouraged to permit other active members of CFPC to participate in the contract under the same prices, terms, and conditions except that allowances may be made for differences in delivery costs.

1.18 COMPLIANCE WITH THE JESSICA LUNSFORD ACT

If applicable, compliance with the Jessica Lunsford Act will be required by Contractor.

1.19 CONE OF SILENCE – The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the execution of the award. The Cone of Silence is defined as the period beginning with the issuance of the solicitation document and continues through the execution of the award document. During this time vendors, service providers and the like are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City Agents, or elected officials. Any vendor who attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation.

Exceptions to the Cone of Silence –

- Written communications directed to the Procurement Officer;
- All communications occurring at pre-bid meetings;
- Oral presentations before publicly noticed committee meetings;
- Procurement of goods and services for Emergency situations; and
- Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.

1.20 PROTEST

Any protest must be made within three (3) days following posting of the qualifications award. Protest procedures are available from the City of Kissimmee Finance Department 4th Floor Attn: Purchasing Division, 101 Church Street, Kissimmee, FL 34741.

Notice of decision or intended decision concerning a bid solicitation or award may be given by posting the bid tabulation or recommended award at the location where the bids were opened or posted electronically on the City's website www.kissimmee.org. Failure to file a protest within the deadlines prescribed shall constitute a waiver of protest of the proceedings.

2.0 SPECIAL PROVISIONS:

2.1 PUBLIC ENTITY CRIMES: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a qualification on a contract to provide any goods or services to a public entity, may not submit a qualification on a contract with a public entity for the construction or repair of a public building or public work, may not submit qualifications on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list".

2.2 CLARIFICATION OF REQUIREMENTS: Questions regarding clarification or interpretation of the technical specifications and/or non-technical nature regarding this solicitation must be addressed **IN WRITING** to Debbie Luke, Purchasing Coordinator at 101 Church Street, Kissimmee, Florida 34741 **OR BY EMAIL** to debbie.luke@kissimmee.gov not less than seven (7) days prior to the RFQ opening date. Phone inquiries will not be responded to.

However, unless modified by a written addendum issued by the Purchasing Coordinator, the specifications and conditions contained herein stand as stated. Verbal communications are neither authoritative or binding. Any verbal interpretation in conflict with these specifications as written should immediately be directed in writing to the

Purchasing Coordinator for the City of Kissimmee. Any interpretation provided to any submitter in response to inquiries regarding this solicitation which may affect the outcome of this request will be furnished in writing to all submitters who have received qualifications packages.

2.3 No minor children are permitted to accompany submitters during pre-qualification conferences, opening of qualifications packages or site tours.

2.4 The City of Kissimmee has a Local Vendor Preference Policy.

2.5 **INDEMNITY:** The successful submitter will indemnify and hold harmless the City of Kissimmee from and against all claims, damage loss, and expenses arising out of, or resulting from, the performance of their operations under this contract.

The successful submitter shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the services provided pursuant to this contract.

The successful submitter shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- All employees on the job and all other persons who may be affected thereby.
- All the work, materials, and equipment, whether in storage on or off the site, under the care, custody, or control of the successful submitter; and
- Other property at the site including trees, shrubs, lawns, walks, pavements, and roadways.

The successful submitter shall comply with all applicable laws, ordinances, rules, regulations, and lawful order of any public authority bearing on the safety of persons or property or their protection from damage, injury, or loss.

In any emergency affecting the safety of persons or property, the successful submitter shall act, at its discretion, to prevent threatened damage, injury or loss.

2.6 A link to this website is available through the City's website <http://www.kissimmee.org>, under the Finance Department, Purchasing. Notice of Award, Qualifications currently available, and Tabulation sheets are available on the City's website. Submitters, who do not have internet access, may request a copy of the tabulation by enclosing a stamped, self-addressed envelope with their submission.

2.7 **FEES AND LICENSURE COST:** This bid requires the following fees/licensure; proof of a valid Business Tax Receipt from the jurisdiction of the bidder's place of business.

2.8 **INSURANCE PROVISIONS:** The Successful bidder will have in force the following insurance coverage and will provide Certificates of Insurance prior to commencement of any work.

A) Workers' Compensation: The Contractor will provide Worker's Compensation coverage for all employees at the site location and, in case any work is subcontracted, will require the subcontractor to provide Workers' Compensation for all his employees. The limits will be statutory for Workers' Compensation and \$300,000.00 for Employers' Liability.

- B) Comprehensive General Liability:** The Contractor will provide for all operations including, but not limited to Contractual, and Products and Completed Operations. The limits will be not less than \$1,000,000.00.
- C) Comprehensive Automobile Liability:** The Contractor will provide coverage for all owned and non-owned vehicles for limits of not less than \$1,000,000.00.
- D) Umbrella Liability:** The Contractor will provide an umbrella in excess to the coverage in paragraphs B), and C) of not less than \$1,000,000.00.

2.9 **The City of Kissimmee has a Local Contractor Preference Policy:** When written bids, responses to request for proposals or quotations are received by the City as part of the competitive sealed bid process, and the lowest responsible price is offered by an individual or entity that is not an Osceola County person, firm and/or corporation and the next lowest responsible bidder is an Osceola County person, firm and/or corporation, the Osceola County individual or entity will be given an opportunity to match the lowest price offered.

If an offer is made to match the lowest price and the Osceola County individual or entity is otherwise fully qualified and meets all City requirements, the bid shall be awarded to the Osceola County individual or entity at the lowest price. In order to receive the local Contractor preference provided herein, the Osceola County individual or entity that qualifies as the next lowest price bidder hereunder, must unconditionally agree in writing to match the lowest price bid and deliver to the City designated representative by 8:30 a.m. on the third regular business day after notification of opportunity to match bid. Eligibility form is Attachment A.

2.10 **ALTERNATE BIDS WILL NOT BE ACCEPTED:**

If two bids are received from a company one bid will be returned unopened. If two different bids are included in a single envelope, both will be rejected at the bid opening.

2.11 **Terms** – The contract will be in effect for three (3) years. The city reserves the right to extend this contract for up to two (2), one (1) year periods, upon mutual consent, subject to the same commission, terms and conditions. The City will determine whether to exercise the option based on its own convenience and best interest.

2.12 **CONTRACT:** A sample contract is included in this proposal, on page 10 - 24

3.0 **SPECIAL PROVISIONS:** Identify how the firm's professional planning expertise would be utilized to perform tasks identified in the following Scope of Services under a "continuing contract" as defined by Section 287.055(2) (g) Florida Statutes.

- A. General Planning Services may be included but not Limited to:
- a. Comprehensive Plan Update / Amendments
 - b. Current Planning / Architectural Review
 - c. Land Use Planning Studies
 - d. Redevelopment / Infill Plans
 - e. Activity Center / Corridor Planning
 - f. Scenario Planning and Build Out Analysis
 - g. Demographic Studies
 - h. Development of Regional Impact / Notice of Proposed Change (NOPC) / Substantial Deviation
 - i. Strategic Planning and Evaluation
 - j. Historic Preservation Planning

- k. Land Development Code Updates
 - l. Site Planning
 - m. Other General Planning Consulting Services as directed
- B. Market Analysis may include but is not limited to:
 - a. Barrier Analysis to Redevelopment and Infill
 - b. Areas Market Study and Analysis
 - c. Economic Development
 - d. Demographics / Socio-Economic Analysis
 - e. Economic Assessment
 - f. Viability for Specific Development Types
- C. Transportation Planning Services may be included but not limited to:
 - a. Performing and or reviewing individual traffic analysis for private development
 - b. Providing transportation modeling in conjunction with mobility fee development, alternative analysis, and long range planning
 - c. Providing annual traffic counts and other counts for special studies
 - d. Roadway conceptual analysis
 - e. Developing plans for bicycle, pedestrian and transit in support of the Transportation Element
 - f. Performing periodic reports on Multimodal Transportation District and Vine Street
- D. Geographic Information Systems (GIS) Mapping and Support
- E. Graphics / Renderings
 - a. Landscape renderings
 - b. Photo montages
 - c. Concept plans
 - d. Branding and publications
- F. Public Involvement / Consensus Building

The interested and qualified firms shall submit a Statement of Qualifications describing their qualifications and experience in the type of work requested. Submissions shall be limited to a total of **forty (40) 8.5" x 11" pages** (including resumes; but, excluding front and back covers, dividers, and a 2–page cover letter), single-sided, portrait orientation, 12-point font. The required submission material includes the following:

Qualifications packages must include all of the following and include **one (1) original and one (1) copies and one (1) PDF version of all submission materials** clearly marked on the outside: **RFQ 2021-001 Continuing Services Contract for Professional Planning Consulting Services.**

4.0 SELECTION CRITERIA

Submissions will be ranked on qualifications and the City may choose to interview the top ranked firms. However, at their discretion, the City may dispense with interviews and select a firm to perform the work. Firms will be evaluated on the basis of the following factors:

- | | | |
|----|---|--------------|
| 1. | Firm Qualifications | (15%) |
| 2. | Firm Experience | (15%) |
| 3. | Team Qualification | (25%) |
| 4. | Team Experience | (10%) |
| 5. | Project Approach | (15%) |
| 6. | Work Schedule | (5%) |
| 7. | Technical Compliance with RFQ Requirements | (5%) |

**AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
RELATED TO GENERAL PLANNING FOR THE CITY OF KISSIMMEE**

THIS AGREEMENT made and entered into this _____ day of _____, 2021 by and between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, Florida 34741 (hereinafter “CITY”) and [insert company name] [insert company address] (hereinafter “CONSULTANT”) and each represents as follows:

WHEREAS, the CITY desires to retain the services of a competent and qualified consultant to provide professional services to support the City with on-going general planning services, market analysis services, transportation planning services, geographic Information Systems (GIS) mapping/ support and redevelopment activities necessary to guide the City transportation network, and other related tasks as may be assigned by the City; and

WHEREAS, CITY has requested and received interest for the retention of services of a consultant; and

WHEREAS, the CONSULTANT is competent and qualified to furnish consulting services to the CITY and desires to provide such professional services in accordance with the terms and conditions of this AGREEMENT.

WHEREAS, CITY advertised RFQ 2021-001 Continuing Services for Professional Planning Consulting wherein firms submitted qualifications which were reviewed, evaluated, and scored by the Selection Committee; and

WHEREAS, based on the competitive selection process the CITY has determined that Smithson Electric, Inc., is qualified to provide the services and desires to award the contract to CONTRACTOR consistent with the terms, conditions and requirements of the RFQ.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter recited, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, the CITY and CONSULTANT agree as follows:

Article 1. Consultant’s Services.

1.1 CITY does hereby retain CONSULTANT to furnish services and perform those tasks as further described in the Scope of Services, attached hereto and incorporated herein as Exhibit A. CONSULTANT shall also be bound by all requirements contained in the solicitation package and any addenda thereto.

1.2 The CONSULTANT's services shall be performed as expeditiously as is consistent with professional skill and care, and as more fully described within the Scope of Services. Upon request of the CITY, the CONSULTANT shall submit schedules for the performance of the CONSULTANT's services. The schedules may be adjusted as various projects and tasks proceed, and shall include allowances for periods of time required for the CITY's review and for approval of submissions by additional authorities having jurisdiction, as may be applicable.

1.3 Conduct meetings with staff, the public, the City Commission and advisory boards as necessary to share information and present findings or recommendations.

1.4 Provide CITY staff with a monthly status report of progress, problems, issues, and/or findings associated with an invoice for active projects or task assignments.

1.5 Produce written reports and provide all work products and data developed for assigned projects or tasks to CITY staff in electronic format for the CITY's use and public review, as requested.

1.6 Perform additional services relating to the implementation of the Comprehensive Plan, Community Redevelopment Agencies and Multimodal Transportation District as may be requested by the CITY.

Article 2. Term.

CONSULTANT shall complete assigned tasks as may be needed from time to time by the CITY within the next (3) three years. The CITY shall retain the option, at its sole discretion, to award up to two (2), one-year renewal periods to the selected Vendor.

Article 3. City's Responsibilities.

3.1 The CITY shall designate an employee authorized to act on the CITY's behalf as the CONSULTANT's contact, hereinafter "City Representative." The CITY or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the CONSULTANT in order to avoid unreasonable delay in the orderly and sequential progress of the CONSULTANT's services. All information and document submittals shall be made directly to the City Representative.

3.2 The CITY shall provide copies of ordinances, maps, studies and any other such documents as are on file with the City and of use to the CONSULTANT in performing the Scope of Services.

3.3 The CITY shall provide timely reviews of CONSULTANT's draft work products,

ensuring that all appropriate CITY departments and external agencies, as appropriate, have an opportunity to review and comment on draft work products.

3.4 The CITY shall give prompt written notice to the CONSULTANT if the CITY becomes aware of any fault or defect in the services performed or nonconformance of the CONSULTANT'S work products.

3.5 The CITY shall give prompt written notice to the CONSULTANT if the CITY determines to amend or add Engineering and Planning Services, which are to be completed by the CONSULTANT. If such changes increase (additional services) or decrease or eliminate any amount of work, CITY and CONSULTANT will negotiate any change in total cost or schedule. If the CITY and CONSULTANT approve any changes, the task authorization/work order will be modified to reflect the changes; and CONSULTANT shall be compensated for said services in accordance with the terms of Article 7 herein. All change orders shall be authorized in writing by CITY's and CONSULTANT's designated representatives.

Article 4. Ownership and Use Documents.

4.1 The documents prepared by the CONSULTANT pursuant to this Agreement are instruments of the CONSULTANT's service for use solely with respect to this Agreement and, unless otherwise provided, the CONSULTANT shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights.

4.2 All reports, documents and materials prepared relating to services rendered hereunder shall be the property of the CITY provided payment of applicable fees for their production has been made to the CONSULTANT in accordance with the terms of this Agreement. The CITY shall retain and use the CONSULTANT's documents for public record, information and reference and make use in connection with the CITY's compliance with any federal, state, county or city laws, codes, requirements, permits or any other mandate whatsoever.

Article 5. Termination.

5.1 TERMINATION FOR CAUSE: CITY may, with thirty (30) days written notice to CONSULTANT, terminate this Agreement for good cause shown before the termination date hereof. Following termination CONSULTANT may recover from the CITY payment for all work satisfactorily completed in accordance with this Agreement which may be due and owing at the time of such termination.

5.2 If the CITY terminates this Agreement due to a default by CONSULTANT in performance of any provision herein, the CITY shall not be responsible for payment to

CONSULTANT for any work in default or not completed in accordance with the provisions of this Agreement.

5.3 CONSULTANT may, with 30 days written notice to the CITY and the CITY Representative, terminate this Agreement before the termination date hereof for good cause shown. On such termination, CONSULTANT may recover from the CITY for all work satisfactorily completed in accordance with this Agreement, including reimbursable expenses, which may be due and owing at the time of the termination date.

5.4 Prior to termination by default, CITY shall issue a written notice to CONSULTANT notifying of any default or deficiency in service that may be cause for termination. CONSULTANT shall have ten (10) days from receipt of such notice to demonstrate a cure for the deficiency to the CITY'S satisfaction.

5.5 TERMINATION WITHOUT CAUSE: Either the CITY or the CONSULTANT may terminate this Agreement for convenience with sixty (60) days prior written notice. CONSULTANT may recover from the CITY for all work satisfactorily completed in accordance with this Agreement, including reimbursable expenses, which may be due and owing at the time of the termination date.

Article 6. Miscellaneous Provisions.

6.1 Venue. The CITY and CONSULTANT intend that the laws of the State of Florida shall govern this Agreement. Venue for any action arising out of this Agreement shall lie in Osceola County. The Parties agree to waive any right to trial by jury for any action arising out of this Agreement and to waive any right to recovery of attorney fees and costs, up to and including appellate costs.

6.2 Modifications / Waiver. All of the representation and obligations of the CITY and CONSULTANT are contained in this Agreement and no modification, waiver or amendment of this Agreement or any of its conditions or provisions shall be binding upon a Party unless made in writing signed by that Party or a duly authorized agent of that Party. The waiver by any Party of a breach of any provision of this Agreement shall not operate to be construed as a waiver of any subsequent breach of that provision by the same Party, or of any other provision or condition of the Agreement.

6.3 Entire Agreement. This Agreement represents the entire and integrated Agreement between the CITY and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both CITY and CONSULTANT.

6.4 No Third Party Beneficiary. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or CONSULTANT.

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

6.6 Permits and Licenses. Where CONSULTANT is required to deliver materials or perform work or services, as a result of this Agreement, CONSULTANT shall assume full duty, obligation and expense of obtaining all necessary licenses, permits, inspections and insurance, as required.

6.7 Headings. The headings of articles, paragraphs and subparagraphs are for convenient reference only and shall not be deemed to limit, construe affect, modify or alter the meaning of such articles, paragraphs or subparagraphs.

6.8 Joint Negotiations. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

6.9 Severability. If any article, paragraph, subparagraph, section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said article, paragraph, subparagraph, section, subsection, term or provision of this Agreement or the application of same to Parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining article, paragraph, subparagraph, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6.10 Indemnity. The CITY shall not assume any liability for the acts, omissions, or negligence of CONSULTANT, its agents, servants, or employees; nor shall CONSULTANT exclude liability for its own acts, omissions, or negligence to the CITY. CONSULTANT agrees to be responsible for all claims of any nature, including but not limited to injury, death, and

property damage, arising out of activities related to this Agreement by CONSULTANT. CONSULTANT shall be responsible for all work performed in connection with the Agreement. CONSULTANT may subcontract as necessary to perform the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities. CONSULTANT agrees to not enter into any agreements, contracts, or understandings with any vendor in any manner or way inconsistent with the terms and conditions of this Agreement.

6.11 Time is of the essence to this Agreement.

6.12 Representation on Authority of Parties and Signatories. Each person signing this Agreement represents and warrants that they are duly authorized and has legal capacity to execute and deliver this Agreement, and that the obligations hereunder have been duly authorized.

6.13 Necessity of Writing for Waiver, Change, Modification or Termination. No waiver, change, modification or termination of any provision of this Agreement is effective unless made in writing.

6.14 Public Records. CONSULTANT, specifically acknowledges the CITY's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement. As such, the CONSULTANT shall keep and maintain public records required by the CITY and to comply with §119.071, F.S., shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services required under this Agreement;
- b) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- d) Meet all requirements for retaining public records and transfer, at no cost to the CITY, all public records in possession of CONSULTANT upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology system of the CITY.

If the CONSULTANT has questions regarding the application of Chapter 119, Florida Statutes, to CONSULTANT's duty to provide public records relating to this Agreement, contact the Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

Article 7. Payments and Basis of Compensation

7.1 CITY shall pay CONSULTANT for planning services in one of two forms:

- A. Lump Sum Method - a negotiated fixed fee for specific tasks or projects. Task authorizations will be negotiated jointly between the CITY and CONSULTANT, as authorized in writing in a Letter of Authorization by the CITY, and will be reimbursed on a percentage completion basis, inclusive of labor and direct expenses, according to the amount of work performed for the invoicing period.
- B. Closed End Hourly - hourly rate schedule based upon the rates stipulated in Exhibit "B". Task authorizations will generally be of an "on-call" nature with the CONSULTANT responding to the CITY's request for services relating to the miscellaneous transportation planning services that may be required from time to time. Exhibit "B" may be modified biannually throughout the effective term of this Agreement with the written consent and in the sole discretion of the CITY's Representative, the consent thereto will not be unreasonably withheld.

7.2 Payments on account of the CONSULTANT's services and for reimbursable expenses shall be made monthly upon presentation of the CONSULTANT's statement of services rendered or expenses incurred.

7.3 Payments are due and payable within fifteen (15) days from the date the CONSULTANT's invoice is approved for payment by the CITY. CONSULTANT will submit invoices monthly. CITY, upon notifying the CONSULTANT of special circumstances, may pay invoices no later than forty-five (45) days from approval of the respective invoice. Notwithstanding, in no instance shall payment be due in less than thirty (30) days.

7.4 Invoices for payment submitted under either payment method will be supported by a progress report in sufficient detail to indicate work accomplished during the previous period and work planned during the next period for all open task authorizations.

7.5 Reimbursable Expenses are in addition to compensation for professional services and

include expenses incurred by the CONSULTANT and CONSULTANT's employees and consultants as follows:

- A. Expenses of reproductions, postage and handling of materials and documents as required.
- B. If authorized in advance by the CITY, expenses related to travel, including mileage, air fare, and rental car and per diem (inclusive of meals and hotel).
- C. Direct costs associated with the CONSULTANT engaging services for specialized studies and data collection, if required to complete the Scope of Services, and only if authorized in advance by the CITY.

7.6 CONSULTANT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to services performed on the basis of a Direct Cost Expense shall be available to the CITY or the CITY's Representative at mutually convenient times.

Article 8. Notices.

8.1 All notices under this Agreement shall be in writing and shall be effective when mailed by certified mail, return receipt requested, or when delivered personally, as provided hereafter or to such other addresses as may be designated by notice:

CITY OF KISSIMMEE	CONSULTANT
City of Kissimmee Development Services Dept.	
101 Church Street	
Kissimmee, Florida 34741	

Article 9 - Insurance Requirements

9.1 CONSULTANT shall procure and maintain for the duration of and in full compliance with the Agreement, insurance against claims for injuries to persons and damages to property which may arise from or in connection with the delivery and supply of products, materials and/or services to the CITY by the CONSULTANT, its agents, representatives and employees. The cost of such insurance shall be borne by the CONSULTANT or its subconsultant, if applicable. CONSULTANT shall supply evidence of all coverages required herein prior to

execution of this Agreement, such evidence of which shall be attached hereto as Exhibit "C" and made a part hereof.

9.2 Minimum Scope and Limits of Insurance shall be as follows:

- A. Commercial General Liability: \$1,000,000 combined single limit per occurrence and \$2,000,000 annual aggregate for bodily injury, personal injury and property damage.
- B. Auto Liability: \$1,000,000 combined single limit per occurrence and \$1,000,000 annual aggregate for bodily injury and property damage arising from the operations of all owned automobiles, non-owned automobiles and hired automobiles.
- C. Workers' Compensation insurance as required by the State of Florida.
- D. Employer's Liability: \$1,000,000 limit per occurrence, \$1,000,000 annual aggregate for disease and \$1,000,000 limit for disease of an individual employee.
- E. Professional Liability: \$1,000,000 limit each claim and \$2,000,000 yearly aggregate of claims.

9.3 All insurance, except Professional Liability and Workers' Compensation, shall include the CITY as an Additional Insured and Certificate Holder. There are not to be any special limitations on the protection being provided to the CITY, its officials, employees or volunteers.

9.4 Verification of coverages and continuations of coverage, provision of certificates and endorsements and authorized signatures, and additional coverage, as may be applicable, shall be made in accordance with the following:

- A. The CONSULTANT shall furnish the CITY with a certificate of insurance specifically stating the RFP number and title and with original endorsements affecting coverage. The certificates and endorsements must be received and approved before any work commences. Certificates and endorsements shall be received by the CITY's Representative by January 15th of each year this Agreement is in effect.
- B. If coverage on the certificates of insurance is shown to expire prior to completion of all terms of the Agreement with the CITY, the CONSULTANT shall furnish certificates of insurance evidencing renewal of such coverage to the CITY.

C. The CONSULTANT shall be responsible for their subconsultants and their insurance. Subconsultants are to provide Certificates of Insurance to the CITY evidencing coverage and terms in accordance with the CONSULTANT's requirements.

10. The CONSULTANT agrees to hold harmless and indemnify the CITY from and against liability arising out of the CONSULTANT's negligent performance of the obligations and duties outlined in this Agreement and described in further detail in the Scope of Services. It is specifically understood and agreed that in no case shall the CONSULTANT be required to pay an amount disproportional to its culpability or any share of any amount levied to recognize more than actual economic damage.

11. Nothing in this Agreement is intended to serve as a waiver of the sovereign immunity of the CITY.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have through their duly authorized representatives, approved and executed this Agreement for the purposes stated herein, as of the date set below.

CITY OF KISSIMMEE:

Mayor- Commissioner

Date: _____

Attest:

City Clerk

Approved as to form & legality

City Attorney

CONSULTANT:

Signature

Printed Name

Title: _____

Date: _____

**STATE OF FLORIDA
COUNTY OF OSCEOLA**

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2021 by _____, as _____, who is personally known to me or has produced _____ as identification.

Notary Public

(Print, Type or Stamp Name)

My Commission Expires: _____

EXHIBIT "A"

CITY OF KISSIMMEE PROFESSIONAL PLANNING CONSULTING SERVICES SCOPE OF SERVICES

The following potential work tasks may be assigned under this "continuing contract" as defined by Section 287.055(2)(g) Florida Statutes.

- I. **General Planning Services may be included but not limited to:**
 - a. Comprehensive Plan update / amendments;
 - b. Land Use Planning Studies;
 - c. Redevelopment / infill Plans;
 - d. Activity center / corridor planning;
 - e. Scenario planning and build out analysis;
 - f. Demographic studies;
 - g. Development of Regional Impact / Notice of Proposed Change (NOPC) / Substantial deviation;
 - h. Strategic Planning and Evaluation;
 - i. Historic Preservation planning;
 - j. Land Development Code updates; and/or
 - k. Other general planning consulting services as directed
- II. **Market Analysis may include but is not limited to:**
 - a. Barrier analysis to redevelopment and infill;
 - b. Areas market study and analysis;
 - c. Economic development;
 - d. Demographics / socio-economic analysis;
 - e. Economic assessment; and/or
 - f. Viability for specific development types.
- III. **Transportation Planning Services may be included but not limited to:**
 - a. Performing and or reviewing individual traffic analysis for private development;
 - b. Providing transportation modeling in conjunction with mobility fee development, alternative analysis and long range planning;
 - c. Providing annual traffic counts and other counts for special studies
 - d. Roadway conceptual analysis;
 - e. Developing plans for bicycle, pedestrian and transit in support of the Transportation Element; and/or

f. Performing periodic reports on Multimodal Transportation District and Vine Street.

IV. Geographic Information Systems (GIS) Mapping and Support.

V. Graphics / Renderings

- a. Landscape renderings;
- b. Photo montages;
- c. Concept plans; and/ or
- d. Branding and publications.

VI. Public Involvement / Consensus Building

EXHIBIT “B”
CITY OF KISSIMMEE PROFESSIONAL PLANNING CONSULTING SERVICES
HOURLY RATES

Compensation for services and reimbursable expenses shall be negotiated as a fixed fee or direct cost as agreed by CITY and CONSULTANT or an hourly rate further defined as follows:

Firm/Classification

Hourly Billing Rate

EXHIBIT “C”
DOCUMENTATION EVIDENCING SATISFACTION OF
INSURANCE REQUIREMENTS