

# **CITY OF WAUCHULA**

## **REQUEST FOR PROPOSALS RFP 22-01 WATER & WASTEWATER UTILITY RATE STUDY**

Sealed proposals will be received in the City Clerk's Office, **March 21, 2022**, prior to **2:00 p.m.**

Attached are important instructions and specifications regarding responses to this Request for Proposals. Failure to follow these instructions could result in disqualification.

Questions regarding this proposal must be in writing and must be sent to Holly Smith, City Clerk by mail at the address listed below or by email to [hsmith@cityofwauchula.com](mailto:hsmith@cityofwauchula.com). All questions must be received by **March 7, 2022**.

*Prospective proposers shall not contact, communicate with or discuss any matter relating in any way to the Request for Proposals with the City Commissioners, any employee of the City of Wauchula, other than the City Clerk or as directed in the Request for Proposals. Such communications initiated by a proposer shall be grounds for disqualifying the offending proposer from consideration for award of the proposal and/or any future proposal.*

Proposals may be mailed, express mailed or hand delivered to:

**City of Wauchula  
Holly Smith, City Clerk  
126 S. 7th Avenue  
Wauchula, Florida 33873**

**CITY OF WAUCHULA**  
**REQUEST FOR PROPOSALS**  
**RFP 22-01 WATER & WASTEWATER UTILITY RATE STUDY**

**Notice of Interest**

Proposer Name:

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Address:

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Telephone:

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Fax:

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E-Mail:

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Proposer's Signature:

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(Duly Authorized)

Return To:

Holly Smith  
City of Wauchula  
126 S. 7th Avenue  
Wauchula, FL 33873  
hsmith@cityofwauchula.com

## **INTRODUCTION**

The City of Wauchula, a municipal corporation, seeks the submittal of proposals from qualified firms to complete a review of the water and wastewater rates and associated expenses to develop a comprehensive rate study. The City covers approximately 3.3 square miles, with a population of 4,900. Wauchula is a full-service city that provides Water, Sewer, Solid Waste and Electric services. There are approximately 2,958 water customers and 2,326 wastewater customers. The last review of water and wastewater rates was done in 2014.

The City's water plant consists of five wells and three high service pumps. The plant is capable of supplying over 4 million gallons of water per day. The water is aerated, disinfected and also injected with an antiscalant that helps prevent corrosion in the pipes of the distribution system. The water storage capacity is 800,000 gallons. Also, there is a Reverse Osmosis system that treats about 10 percent of the well water that is blended with the water pumped from the wells to help improve water quality.

The City's wastewater plant is a Carrousel oxidation ditch activated sludge process with 1.2 million gallons per day capacity. It consists of: an on-site influent pump station, headworks, two Carrousel oxidation ditch aeration basins of 290,000 gallons each providing a total volume of 580,000 gallons, two clarifiers, one of 101,000 gallons and one of 186,000 gallons providing a total volume of 287,000 gallons with 3,349 square feet of surface area, two chlorine contact chambers of 29,000 gallons each for a total of 58,000 gallons, and an effluent transfer pump station with two pumps each rated for 2,500 gallons per minute. Residuals are stabilized with one aerobic sludge digester of 325,000 gallons. The residuals are land applied at the City owned residuals site after stabilization. There are two effluent storage tanks of 1.0 million gallons total volume and a reclaimed water pump station with two pumps each rated for 2,100 gallons per minute after the storage tanks with 10.6 miles of reclaimed water transmission pipeline.

## **OBJECTIVE**

The rate study is intended to establish utility rates that achieve the following objectives:

- Ensure that the revenues generated by the City's utility rates are adequate to maintain all operations at current service levels while accounting for anticipated cost increases in the immediate or foreseeable future while addressing capital needs and system depreciation.
- Affirm the appropriateness of existing user fee classifications and/or develop new classification recommendations as necessary to achieve clarity and equity.
- Ensure that revenues are adequate to meet debt service coverage ratios for existing bond covenants, and any future debt that may be needed to finance capital improvements.

- Affirm policies regarding adequate reserve amounts for operations, rate stabilization, and capital improvement debt expenses.

## **SCOPE OF SERVICES**

The City requires the support of a consultant for a water and wastewater rate study, including all tasks necessary for development and implementation of a new water and wastewater rate structure to include installation and tap charges. Tasks will include but are not limited to:

- Review of the City's current rate structure, including tap charges and customer services fees.
- Review of the City's ordinances and supporting documentation.
- Develop a general familiarity with the ability of the City's utility billing system.
- Analysis of the City's water & wastewater user classifications. Review and provide justification for any new classes of customers.
- Analysis of revenue and costs for the water & wastewater departments.
- Analysis of fund balances and make recommendations for appropriate levels.
- Recommend strategies and improvements from a financial standpoint.
- Analysis and comparison of the City's rates and services with others in the region.
- Review and consideration of capital improvement plans and needs identified by the City for all components of its water & wastewater infrastructure when developing rate schedules.
- Interaction with City staff members and others who may be assigned the task of developing these new rate structures. Proposals should anticipate four on-site or virtual meetings with staff.
- Identification of various rate structures and methodologies for City Commission consideration.
- Development of rate forecast up to 10 years based on forecasted costs.
- Development of a spreadsheet based pro-forma model that will become the property of the City which will allow staff to compare different scenarios and report on the results for future projections/recommendations. Rate models are to be in Excel format file.
- Presentation of proposed and recommended rate structures to the City Commission and public.
- Development of proposed revisions to the City ordinances necessary to implement the new regulations and rate structure.
- Draft and final reports that document the process used in development of the final rate structure.

It is the intent of the City to negotiate a Professional Services Agreement for the work described. The Professional Services Agreement will be in force until the completion of the project.

## **PROJECT SCHEDULE**

The schedule for services described herein will be formalized during the project contract negotiations. In general, the negotiated project schedule shall comply with the intent of the schedule presented below. The consultant, in conjunction with City staff will prepare a schedule for completion of each phase of the project. These schedules will include milestone dates for completion of the individual tasks identified in the project contract negotiations. These schedules will be integrated into and become part of the project contracts.

- Date Proposals Due March 2022
- Interview Selected Consultants March 2022
- Present recommendation to City Commission for approval April 2022
- Notice to Proceed April 2022
- Present Final Rate Study to City Commission June 2022
- Project Complete July 2022

## **SELECTION AND EVALUATION PROCEDURES**

The City reserves the right to determine, at its sole discretion, whether the proposals satisfactorily meet the criteria established in this RFP, and the right to seek clarification from any firm(s) submitting a proposal. A selection committee will review and score the proposals received. The evaluation criteria listed below will be utilized to evaluate the proposals. Interviews with firms may then be scheduled with the selection committee and/or the City Commission before a final decision is made. The City shall be the sole judge of its own best interests, the proposals and the resulting negotiated agreement. The City's decisions will be final.

Consultants will be evaluated using a number of factors including, but not limited to, the following:

- Qualifications and experience of staff (20 points)
- Prior Experience with similar projects (35 points)
- Project Approach and schedule (15 points)
- Location of staff (5 points)
- Proposed Fee Schedule (25 points)

The City reserves the right to act in the best interest of the City and its residents and businesses, including the right to reject a proposal that is given the highest score in the evaluation process if the proposal is not in the best interest of its residents and businesses.

## **SUBMITTAL**

Submittals should not contain information in excess of that requested, must be concise, and must specifically address the issues of this RFP. The submittals should include

the following:

1. **Letter of Transmittal:** Briefly state your understanding of the work to be done and provide a positive commitment to perform the work within a specified time period.
2. **Profile of Firm and Qualifications:**
  - a. Give a brief history of the firm. State whether the firm is local, regional or national. State the location of the office from which the work will be performed. Describe present size of the firm and nature of services offered.
  - b. Give brief resume of key persons to be assigned to the project including but, not limited to how many years employed with this and other firms, experience on similar projects and education. Any use of subcontractors should be shown separately and the tasks to which they will be assigned must be identified as well.
  - c. Provide a list of similar projects which best illustrate the experience of the firm. List no more than ten (10) projects completed within the last five (5) years. For each project listed, include the name and current contact information of a representative for whom the project was undertaken who can verify satisfactory performance and professionalism.
3. **Project Approach and Schedule:** Describe in detail the approach to the project identifying all tasks and activities that the firm will perform. Provide a project schedule identifying major activities and the amount of time required to complete each project activity. Include any innovative approaches to providing the services.
4. **Proposed Cost:** The compensation schedule shall be devised based on the tasks outlined in the project schedule. Each task shall contain a cost, and shall be tallied for a grand total at the bottom of the compensation schedule. The compensation schedule may include multiple methodology options with applicable costs.

## RESPONSE

Interested parties are invited to submit one (1) bound original and one (1) electronic copy on a USB drive of their proposal in a sealed envelope to the City Clerk. The envelope should be labeled "**RFP #22-01, Water & Wastewater Utility Rate Study**" and marked with the respondent's name and address. Proposals may be mailed or delivered to:

**City of Wauchula  
Holly Smith, City Clerk  
126 S. 7th Avenue  
Wauchula, Florida 33873**

The submittal shall be received by the City only at the above address prior to **2:00 p.m., March 21, 2022.**

The delivery of the submittal on the above date and prior to the specified time is solely the responsibility of the proposer.

The submittal may be withdrawn either by written notice to the City Clerk or in person, if properly identified, at any time prior to the above submittal deadline. Proposals shall remain valid for at least sixty (60) days after the filing deadline.

## GENERAL CONDITIONS

### CONTACT

After the issuance of any Request for Proposals, prospective proposers shall not contact, communicate with or discuss any matter relating in any way to the Request for Proposals with the City Commission, and any employee of the City of Wauchula, other than the City Clerk or as directed in the Request for Proposals. This prohibition begins with the issuance of any Request for Proposals and ends upon execution of the final contract. Such communications initiated by a proposer **shall** be grounds for disqualifying the offending proposer from consideration for award of the proposal and/or any future proposal.

### INSURANCE REQUIREMENTS

The selected firm, if any, shall maintain, at all times, the following minimum levels of insurance and; shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below. Provide to the City original Certificates of Insurance satisfactory to the City to evidence such coverage before any work commences. The City of Wauchula, a municipal corporation, shall be an additional named insured on all policies related to the project; excluding workers' compensation and professional liability. The Workers' Compensation policy shall contain a waiver of subrogation in favor of the City of Wauchula. All insurance coverage shall be written with a company having an A.M. Best Rating of at least the "A" category and size category of VIII. The firm's self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the City. The City requires thirty (30) days written notice of cancellation and ten (10) days written notice of non-payment. In the event of any failure by the firm to comply with the provisions; the City may, at its option, on notice to the firm suspend the project for cause until there is full compliance. Alternatively, the City may purchase such insurance at the firm's expense, provided that the City shall have no obligation to do so and if the City shall do so, the firm shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

- Worker's Compensation and Employer's Liability Insurance providing statutory benefits, including those that may be required by any applicable federal statute:

Admitted in Florida	Yes
Employer's Liability	\$1,000,000
All States Endorsement	Statutory
Voluntary Compensation	Statutory

- Commercial General Liability Insurance. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage, and personal injury resulting from any one occurrence, including the following coverages:



Premises and Operations; Broad Form Commercial General Liability Endorsement to include blanket contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted) and Broad Form Property Damage coverages.

- Comprehensive Automobile Liability Insurance. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage, and personal injury resulting from any one occurrence, including all owned, hired and non-owned vehicles.
- Professional Liability Insurance. \$1,000,000 per occurrence, exclusive of defense costs.

## **INDEMNIFICATION**

Consultant shall, in addition to any other obligation to indemnify the City and to the fullest extent permitted by law, protect, defend (by counsel reasonably acceptable to City), indemnify and hold harmless the City, their agents, elected officials and employees from and against, including, but not limited to, all claims, actions, liability, losses, costs (including attorney's fees) arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of or resulting from or claims to have resulted in whole or in part from any actual or alleged act or omission of the consultant, any subcontractor, anyone direct or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work; or violation of law, statute, ordinance, governmental administration order, rule, regulation or infringement of patent rights by consultant in the performance of the work; or liens, claims or actions made by the consultant or any subcontractor or other party performing the work.

## **PUBLIC ENTITY CRIMES STATEMENT**

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 bid or proposal on a contract to provide any goods or services to a public entity, may not submit a bid or proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids 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. By submitting this proposal, the proposer hereby certifies that they have complied with said statute.

## **EQUAL OPPORTUNITY/AFFIRMATIVE ACTION**

The City is an equal opportunity/affirmative action employer. The City is committed to equal opportunity employment effort; and expects firms that do business with the City to have a vigorous affirmative action program.

## **WOMEN/MINORITY BUSINESS ENTERPRISE OUTREACH**

The City hereby notifies all Proposers that W/MBE's are to be afforded a full opportunity to participate in any request for proposal by the City and will not be subject to discrimination on the basis of race, color, sex or national origin.

## **DEVELOPMENT COSTS**

Neither the City nor its representative(s) shall be liable for any expenses incurred in connection with preparation of a response to the RFP. Proposers should prepare their proposals simply and economically, providing a straightforward and concise description of the proposer's ability to meet the requirements of the RFP.

## **APPLICABLE LAWS AND COURTS**

This RFP and any resulting agreements shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Hardee County, Florida or the United States District Court, Middle District of Florida, located in Hillsborough County, Florida. The proposer shall comply with all applicable federal, state and local laws and regulations.

## **CONTRACTUAL MATTERS**

A copy of the proposed Professional Services Agreement to be entered into with the successful proposer(s) is included with this RFP as Attachment "A".

All contracts are subject to final approval of the City of Wauchula City Commission. Persons who incur expenses or change position in anticipation of a contract prior to the Commission's approval do so at their own risk.

## **PROPRIETARY INFORMATION**

In accordance with Chapter 119 of the Florida Statutes (Public Records Law), and except as may be provided by other applicable State and Federal Law, all proposers should be aware that Request for Proposals and the responses thereto are in the public domain. However, the proposers are required to **identify specifically** any information contained in their proposals which they consider confidential and/or proprietary and which they believe to be exempt from disclosure.

All proposals received from proposers in response to this Request for Proposals will

become the property of the City and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the City.

### **UNAUTHORIZED ALIEN(S)**

The Consultant agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The City shall consider the employment or utilization of unauthorized aliens a violation of Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the City.

### **LIMITATIONS**

This request does not commit the City of Wauchula to award a contract. Proposers will assume all costs incurred in the preparation of their response to this RFP. The City reserves the right to: 1) accept or reject qualifications and/or proposals in part or in whole; 2) request additional qualification information; 3) limit and determine the actual contract services to be included in a contract; 4) obtain information for use in evaluating submittals from any source and 5) reject all submittals. The City reserves the right to modify this RFP at any time. Written addenda issued by the City is the only method which should be relied on with respect to changes to the RFP. Proposer is responsible to contact the City prior to submitting a proposal to determine if any amendments were made to the RFP.

**ATTACHMENT " A "**  
**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, between the CITY OF WAUCHULA, a municipal corporation, organized and existing under the laws of the State of Florida, by and through its City Commission, situated at 126 S. 7th Avenue, Wauchula, Florida 33873, hereinafter referred to as CITY, and \_\_\_\_\_ a \_\_\_\_\_ corporation, headquartered at \_\_\_\_\_

hereinafter referred to as CONSULTANT, and whose Federal Employer Identification Number is \_\_\_\_\_:

WHEREAS, CITY desires to engage a Consultant that has a special and unique competence and experience in performing consulting services necessary to provide a Water & Wastewater Utility Rate Study; and,

WHEREAS, CITY has solicited these services in RFP #22-01, included by reference as to the scope of services contained herein; and

WHEREAS, CONSULTANT represents it is capable and prepared to provide such Services;

NOW, THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

**1.0 Term**

1.1 This Agreement shall take effect on the date of its execution by the City Manager.

1.2 The term of this Agreement shall extend until the completion of the services required hereunder and in accordance with the project requirements and schedule, unless otherwise terminated as provided herein.

**2.0 Services to Be Performed by CONSULTANT**

2.1 CONSULTANT shall perform the services as generally described in the Scope of Work Exhibit "A".

**3.0 Compensation**

3.1 CITY shall pay CONSULTANT in accordance with Exhibit "B", "Compensation Schedule", which is attached hereto and incorporated by reference as part of this Agreement.

3.2 The Compensation Schedule, as set out in Exhibit "B" may be adjusted by an Amendment to the Professional Services Agreement, after mutual written agreement of the parties. The City Manager will approve and execute any compensation schedule amendment.

3.3 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of correct, fully documented, invoice, in form and substance satisfactory to the CITY. All invoices shall be delivered to:

City of Wauchula  
126 S. 7th Avenue  
Wauchula, FL 33873

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

#### **4.0 Insurance**

##### **4.1 General Provisions**

4.1.1 CONSULTANT shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below and provide the CITY with a Certificate of Insurance and an opportunity to inspect a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the CITY to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the CITY.

4.1.2 The CITY shall be named as an additional insured on all CONSULTANT policies related to the project, excluding professional liability and worker's compensation. The policies shall contain a waiver of subrogation in favor of the City of Wauchula. All insurance coverage shall be written with an insurer having an A.M. Best Rating of at least the "A" category and size category of VIII.

4.1.3 The CONSULTANT's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the CITY.

4.1.4 If there is any failure by the CONSULTANT to comply with the provisions of this section, the CITY may, at its option, on notice to the CONSULTANT, suspend the work for cause until there is full compliance.

4.1.5 CITY may, at its sole discretion, purchase such insurance at CONSULTANT's expense provided that the CITY shall have no obligation to do so and if the CITY shall do so, it shall not relieve CONSULTANT of its obligation to obtain insurance.

4.1.6 The CONSULTANT shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

4.1.7 All CONSULTANT's sub-contractors shall be required to include CITY and CONSULTANT as additional insured on their General Liability Insurance policies.

4.1.8 In the event that subconsultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the subconsultants' insurance coverage.

4.1.9 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

4.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

4.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

4.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

4.4 Professional Liability Insurance. \$1,000,000.00 per occurrence, exclusive of defense costs.

4.5 Worker's Compensation. The CONSULTANT shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

**5.0 Standard of Care**

5.1 CONSULTANT has represented to the CITY that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

5.2 CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

5.3 CONSULTANT shall, at no additional cost to CITY, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

5.4 The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the professional standards in the field.

**6.0 Indemnification**

6.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, CITY and CONSULTANT agree to allocate such liabilities in accordance with this Section.

6.2 Indemnification.

6.2.1 CONSULTANT, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to CITY) protect and hold CITY, and its officers, employees and agents, free and harmless from and against any and all, including, but not limited to, any claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses and expenses (including, without limitation, attorney's fees and costs during negotiation, through litigation and all appeals therefrom), or death or injury to any person or damage to any property whatsoever, arising out of or resulting from (i) the failure of CONSULTANT to comply with applicable non-conflicting laws, rules or regulations, (ii) the breach by CONSULTANT of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of CONSULTANT's performance of this Agreement, or (iv) the negligent act,

errors or omissions, or intentional or willful misconduct, of CONSULTANT, its sub-consultants, agents, employees and invitees; provided, however, that CONSULTANT shall not be obligated to defend or indemnify the CITY with respect to any such claims or damages arising out of the CITY's negligence.

6.2.2 CITY review, comment and observation of the CONSULTANT's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

6.2.3 CONSULTANT agrees that it bears sole legal responsibility for its work and work product, and the work and work product of subconsultants and their employees, and/or for CONSULTANT's performance of this Agreement and its work product(s).

6.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Agreement shall survive as if the Agreement were in full force and effect.

#### **7.0 Independent Contractor**

7.1 CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

7.2 CITY shall have no right to supervise the methods used, but CITY shall have the right to observe such performance.

7.3 CONSULTANT shall work closely with CITY in performing Services under this Agreement.

7.4 The CONSULTANT shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

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

#### **8.0 Authority to Practice**

8.1 The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

#### **9.0 Compliance with Laws**

9.1 In performance of the Services, CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

#### **10.0 Subcontracting**

10.1 The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

10.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the

new subcontractor by the CITY. Failure of a Subcontractor to timely or properly perform its obligations shall not relieve CONSULTANT of its obligations hereunder.

**11.0 Federal and State Taxes**

11.1 The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the CITY, nor shall the CONSULTANT be authorized to use the CITY's Tax Exemption Number in securing such materials.

**12.0 Public Entity Crimes**

12.1 The CONSULTANT understands and acknowledges that this Agreement with the CITY will be void, in the event the conditions under Section 287.133, Florida Statutes applies to the CONSULTANT, relating to conviction for a public entity crime.

**13.0 CITY's Responsibilities**

13.1 CITY shall be responsible for providing access to all information in the CITY's possession that may reasonably be required by CONSULTANT, including; existing reports, studies, financial information, and other required data that are available in the files of the CITY.

**14.0 Termination of Agreement**

14.1 This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Agreement through no fault of the CONSULTANT.

14.2 This Agreement may be terminated by the CITY with or without cause immediately upon written notice to the CONSULTANT.

14.3 Unless the CONSULTANT is in breach of this Agreement, the CONSULTANT shall be paid for services rendered to the CITY's satisfaction through the date of termination.

14.4 After receipt of a Termination Notice and except as otherwise directed by the CITY, the CONSULTANT shall:

14.4.1 Stop work on the date and to the extent specified.

14.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

14.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the CITY.

14.4.4 Continue and complete all parts of the work that have not been terminated.

14.5 The CONSULTANT shall be paid for services actually rendered to the date of termination.

**15.0 Uncontrollable Forces (Force Majeure)**

15.1 Neither the CITY nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the



non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

15.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

15.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

#### **16.0 Governing Law and Venue**

16.1 This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Hardee County, Florida or the United States District Court, Middle District of Florida located in Hillsborough County, Florida.

#### **17.0 Non-Discrimination**

17.1 The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

#### **18.0 Waiver**

18.1 A waiver by either CITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

#### **19.0 Severability**

19.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

19.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

19.3 The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

19.4 The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

## **20.0 Entirety of Agreement**

20.1 The CITY and the CONSULTANT agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein.

20.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and CONSULTANT pertaining to the Services, whether written or oral.

## **21.0 Modification**

21.1 The Agreement may not be modified unless such modifications are evidenced in writing signed by both CITY and CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both parties.

## **22.0 Successors and Assigns**

22.1 CITY and CONSULTANT each binds itself and its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.

22.2 CONSULTANT shall not assign this Agreement without the express written approval of the CITY by executed amendment.

22.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this agreement and such substitution shall be affirmed by the City of Wauchula City Commission by executed amendment.

## **23.0 Contingent Fees**

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

## **24.0 Truth-In-Negotiation Certificate**

24.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

24.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

## **25.0 Ownership of Documents**

25.1 CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY. CONSULTANT is not liable for any damages,

injury or costs associated with the CITY use or distribution of these documents for purposes other than those originally intended by CONSULTANT.

**26.0 Access and Audits**

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

26.2 Misrepresentations of billable time or reimbursable expenses as determined by the Auditor to the City of Wauchula shall result in the recovery of any resulting overpayments. The CITY's cost of recovery shall be the sole expense of the CONSULTANT, including accounting and legal fees, court costs and administrative expenses.

26.3 Intentional misrepresentations of billable hours and reimbursable expenses will be criminally prosecuted to the fullest extent of the law.

26.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

**27.0 Notice**

27.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

**As to City:**  
**City of Wauchula**  
126 S. 7th Avenue  
Wauchula, FL 33873

**Attention: City Manager**

As to Consultant:

27.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

27.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and

CITY.

**28.0 Service of Process**

As to City: Thomas A. Cloud, Esquire  
GrayRobinson, P.A.  
301 East Pine Street, Suite 1400  
Orlando, Florida 32801

As to Consultant:

**29.0 Contract Administration**

29.1 Services of CONSULTANT shall be under the general direction of the City Manager, or his designee, who shall act as the CITY's representative during the term of the Agreement.

**30.0 Key Personnel**

30.1 CONSULTANT shall notify CITY in the event of key personnel changes, which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to changes. CONSULTANT at CITY's request shall remove without consequence to the CITY any Subcontractor or employee of the CONSULTANT and replace him/her with another employee having the required skill and experience. CITY has the right to reject proposed changes in key personnel. The following personnel shall be considered key personnel:

Name:

Name:

**31.0. Annual Appropriations**

31.1 CONSULTANT acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this agreement is contingent upon annual appropriation.

**32.0 Unauthorized Alien(s)**

32.1 The CONSULTANT agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this Agreement. The City shall consider the employment or utilization of unauthorized aliens a violation of

Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the City.

**33.0 Limitation of Liability.**

33.1 In no event, shall the CITY be liable to the CONSULTANT for indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature, including loss of profit, whether foreseeable or not, arising out of or resulting from the nonperformance or breach of this contract by the CITY whether based in contract, common law, warranty, tort, strict liability, contribution, indemnity or otherwise.

(THE REMAINDER OF THE PAGE LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

**Attest:**  
**HOLLY SMITH**  
City Clerk

**CITY OF WAUCHULA, a municipal corporation, organized & existing under the laws of the State of Florida**

By: \_\_\_\_\_  
Holly Smith, City Clerk

By: \_\_\_\_\_  
Terry W. Atchley, City Manager

Date Approved by Commission: \_\_\_\_\_

Review as to form and legal sufficiency

\_\_\_\_\_  
Date \_\_\_\_\_  
Thomas A. Cloud  
City Attorney

**Attest:**

**(COMPANY NAME), a \_\_\_\_\_ Corporation**

By: \_\_\_\_\_  
Corporate Secretary

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Print Name]

DATE: \_\_\_\_\_

\_\_\_\_\_  
[Title]

SEAL

DATE: \_\_\_\_\_

ACKNOWLEDGEMENT OF FIRM, IF A CORPORATION

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instruments was acknowledged before me this

\_\_\_\_\_ by \_\_\_\_\_

(Date)

(Name of officer or agent, title of officer or agent)

on behalf of the corporation, pursuant to the powers conferred upon said officer or agent by the corporation. He/she personally appeared before me at the time of notarization, and is personally known to me or has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters stated in the foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_

(Date)

\_\_\_\_\_ Commission Number \_\_\_\_\_

(Official Notary Signature and Notary Seal)

\_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

(Name of Notary typed, printed or stamped)

ACKNOWLEDGEMENT OF FIRM, IF A PARTNERSHIP

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this

\_\_\_\_\_ by \_\_\_\_\_

(Date)

(Name of acknowledging partner or agent)

on behalf of \_\_\_\_\_, a partnership. He/She personally appeared before me at the time of notarization, and is personally known to me or has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters in the foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_

(Date)

\_\_\_\_\_ Commission Number \_\_\_\_\_

(Official Notary Signature and Notary Seal)

\_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

(Name of Notary typed, printed or stamped)

ACKNOWLEDGEMENT OF FIRM, IF AN INDIVIDUAL

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this

\_\_\_\_\_ By \_\_\_\_\_

(Date)

(Name of acknowledging)

who personally appeared before me at the time of notarization, and is personally known to me or has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters in the foregoing instrument and certified the same to be true in all respects. Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_

(Date)

\_\_\_\_\_ Commission Number \_\_\_\_\_

(Official Notary Signature and Notary Seal)

\_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

(Name of Notary typed, printed or stamped)

## **EXHIBIT "A"**

### **SCOPE OF WORK**

Tasks will include but are not limited to:

- Review of the City's current rate structure, including tap charges and customer services fees.
- Review of the City's ordinances and supporting documentation.
- Develop a general familiarity with the ability of the City's utility billing system.
- Analysis of the City's water & wastewater user classifications. Review and provide justification for any new classes of customers.
- Analysis of revenue and costs for the water & wastewater departments.
- Analysis of fund balances and make recommendations for appropriate levels.
- Recommend strategies and improvements from a financial standpoint.
- Analysis and comparison of the City's rates and services with others in the region.
- Review and consideration of capital improvement plans and needs identified by the City for all components of its water & wastewater infrastructure when developing rate schedules.
- Interaction with City staff members and others who may be assigned the task of developing these new rate structures. Proposals should anticipate four on-site or virtual meetings with staff.
- Identification of various rate structures and methodologies for City Commission consideration.
- Development of rate forecast up to 10 years based on forecasted costs.
- Development of a spreadsheet based pro-forma model that will become the property of the City which will allow staff to compare different scenarios and report on the results for future projections/recommendations. Rate models are to be in Excel format file.
- Presentation of proposed and recommended rate structures to the City Commission and public.
- Development of proposed revisions to the City ordinances necessary to implement the new regulations and rate structure.
- Draft and final reports that document the process used in development of the final rate structure.



**EXHIBIT "B"**  
**COMPENSATION SCHEDULE**