

PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made this _____ day of _____ 2023, between **CITY OF SANIBEL** ("OWNER") and **K2M Design, Inc.** ("CONSULTANT").

OWNER and CONSULTANT in consideration of their mutual covenants herein agree as follows:

SECTION 1 – GENERAL

Term of Agreement:

The term of this agreement shall be from **October 1, 2023** to **September 30, 2028**. This Agreement may be renewed for one additional five-year term by OWNER, upon agreement of CONSULTANT, in writing under the same terms and conditions set forth below.

Standard of Care:

CONSULTANT shall perform for or furnish to OWNER professional engineering, surveying, mapping, planning, environmental consulting, landscape architecture and other related services for the assigned tasks or projects to which this Agreement applies as hereinafter provided and as set forth in Exhibit "B", Scope of Services. CONSULTANT shall serve as OWNER's prime engineering representative for the tasks or projects assigned to CONSULTANT by OWNER from time to time for purposes of providing professional engineering consultation and advice with respect thereto. CONSULTANT may, with written approval of the City Public Works Director, employ such Sub-Consultants as CONSULTANT deems necessary to assist in the performance or furnishing of professional surveying, engineering, and related services hereunder. CONSULTANT shall not be required to employ any Sub-Consultant unacceptable to CONSULTANT.

The standard of care for all professional surveying and related services performed or furnished by CONSULTANT under this Agreement will be the care and skill ordinarily used by members of CONSULTANT's profession practicing under similar conditions at the same time and in the same locality. CONSULTANT makes no warranties, express or implied, under this Agreement or otherwise, in connection with CONSULTANT's services.

Definitions:

Whenever used in this Agreement, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Agreement: Agreement means this Agreement for Professional Services between OWNER and CONSULTANT for the professional services of CONSULTANT including exhibits listed in Section 5 of this Agreement.

Services: The services to be performed for or furnished to OWNER by CONSULTANT described in Exhibit B, (Scope of Services) of this Agreement.

Contractor: The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to any task or project.

CONSULTANT's Sub-Consultant: The person or entity having a contract with CONSULTANT to perform or furnish services as CONSULTANT's independent professional associate or consultant.

Reimbursable Expenses: The expenses incurred directly in connection with the performance or furnishing of services for any assigned task or project for which OWNER shall pay CONSULTANT.

SECTION 2 – PAYMENTS TO CONSULTANT FOR SERVICES AND REIMBURSABLE EXPENSES

Compensation:

For CONSULTANT's services. OWNER shall pay CONSULTANT for services performed or furnished on the basis set forth in Exhibit A ("Hourly Rate Schedule")

For Sub-Consultant's services. OWNER shall pay CONSULTANT for services performed or furnished by CONSULTANT's Sub-consultants which have been approved, in advance, by the City's Public Works Director.

For Reimbursable Expenses. In addition to payments provided for CONSULTANT and CONSULTANT's Sub-Consultants, OWNER shall pay CONSULTANT for reimbursable expenses incurred by CONSULTANT.

Any single reimbursable expense which exceeds \$500 shall be approved in advance, in writing, by the City's Public Works Director.

Invoices:

Invoices for CONSULTANT's services, Sub-Consultants and Reimbursable Expenses will be prepared in accordance with CONSULTANT's standard invoicing practices and will be submitted to OWNER by CONSULTANT. Invoices will be paid in accordance with the OWNER's Prompt Payment Policy.

Other Provisions Concerning Payments:

Unpaid Invoices. If OWNER fails to make any payment due CONSULTANT for services and expenses in accordance with the OWNER's Prompt Payment Policy, CONSULTANT may, after giving seven days' written notice to OWNER, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses and charges. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

If either the OWNER or CONSULTANT terminates this Agreement, CONSULTANT will be paid for all services performed or furnished in accordance with this Agreement by CONSULTANT through the date of termination including any costs reasonably incurred by CONSULTANT that are directly attributable to the termination. CONSULTANT will be paid for the charges of CONSULTANT's Sub-Consultants employed to perform or furnish services to the extent such services have been performed or furnished in accordance with this Agreement through the effective date of the termination. CONSULTANT also will be paid for all unpaid Reimbursable Expenses authorized by this Agreement and directly relating to the services performed prior to termination.

Records of CONSULTANT's costs pertinent to CONSULTANT's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER at no cost on request prior to final payment for CONSULTANT's services. Additionally, documentation supporting reimbursable expenses shall be provided to OWNER with each expense reimbursement request.

SECTION 3 – OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT and shall bear all costs incident thereto: Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by CONSULTANT under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to CONSULTANT's services for the project.

Provide all criteria and full information as to OWNER's requirements for the project, including design objectives and constraints.

Assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the project.

OWNER shall be responsible for, and CONSULTANT may rely upon, the accuracy and completeness of all reports, data and other information furnished to CONSULTANT by OWNER. CONSULTANT may use such reports, data and information in performing or furnishing services under this Agreement.

Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform services under this Agreement.

Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by CONSULTANT (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.

Obtain, secure, and make application for any and all forms of permits and/or approvals which might be necessary for the design and/or construction of the assigned projects as described herein. Pay directly to government authorities for all permit applications. Notwithstanding any other provision herein to the contrary, it is expressly understood by and between the parties hereto, while the CONSULTANT may, according to the Scope of Services, have duties and/or responsibilities with respect to the assembly of data and/or completion of forms associated with applications for permits and/or approvals, it is expressly understood that the OWNER is solely responsible for the ultimate acquisition of any and all such permits and/or approvals. Notwithstanding any other provision herein to the contrary, the Scope of Services described herein, and/or as otherwise discussed by and between the parties to the Agreement, the following services constitute *Excluded Services*:

Noting, monitoring and/or advising the OWNER of any deadlines, expiration dates, limitations, and/or any/all forms of permits and/or approvals which might reasonably be necessary for the design and/or construction of the OWNER's assigned projects.

Provide, as may be required for the project: accounting, bond and financial advisory, independent cost estimating and insurance counseling services; and such legal services as OWNER may require or CONSULTANT may reasonably request with regard to legal issues pertaining to the project.

SECTION 4 – GENERAL CONSIDERATIONS

Termination

The obligation to provide further services under this Agreement may be terminated under the following circumstances:

- (a) For Cause, by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure, provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided from herein shall extend up to, but in no case more than, sixty days after the date of receipt of the notice.

- (b) By CONSULTANT, upon seven days' written notice if CONSULTANT believes that CONSULTANT is being requested by OWNER to furnish or perform services contrary to CONSULTANT's responsibilities as a licensed design professional; or upon seven days' written notice if the CONSULTANT's services for design or during the construction of the Project are delayed or suspended for more than ninety days for reasons beyond CONSULTANT's control; or upon assignment of this agreement or transfer of the project by OWNER to any other entity without the prior written consent of CONSULTANT or upon material changes in the conditions under which this agreement was entered into, the scope or services or the nature of the project and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes. In the case of termination by CONSULTANT, CONSULTANT shall have no liability to OWNER on account of such termination.
- (c) By OWNER, for convenience upon seven (7) days' written notice to CONSULTANT, effective upon the receipt of OWNER's notice by CONSULTANT.

E-Verify

In compliance with Section 448.095, Fla. Stat., CONSULTANT and its Sub-Consultant must be registered with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

- (a) CONSULTANT shall require each of its Sub-Consultants to provide CONSULTANT with an affidavit stating that the Sub-Consultant does not employ, contract with, or subcontract with an unauthorized alien. CONSULTANT shall maintain a copy of the Sub-Consultant's affidavit as part of and pursuant to the records retention requirements of this Agreement.
- (b) The OWNER, CONSULTANT, or any Sub-Consultant who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
- (c) The OWNER, upon good faith belief that a Sub-Consultant knowingly violated the provisions of this section, but CONSULTANT otherwise complied, shall promptly notify CONSULTANT, and CONSULTANT shall immediately terminate the contract with the Sub-Consultant.
- (d) A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. CONSULTANT acknowledges that upon termination of this Agreement by the OWNER for a violation of this section by CONSULTANT, CONSULTANT may not be awarded a public contract for at least one (1) year. CONSULTANT further acknowledges that CONSULTANT is liable for any additional costs incurred by the OWNER as a result of termination of any contract for a violation of this section.
- (e) Subcontracts. CONSULTANT or Sub-Consultant shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the Sub-Consultant to include these clauses in any lower tier subcontracts. CONSULTANT shall be responsible for compliance by any Sub-Consultant or lower tier subcontractor with the clauses set forth in this section.

Reuse of Documents:

All documents including Drawings and Specifications provided or furnished by CONSULTANT (or CONSULTANT's Sub-Consultants) pursuant to this Agreement in respect to any project shall be owned

by and the property of the OWNER provided CONSULTANT has been paid in full pursuant to this Agreement for CONSULTANT'S professional surveying and engineering services. Such documents are not intended or represented to be suitable for use, reuse or modification by OWNER or others on extensions of the Project or on any other project. Any use, reuse, or modification without written verification or adaptation by CONSULTANT and CONSULTANT's Sub-Consultants, as appropriate, for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to CONSULTANT, or to CONSULTANT's Sub-Consultants.

Insurance:

CONSULTANT shall maintain the following minimum insurance types and limits. Any Sub-Consultant retained by CONSULTANT pursuant to this Agreement shall also maintain the following insurance types and limits unless reduced or alternative minimum insurance types and limits are approved by OWNER, in writing.

1. Worker's Compensation: Statutory Limits
 - E.L. Each Accident \$ 500,000
 - E.L. Disease – Each Employee \$ 500,000
 - E.L. Disease – Policy Limit \$ 500,000
2. General Liability (Occurrence):
 - Each Occurrence \$ 1,000,000
 - Fire Damage (any one fire) \$ 50,000
 - Medical Expense (any one person) \$ 5,000
 - Personal & Adv. Injury \$ 1,000,000
 - General Aggregate \$ 1,000,000
 - Products Completion \$ 1,000,000
3. Excess Umbrella Liability:
 - Each Occurrence: \$ 1,000,000
 - Aggregate: \$ 1,000,000
4. Automobile Liability:
 - Combined Single Limit
 - Each Accident \$ 1,000,000
5. Professional Liability (Claims-made) \$ 1,000,000

At any time, OWNER may request that CONSULTANT, at OWNER's sole expense, provide additional insurance coverage, different limits or revised deductibles excess of those specified in this Agreement. If so requested by OWNER, and if commercially available, CONSULTANT shall obtain and shall require CONSULTANT's Sub-Consultants to obtain such additional insurance coverage, different limits or revised deductibles, for such periods of time as requested by OWNER, at OWNER's sole expense, and this Agreement will be supplemented to incorporate these requirements.

Dispute Resolution:

OWNER and CONSULTANT agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes") to non-binding mediation by a mediator mutually acceptable to both OWNER and CONSULTANT prior to either of them initiating litigation against the other. The cost of mediation will be shared equally between the OWNER and CONSULTANT.

Controlling Law:

This Agreement is to be governed by the laws of the State of Florida. In the event of any litigation between OWNER and CONSULTANT arising out of this Agreement, OWNER and CONSULTANT agree that the same shall be filed in the appropriate Florida state court having jurisdiction of the amount in controversy in Lee County, Florida.

Expenses of Litigation:

In the event litigation in any way related to the Services performed hereunder the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable attorney's fees and other reasonable expenses related to the litigation.

Successors and Assigns:

OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators, assigns and legal representatives of OWNER and CONSULTANT are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect of all covenants, agreements and obligations of this Agreement.

Neither OWNER nor CONSULTANT may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other. Unless expressly provided otherwise in this Agreement:

Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by CONSULTANT to any contractor, subcontractor, supplier, other person, or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and CONSULTANT.

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party, unless agreed in writing by OWNER and CONSULTANT. The OWNER agrees that the substance of the provisions of this paragraph shall appear in the Contract Documents.

Public Records:

OWNER is a public agency subject to Chapter 119, Florida Statutes, the Public Records Law. As a contractor or service provider to OWNER, CONSULTANT is also subject to the Public Records Law pursuant to Section 119.0701, Florida Statutes, and shall comply with Florida's Public Records Law. Unless specifically exempted by Florida law, in whole or part, the CONSULTANT shall:

- (a) Keep and maintain public records required by the OWNER in order to perform the service. This shall include all records relating to CONSULTANT's services provided to the OWNER and includes "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics or means of transmission."
- (b) Upon request from the OWNER's custodian of public records, provide the OWNER with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at

a cost that does not exceed the cost provided in 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 for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the OWNER.
- (d) Upon completion of the contract, transfer, at no cost to the OWNER, all public records in possession of the CONSULTANT, or keep and maintain public records required by the OWNER to perform the service. If the CONSULTANT transfers all public records to the OWNER upon completion of the contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the OWNER, upon request from the OWNER's custodian of public records, in a format that is compatible with the information technology systems of the OWNER.

As required by Section 119.0701(2)(a), the following contact information is provided to the CONSULTANT in the format required by statute:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**SANIBEL CITY CLERK
800 DUNLOP ROAD
SANIBEL, FLORIDA 33957
(239) 472-3700
scotty.kelly@mysanibel.com**

Notices:

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

Severability:

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONSULTANT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Limitation of Liability:

In recognition of the relative risks and benefits of the project to both the OWNER and CONSULTANT, the risks have been allocated such that the OWNER agrees, to the fullest extent permitted by law, to limit the liability of CONSULTANT and its subconsultants to the OWNER and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of CONSULTANT and its subconsultants to all those named shall not exceed the greatest of the following: (a) the limits of any applicable insurance of CONSULTANT and its subconsultants; (b) \$100,000 or (c) the two times the amount of CONSULTANT's total fee paid by the OWNER for services under this Agreement. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

Indemnification:

CONSULTANT shall indemnify and hold harmless the OWNER and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused, in whole or in part, by the negligent act, error, or omission of CONSULTANT in the performance of services under this Agreement. If such damage results in part by the negligence or other wrongful act of another party, CONSULTANT shall be liable only to the extent of CONSULTANT's proportional negligence or other wrongful act; however, such limitation, if any, shall only be effective if established by a Florida court of competent jurisdiction or agreed upon by the OWNER.

Force Majeure:

CONSULTANT shall not be liable for any damages caused by any delay that is beyond CONSULTANT's reasonable control, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

SECTION 5 – EXHIBITS

This Agreement is subject to the provisions of the following Exhibit which is attached to and made a part of the Agreement:

Exhibit A "Rate Schedule"

Exhibit B "Scope of Services"

Exhibit C "Required Contract Provisions"

Exhibit D "Request for Qualifications – Hurricane Ian Architectural and Engineering Services"

This Agreement (consisting of pages 1 to 9, and including Exhibits A, B, C, and D identified above) constitutes the entire Agreement between OWNER and CONSULTANT and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed written instrument signed by OWNER and CONSULTANT.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement to be effective as of the date first above written.

OWNER:
CITY OF SANIBEL

CONSULTANT:
K2M Design, Inc.

Signature

Signature

By: Dana Souza

By: Joe Moody

Title City Manager

Title Director

Address for giving notices:

City of Sanibel Department of Public Works
800 Dunlop Road
Sanibel, Florida 33957-4096
Phone (239) 472-6397
Fax (239) 472-6041

Address for giving notices:

K2M Design, Inc.
300 Marsh Creek Road
Venice, Florida 34292
Phone (801) 244-3328
Fax NA
E-Mail: jmoody@k2mdesign.com

ATTEST

City Clerk

(IF CORPORATION, AFFIX CORPORATE SEAL)

OR

State ____

County ____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by
_____ who is personally known to me or who has produced
_____ as identification.

Notary Public

Name typed, printed or stamped

(Seal)

Approved as to form: _____
City Attorney

EXHIBIT A**K2M DESIGN 2023 HOURLY RATES – CITY OF SANIBEL**

The following is a listing of hourly rates assigned by staffing type for K2M Design®, Inc.

GENERAL

Principal	\$325.00 / hour
Director	\$285.00 / hour
Senior Project Manager	\$210.00 / hour
Project Manager	\$165.00 / hour
Construction Administrator	\$130.00 / hour
Design Technology Specialist III	\$115.00 / hour
Design Technology Specialist II	\$ 80.00 / hour
Design Technology Specialist I	\$ 75.00 / hour
Administration	\$ 90.00 / hour
Clerical	\$ 65.00 / hour

ARCHITECTURE

Senior Architect	\$210.00 / hour
Architect III	\$175.00 / hour
Architect II	\$155.00 / hour
Architect I	\$135.00 / hour
Designer III	\$140.00 / hour
Designer II	\$115.00 / hour
Designer I	\$100.00 / hour

ENGINEERING

Senior Engineer	\$205.00 / hour
Engineer III	\$175.00 / hour
Engineer II	\$165.00 / hour
Engineer I	\$135.00 / hour
Engineering Designer III	\$140.00 / hour
Engineering Designer II	\$130.00 / hour
Engineering Designer I	\$120.00 / hour

INTERIOR DESIGN

Senior Interior Designer	\$180.00 / hour
Interior Designer III	\$165.00 / hour
Interior Designer II	\$135.00 / hour
Interior Designer I	\$ 90.00 / hour

FACILITY ASSET MANAGEMENT

Facility Assessor	\$140.00 / hour
Facility Designer	\$115.00 / hour

EXHIBIT “B”

Scope of Services

The scope of engineering services is for various Hurricane Ian repair and hazard mitigation services, but is not limited to the below referenced projects:

- **DONAX WRF**
 - **Mechanical and Electrical repairs with Project Management**
 - **Hazard Mitigation Identification**
 - **Treatment Plant Process Optimization due to Hurricane Ian Related Changes in Influent Wastewater Characteristics**
- **LIFT STATIONS**
 - **Control Panel replacement**
 - **Hazard Mitigation Identification**
- **JORDAN FILTER MARSH RESTORATION**
 - **Mechanical and Electrical Repairs**
 - **Hazard Mitigation Identification**
- **WASTEWATER COLLECTION SYSTEM REPAIRS**
- **REUSE SYSTEM REPAIRS**
- **STORMWATER SYSTEM**
- **MIDDLE GULF DR. FORCE MAIN**
- **EFFLUENT DISPOSAL POND APPLE SITE REPAIRS**
- **BEACH EMERGENCY BERM**
 - **Construction of 5 year storm event Sand Berm**
- **City-wide BEACH AND DUNE RESTORATION**
 - **Sand Placement**
 - **Native Plant Installations**
- **BEACH ACCESS DUNE WALKOVERS AND BOARDWALKS REPLACEMENTS**
- **FISHING PIER REPAIRS/REPLACEMENT**
- **BEACH PARK FACILITY REPAIRS**
- **PERIWINKLE BRIDGE REPLACEMENT**
- **UPSIZE AND NEW REPLACEMENT GENERATORS AT CITY HALL AND RECREATION FACILITIES**
- **ANY OTHER HURRICANE REPAIR AND HAZARD MITIGATION PROJECTS AS DEEMED NECESSARY FOR RECOVERY**

- **OTHER ENGINEERING, SURVEYING AND ARCHITECTURAL SERVICES AS REQUESTED BY THE CITY.**

NOTE: The City of Sanibel requires that designs utilize environmentally preferable materials at all times where applicable. Environmentally preferable materials refer to recovered/recycled materials and products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. These products minimize the consumption of resources, energy, and water, prevent the creation of solid waste, air pollution or water pollution, minimize the use of materials or processes which compromise the environment, and/or promote the use of non-toxic substances and avoid toxic materials or processes. The City of Sanibel requires the purchase of recycled content products rather than non-recycled products whenever price, quality and availability are comparable. The City utilizes the U.S. Environmental Protection Agency's guidelines for minimum recycle content product standards as a means to meet product preferences.

Contractor agrees to comply with applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

Exhibit C

REQUIRED CONTRACT PROVISIONS

REMEDIES

Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).

This requirement applies to all FEMA grant and cooperative agreement programs.

ACCESS TO RECORDS

The following access to records requirements apply to this contract: (1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract."

COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor 13 will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

TERMINATION FOR CAUSE AND CONVENIENCE

All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).

This requirement applies to all FEMA grant and cooperative agreement programs.

COPELAND ANTI-KICKBACK ACT

Compliance with the Copeland "Anti-Kickback" Act.

The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

Withholding for unpaid wages and liquidated damages. The City of Sanibel shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

Federal Water Pollution Control Act

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The contractor agrees to report each violation to **The City of Sanibel** and understands and agrees that **The City of Sanibel** will, in turn, report each violation as required to

assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants' employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and

remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

DEBARMENT AND SUSPENSION

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by The City of Sanibel. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to The City of Sanibel, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

SECTION 00806
HMGP Agreement
Mandatory Contract Provisions

Mandatory Contract Provisions as outlined in of Appendix II to 2 C.F.R. Part 200:

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).

(C) During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this

nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures

authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon

9. contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(D) Compliance with the Contract Work Hours and Safety Standards Act.

- a. *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of
\$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- c. *Withholding for unpaid wages and liquidated damages.* The **City of Sanibel** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated

damages as provided in the clause set forth in paragraph (b)(2) of this section.

- d. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(E) Clean Air Act

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The contractor agrees to report each violation to the **City of Sanibel** and understands and agrees that the **City of Sanibel** will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(F) Federal Water Pollution Control Act

- a. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The contractor agrees to report each violation to the **City of Sanibel** and understands and agrees that the **City of Sanibel** will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(G) Suspension and Debarment

- a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. §

180.935).

- b) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c) This certification is a material representation of fact relied upon by **City of Sanibel**. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to **City of Sanibel**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(H) Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

- a. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

(I) APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

- a. Certification for Contracts, Grants, Loans, and Cooperative Agreements
The undersigned certifies, to the best of his or her knowledge and belief, that:
 - 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of

any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
 - This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

(J) Procurement of Recovered Materials

- a** In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.
- b** Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- c** The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

(K) Access to Records.

- a.** The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide City of Sanibel, Director Keith Williams, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or

his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the **City of Sanibel** and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(L) DHS Seal, Logo and Flags

- a. "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval."

(M) No Obligation by Federal Government

- a. "The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

(N) Program Fraud and False or Fraudulent Statements

- a. "The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract."

Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion

Subcontractor Covered Transactions

The prospective subcontractor, _____, of the Sub-Recipient certifies, by submission of this document, that neither it, its principals, nor affiliates are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this transaction by any Federal department or agency.

SUBCONTRACTOR

By: _____	City of Sanibel _____
Signature	Sub-Recipient's Name
_____	- _____
Name and Title	DEM Contract Number
_____	- _____
Street Address	FEMA Project Number

City, State, Zip	

Date	

Exhibit D

CITY OF SANIBEL

REQUEST FOR QUALIFICATIONS **Hurricane Ian: Architectural & Engineering Services**

CCNA-PW-0-2023/SK

July 3, 2023



City-wide Departmental Services
800 Dunlop Road, Sanibel, FL 33957
(239)472-6397

SUBMISSIONS DUE BY: 5:00 PM, (ET) JULY 20, 2023

PRE-BID CONFERENCE: NONE

NO QUESTIONS WILL BE ACCEPTED AFTER: 5:00 PM, (ET) JULY 14, 2023, all questions must be submitted in writing to scott.krawczuk@mysanibel.com and received by stated time.

SEALED ENVELOPES MUST BE MARKED WITH THE TITLE OF THE BID, BID NUMBER, NAME AND ADDRESS OF THE BIDDER.

Courier Packages (Fedex, UPS) shall clearly state on the outer packaging, the Invitation to Bid Title and the Invitation to Bid Number. If the proper information is not on the courier's outer packaging the Bid/RFQ may be sent back to the Vendor without being opened and/or given consideration for that project.

CITY OF SANIBEL, FLORIDA

**LEGAL NOTICE TO REGISTERED PROFESSIONAL ENGINEERS PURSUANT TO
CHAPTER 287, FLORIDA STATUTES
CONSULTANTS' COMPETITIVE NEGOTIATION ACT**

**INVITATION TO RENDER HURRICANE IAN ARCHITECTURAL & ENGINEERING
PROFESSIONAL SERVICES FOR VARIOUS CITY-WIDE DEPARTMENTS
INCLUDING: PUBLIC WORKS, NATURAL RESOURCES AND BUILDINGS**

**REQUEST FOR QUALIFICATIONS – CITY-WIDE ARCHITECTURAL AND
ENGINEERING SERVICES**

Legal Notice is hereby given that sealed submissions will be received at the Office of the City Engineer, City of Sanibel, Florida, at the Public Works Building, 750 Dunlop Road, Sanibel, until 5:00 P.M., on July 20, 2023. Any proposal offered later than the above time will be returned unopened. Please note that mailing address is 800 Dunlop Road, Sanibel, FL 33957.

The work for which submissions are to be received consisting of the following:

**PROFESSIONAL ARCHITECTURAL & ENGINEERING SERVICES RELATED TO
THE CITY-WIDE HURRICANE IAN RECOVERY AND HAZARD MITIGATION
PROJECTS:**

- **DONAX WRF**
 - **Mechanical and Electrical repairs with Project Management**
 - **Hazard Mitigation Identification**
 - **Treatment Plant Process Optimization due to Hurricane Ian Related Changes in Influent Wastewater Characteristics**
- **LIFT STATIONS**
 - **Control Panel replacement**
 - **Hazard Mitigation Identification**
- **JORDAN FILTER MARSH RESTORATION**
 - **Mechanical and Electrical Repairs**
 - **Hazard Mitigation Identification**
- **WASTEWATER COLLECTION SYSTEM REPAIRS**
- **REUSE SYSTEM REPAIRS**
- **STORMWATER SYSTEM**
- **MIDDLE GULF DR. FORCE MAIN**
- **EFFLUENT DISPOSAL POND APPLE SITE REPAIRS**
- **BEACH EMERGENCY BERM**
 - **Construction of 5-year storm event Sand Berm**

- **City-wide BEACH AND DUNE RESTORATION**
 - **Sand Placement**
 - **Native Plant Installations**
- **BEACH ACCESS DUNE WALKOVERS AND BOARDWALK REPLACEMENTS**
- **FISHING PIER REPAIRS/REPLACEMENT**
- **BEACH PARK FACILITY REPAIRS**
- **PERIWINKLE BRIDGE REPLACEMENT**
- **UPSIZE AND NEW REPLACEMENT GENERATORS AT CITY HALL AND RECREATION FACILITIES**
- **ANY OTHER HURRICANE REPAIR AND HAZARD MITIGATION PROJECTS AS DEEMED NECESSARY FOR RECOVERY**

*The selected vendors will need to provide and complete inspections and evaluation of project components, prepare design plans and specifications, bidding, grant management, surveying, provide opinion of probable cost, preparation and execution of temporary easements, construction oversight and management, post-construction reporting, permitting and all other duties as required to facilitate a complete project.

Said proposal should conform to the specifications outlined in the Request for qualification documentation. Instructions for preparation and submission of a proposal may be obtained online at: <https://www.mysanibel.com/Departments/Public-Works-Department/Bidding-Information>

No Proposer's may withdraw their proposal within a period of ninety (90) days following the date set for receiving submissions. The City of Sanibel reserves the right to reject any and all submissions and to waive informalities.

Scott Krawczuk
Deputy Public Works Director

AFFIDAVIT REQUESTED
PUBLISH ONE TIME
Fort Myers News-Press
JULY 3, 2023

SECTION I

INFORMATION & INSTRUCTIONS

1.0 Submission Requirements:

1.1 The complete original proposal must be submitted in a sealed package and received in accordance with the instructions detailed in the cover letter. All submissions shall be marked **City of Sanibel - Hurricane Ian Recovery: Architectural & Engineering Services** Proposer's s shall file all documents necessary to support their proposal and include them with their proposal. Proposers are permitted to submit for any or all of the listed projects. The City will select multiple A&E firms for this Hurricane Ian solicitation. Individual firms will be selected for each project listed in the scope of work. Proposer's shall be responsible for the actual delivery of submissions during business hours to the address indicated on the cover letter. It shall not be sufficient to show that the proposal was mailed in time to be received before scheduled closing time.

1.2 **Proposal Format:** Submissions shall include the following information at a minimum:

- a. This Request for Qualifications Document signed by responsible party.
- b. Listing with description of Architectural & Engineering capabilities
- c. Information on Provider's experience.
- d. References (municipal agencies and/or local businesses) with contact names.
- e. Provide sample of related/similar projects.
- f. Description of tasks and responsibilities required by each position.
- g. Provide copies of any applicable licenses and certifications.
- h. Public Entities Crime Form
- i. All information requested in the Request for qualification document.

1.3 It is the sole responsibility of the Proposer's to assure it has received the entire Request for Qualifications.

1.4 Proposer's s will be notified in writing of any change in the specifications contained in this RFQ.

1.5 No verbal or written information which is obtained other than through this RFQ or its addenda shall be binding on the City of Sanibel.

1.6 **Right of Rejection and for Additional Information:**

All proposers agree to adhering to the attached contract provisions to include the below items. See attached "**Required Contract Provisions.**"

- a. Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour

period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

- b. Submissions received that fail to comply with these submittal requirements may not be considered for award. Further, the City of Sanibel reserves the right to reject any and all submissions from any Proposer's. There is no obligation for the City of Sanibel to enter into a contract on the basis of any proposal submitted in response to this document.
- c. Prior to the final selection, Proposer's s may be required to submit additional information, to provide clarification of information, or to make oral presentations which the City may deem necessary to further evaluate the Proposer's qualifications.

- 1.7 Request for Additional Information:** Any and all questions of Proposer's s regarding this RFQ, whether technical, procedural, or otherwise, must be submitted in writing to the attention of the Public Works Director at the address designated in Section 1.16 below and must be received by July 14th, 2023, of the RFQ due date. Only the interpretation or correction provided in writing by the City Engineer or Community Services Director shall be binding.
- 1.8 Denial of Reimbursement:** The City of Sanibel will not reimburse Proposer's s for any cost associated with the preparation and submittal of any proposal, or for any travel and/or per diem costs that are incurred.
- 1.9 Right of Withdrawal:** A proposal may not be withdrawn before the expiration of ninety (90) days from the proposal due date.
- 1.10 Right of Negotiation:** The City of Sanibel reserves the right to negotiate with the selected Proposer's the exact terms and conditions of the contract.
- 1.11 Exceptions to the RFQ:** Proposer's s may find instances where they must take exception with certain requirements or specifications of the RFQ. All exceptions shall be clearly identified, and written explanations shall include the scope of the exceptions, the ramifications of the exceptions for the City of Sanibel and a description of the advantage to be gained or disadvantages to be incurred by the City as a result of these exceptions.
- 1.13 Rights to Submitted Materials:** All submissions, responses, inquiries, or correspondence relating to or in reference to this RFQ, and all reports, charts, and other documentation submitted by Proposer's s shall become the property of the City of Sanibel when received.

1.14 Basis of Award: Submissions will be evaluated according to the following criteria at a minimum:

The evaluation will rank Proposer's s based on the scores from the selection criteria point values (see initial score breakdown table provided below).

The selection will be made in accordance with City of Sanibel Procurement Policy, Section 287.055, Florida Statutes and federal requirements in 2 CFR. 200 for Architectural & Engineering Services. Some or all of the responding Proposer's (s) may be requested to provide interviews and/or presentations of their proposal, for the ranking process.

Agreement/Contract fees will be negotiated in accordance with federal regulations 2 CFR 200 and Section 287.055, Florida Statutes.

The recommendation to award, negotiated rates, and agreement/contract(s) will be submitted to the City Council for approval.

If a satisfactory agreement/contract(s) cannot be negotiated in a reasonable amount of time, the City, in its sole discretion, may terminate negotiations with the selected Proposer's (s) and begin agreement/contract negotiations with the next finalist.

The Procurement Management Director reserves the right to exercise his or her discretion to:

- Make award(s) to one or multiple Proposer's s.

- Waive minor informalities in any response;

- Reject any and all submissions with or without cause;

- Accept the response that in his or her judgment will be in the best interest of the City of Sanibel.

The selection shall be by Selection Committees consisting of staff representatives from the appropriate City Departments as approved by the Procurement Management Director or designee.

The Selection Committees will receive and review written submissions in response to this Request for qualification (RFQ). Responses will be evaluated against a set of criteria to determine those Proposer's s/Firms most qualified and suited for each project

1.	Technical Capability – 25 points.
2.	Key Staff Project Understanding and Approach, Staff Ability– 25 points.
3.	Similar Project Experience – 20 points.
4.	Workload (sufficient staffing) – 10 points.

5.	Municipal Experience (prior work with city governments) – 15 points.
6.	Ability to Meet Time Requirements– 5 points.

- 1.15 Copies:** An original and three (3) copies of the proposal and supporting documents must be submitted in response to the RFQ. In addition, include electronic PDF version of proposal to the City.
- 1.16 Contacts:** Proposer's s must submit submissions in accordance with the instructions contained in this RFQ. All requested information must be submitted with the proposal. Instructions for preparation of submission are contained in this package. Questions regarding this Request for qualification should be directed to:
- City of Sanibel
Public Works Department
Scott Krawczuk, Deputy Public Works Director
800 Dunlop Road
Sanibel, FL 33957
phone (239) 472-6397
email: scott.krawczuk@mysanibel.com
- 1.17 Agreement:** Fee for services will be negotiated with the selected Proposer's, and the Proposer's will be required to enter into a formal agreement with the City of Sanibel.
- 1.18 Contract Term:** The initial term of the contract shall be for a period of FIVE (5) years. Rates of the fee schedule within the contract may be reviewed on an annual basis, at which time amended costs may be submitted by the Proposer's to City to reflect the current average market value of the services listed in the fee schedule, with proof of such market value to be established in writing by Proposer's to City's satisfaction. The City reserves the right to renew the contract for ONE (1) additional FIVE (5)-year term after concurrence of both parties on any negotiated changes to the terms and specifications contained in the contract.
- 1.19 Termination of Contract:** The City of Sanibel may cancel the agreement at any time for breach of contractual obligations or for convenience, by providing the provider with a written notice of such cancellation. Should the City of Sanibel exercise its right to cancel the contract for such reasons, the cancellation shall become effective on the date as specified in the notice of cancellation sent to the provider, but if such cancellation is for convenience, it shall not be earlier than 30 days from the date of such written notice. In the event of termination for any reason, the City of Sanibel shall have no continuing financial or other obligations to the provider from the effective date of the termination through what otherwise would have remained of the contract term.

1.20 Cooperative Purchasing: Other government agencies may be allowed to piggyback on this contract.

1.21 Compliance with Laws: In connection with the furnishing of supplies or performance of work under the contract, the provider agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other applicable Federal, State, County, and City codes, rules, laws, regulations, requirements and executive orders to the extent that the same may be applicable and further agrees to insert the foregoing provision in all subcontracts awarded hereunder. This RFQ is in accordance with, but not limited to, Section 287.055, Florida Statutes and the Consultants' Competitive Negotiation Act (CCNA).

Proposer's should provide, at or before the time of the opening of the proposal, all necessary local business tax receipts, permits and/or licenses required for this product and/or services.

1.22 Disadvantaged Business Enterprise

Proposer's are required to indicate whether the Firm and/or any proposed sub-consultants are a Disadvantaged Business Enterprise (DBE). The City of Sanibel encourages the utilization and participation of DBE's in procurements, and evaluation proceedings will be conducted within the established guidelines regarding equal employment opportunity and nondiscriminatory action based upon the grounds of race, color, sex or national origin. Interested certified Disadvantaged Business Enterprise (DBE) firms as well as other minority-owned and women-owned firms are encouraged to respond.

1.23 Anti-Lobbying Clause (Cone of Silence)

In accordance with Section 287.057(23), Florida Statutes, Proposer's s/Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

1.24 Drug Free Workplace

City of Sanibel encourages Drug Free Workplace programs as defined in accordance with Section 287.087, Florida Statutes.

1.25 Anti-Discrimination Employment Opportunity

The Proposer's agrees to comply, in accordance with Florida Statute 287.134, 504 of the Rehabilitation Act of 1973 as amended, the Americans with Disabilities Act of 1990 (ADA), and the ADA Amendments Act of 2008 (ADAAA) that furnishing goods or services to the City hereunder, no person on the grounds of race, religion, color, age, sex, national origin, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

The Proposer's will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, disability or marital status. The Proposer's will make affirmative efforts to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, disability or marital status.

The Proposer's will include the provisions of this section in every sub-contract under this contract to ensure its provisions will be binding upon each sub-contractor. The Proposer's will take such actions in respect to any sub-contractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.

An entity or affiliate who has been placed on the State of Florida's Discriminatory Vendor List (This list may be viewed by going to the Department of Management Services website at <http://www.dms.myflorida.com>) may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a vendor, supplier, sub-contractor, or consultant under contract with any public entity, and may not transact business with any public entity.

1.26 Public Records

Unless specifically exempted by Florida law, in whole or in part, Proposer's shall comply with the requirements of Section 119.0701, Florida Statutes, which requires a City contractor, as defined therein, to comply with public records laws, and specifically to:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- B. Provide the public with access to public records on the same terms and conditions that the public agency 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.
- D. Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Proposer's upon termination of the contract 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 public agency in a format that is compatible with the information technology systems of the public agency.

1.27 E-Verify

- A. In compliance with Section 448.095, Fla. Stat., CONTRACTOR and its sub-contractor must be registered with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
 - (1) CONTRACTOR shall require each of its sub-contractors to provide CONTRACTOR with an affidavit stating that the sub-contractor does not employ, contract with, or sub-contract with an unauthorized alien. CONTRACTOR shall maintain a copy of the sub-contractor's affidavit as part of and pursuant to the records retention requirements of this Agreement.
 - (2) The OWNER, CONTRACTOR, or any sub-contractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
 - (3) The OWNER, upon good faith belief that a sub-contractor knowingly violated the provisions of this section, but CONTRACTOR otherwise complied, shall promptly notify CONTRACTOR, and CONTRACTOR shall immediately terminate the contract with the sub-contractor.
 - (4) A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. CONTRACTOR acknowledges that upon termination of this Agreement by the OWNER for a violation of this section by CONTRACTOR, CONTRACTOR may not be awarded a public contract for at least one (1) year. CONTRACTOR further acknowledges that CONTRACTOR is liable for any additional costs incurred by the OWNER as a result of termination of any contract for a violation of this section.

Subcontracts. CONTRACTOR or sub-contractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the sub-contractor to include these clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in this section.

1.28 No Local Preference

The Sanibel Code of Ordinance, Part II – Sanibel Code, Chapter 2 – Administration, Article IV - Finance, Division 4 - Contracts and Purchases, Section 2-330 Competitive Sealed Bids, (k); provides for a “local vendor preference” which provides for a preference to local city and local county businesses. Subsection (k)(3)(c.) (2.) provides local vendor preferences are inapplicable to CCNA contracts.

1.29 Suspension and Debarment Clause

A prospective contractor that is listed on the government-wide Excluded Parties List System in the System for Award Management (www.SAM.gov) as suspended or debarred, **CANNOT** be awarded a contract.

SECTION II

SCOPE OF WORK

2.0 PURPOSE:

The City of Sanibel is soliciting multiple qualified A&E firms to provide various Hurricane Ian repair and hazard mitigation services for the below referenced projects:

- **DONAX WRF**
 - **Mechanical and Electrical repairs with Project Management**
 - **Hazard Mitigation Identification**
 - **Treatment Plant Process Optimization due to Hurricane Ian Related Changes in Influent Wastewater Characteristics**
- **LIFT STATIONS**
 - **Control Panel replacement**
 - **Hazard Mitigation Identification**
- **JORDAN FILTER MARSH RESTORATION**
 - **Mechanical and Electrical Repairs**
 - **Hazard Mitigation Identification**
- **WASTEWATER COLLECTION SYSTEM REPAIRS**
- **REUSE SYSTEM REPAIRS**
- **STORMWATER SYSTEM**
- **MIDDLE GULF DR. FORCE MAIN**
- **EFFLUENT DISPOSAL POND APPLE SITE REPAIRS**
- **BEACH EMERGENCY BERM**
 - **Construction of 5 year storm event Sand Berm**
- **City-wide BEACH AND DUNE RESTORATION**
 - **Sand Placement**
 - **Native Plant Installations**
- **BEACH ACCESS DUNE WALKOVERS AND BOARDWALKS REPLACEMENTS**
- **FISHING PIER REPAIRS/REPLACEMENT**
- **BEACH PARK FACILITY REPAIRS**
- **PERIWINKLE BRIDGE REPLACEMENT**
- **UPSIZE AND NEW REPLACEMENT GENERATORS AT CITY HALL AND RECREATION FACILITIES**
- **ANY OTHER HURRICANE REPAIR AND HAZARD MITIGATION PROJECTS AS DEEMED NECESSARY FOR RECOVERY**

2.1 BACKGROUND:

The City of Sanibel plans to engage the professional and technical services of several Florida registered professional architectural and engineering firms to assist with The City's various Hurricane Ian damages and hazard mitigation projects.

2.2 SCOPE:

A. PROFESSIONAL ARCHITECTURAL & ENGINEERING SERVICES:

The scope of architectural and engineering services may include, but is not limited to the following:

1. General architectural, engineering and hazard mitigation services including attendance at meetings, determination of applicable codes and standards, review materials, negotiations of various kinds, staff assistance, miscellaneous engineering and other functions relating to Hurricane Ian Recovery.
2. Study and report services, permitting, preparation of engineering and financial reports and cost estimates pertaining to the City's recovery from Hurricane Ian.
3. Supplementary and special services as may be authorized by the city, such as field surveys and reports.
4. The selected firms will be required to interact with the Sanibel City Council and Planning Commission, City committees, City staff, other governmental regulatory and permitting agencies, and the public on an as needed basis. Presentations before City Council and Planning Commission may be necessary, along with legal testimony as required. A firm may desire to affiliate with one or more firms in responding to this proposal for the purpose of providing the full range of services sought by the city. The City reserves the right to select one or more consulting firms or teams of firms for these services.
5. Beach surveying; beach fill project design; preparation of engineered plans for beach nourishment projects; preparation of permit applications, bid documents, technical specifications, opinion of probable cost estimates; preparation and execution of temporary easements; construction oversight; post-construction reporting; and/or similar tasks necessary for implementation of a 5-yr emergency berm and the beach nourishment projects on Sanibel.

6. Perform construction surveying/layout and record drawing surveying as needed.
7. Prepare easements and subsequent recording of documents.
8. Filter Marsh site surveying, evaluation, repair and/or replacement of electrical components including but not limited to pump station, flow meters, all electrical components to include panels, and ground boxes/wiring, grading, storm debris quantification necessary to return the Jordan Marsh to pre-storm condition, aquatic vegetation removal and/or installation; and other tasks identified for hazard mitigation.
9. Engineering design, survey work, inspections and construction management work to support construction projects.
10. Prepare and obtain required permitting for engineering projects.
11. Attend and assist with City Council meeting and open house presentations as related to projects.
12. Assisting the City with responding to public concerns and comments.
13. Other miscellaneous engineering and surveying services as requested by the City.
14. The City of Sanibel requires that designs utilize environmentally preferable materials at all times where applicable (i.e., recovered /recycled materials). Environmentally preferable materials refer to products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. These products minimize the consumption of resources, energy and water, prevent the creation of solid waste, air pollution or water pollution, minimize the use of materials or processes which compromise the environment, and/or promote the use of non-toxic substances and avoid toxic materials or processes. The City of Sanibel requires the purchase of recycled content products rather than non-recycled products whenever price, quality and availability are comparable. In addition, the City will utilize the U.S. Environmental Protection Agency's guidelines for minimum recycle content product standards as a means to meet product preferences.
15. Contractor agrees to comply with applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q), 2CFR 200, and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA

and the Regional Office of the Environmental Protection Agency (EPA).

2.3 QUALIFICATIONS OF THE FIRM:

- A. Proposer's s shall provide a description and history of the firm on previous governmental experience using following guidelines:
 - 1. Recent experience demonstrating current capacity and current expertise in architectural, engineering and hazard mitigation project work.
 - 2. Documented knowledge and experience of Federal, State, and Local agencies, State and Federal programs, funding sources and reimbursement process.
 - 3. Document Municipal Experience with listing (prior work with city governments)
 - 4. Ability to Meet Time Requirements - Provide attestation to coordinate and prioritize all referenced A&E scopes of work as determined by The City.
- B. Provide at least three (3) municipal references for which the firm has performed services that are similar to the requirements in the Scope of Services. Provide the reference contact name, address, e-mail address, telephone numbers, and date of the contract.

2.4 QUALIFICATIONS OF THE STAFF:

Provide an organizational chart, resumes, and summary of staff qualifications. Key project staff (management staff including, but not limited to, project manager, engineers, surveyors, office staff, etc.) must be full time employees of the proposing firm and have experience in the following:

- 1. Experience demonstrating current capacity and current expertise in architectural, engineering and hazard mitigation services. The Proposer's must demonstrate experience for at least three (3) government entities.
- 2. Documented knowledge and experience of Federal, State, and Local agencies, state and federal programs.

2.5 INSURANCE:

Proposer's s shall purchase and maintain such comprehensive general liability and other insurance as well as provide protection from claims set forth below which may arise out of or result from Proposer's performance of the Work and Proposer's other obligations under the Contract Documents, whether such performance is by Proposer's , by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance policies shall be with insurers qualified to do business in the state of the Project location.

- a. Types: The types of insurance required to obtain and maintain for the full period of the Contract will be: Workmen's Compensation and Employer's Liability, Comprehensive General Liability and Automobile Liability, and an Excess Liability Umbrella Insurance as detailed in the following specifications.
- b. Evidence: As evidence of specified insurance coverage, the Owner may, in lieu of actual policies, accept a Certificate of Insurance on Accord Form 25 issued by the insurance carrier showing such policies in force for the specified period. Each policy or certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage without ten days notice in writing to be delivered by registered mail to the Owner. Should any policy be canceled before final payment by the Owner to the Proposer's and the Proposer's fails immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Proposer's under this Contract.
- c. Adequacy of Performance: Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guaranty period. Should such insurance be canceled before the end of the guaranty period and the Proposer fails immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and to charge the cost thereof to the Proposer's.
- d. Payment of Damages: Nothing contained in these insurance requirements is to be construed as limiting the extent of the Proposer's responsibility for payment of damages resulting from his operations under this Contract.

1. COMPREHESIVE GENERAL LIABILITY INSURANCE:

- a. General liability insurance shall provide full comprehensive form coverage for both bodily injury and property damage. Such coverage shall include premises-

operations, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, independent contractors, and personal injury. The limits for bodily injury shall be \$500,000 each occurrence and \$500,000 aggregate. The limits for property damage shall be \$100,000 each occurrence and \$100,000 aggregate.

- b. Automobile liability insurance shall provide full comprehensive form coverage for both bodily injury and property damage. Such coverage shall include owned, hired, and non-owned vehicles. The limits for bodily injury shall be \$500,000 each person and \$500,000 each accident. The limits for property damage shall be \$100,000.
- c. Excess liability insurance shall provide an umbrella form coverage for both bodily injury and property damage combined with a minimum limit of \$2,000,000.
- d. Indemnity: Included in such insurance will be contractual coverage sufficiently broad to insure the Owner, the Engineer, their consultants and each of their officers, agents, and employees as additional insured under the General Liability Policy. See Paragraph 2.4.05 below for provisions of Indemnity.

2. WORKERS' COMPENSATION INSURANCE:

Proposer's shall provide the statutory Workers' Compensation and Employer's Liability Insurance requirements of the most current and applicable state Workers' Compensation Insurance Laws.

2.7 TECHNICAL APPROACH:

Provide a detailed plan of approach that explains how your firm intends to comply with and meet the anticipated deliverables as detailed within this solicitation. Provide a copy of Proposer's internal training program.

2.8 PUBILC ENTITY CRIME FORM:

Please submit completed public entity crime form with proposal. Public Entity Crime Form format provided with this RFQ.

SECTION III

PROPOSAL

I have read and understand the requirements of this proposal, and agree to provide the required services in accordance with this proposal and all attachments, exhibits, etc. I agree to furnish the services as described in RFQ except where specific exception has been taken.

ADDENDA

Receipt of Addenda Nos. _____ is hereby acknowledged.

Respectfully submitted,

Proposer's
(Individual____)(Partnership____)
or (Corporation____)

(SEAL)

Signed _____

Name (print) _____

Address _____

City/State _____

Telephone _____

Fax _____

Email _____

DATE:

NOTE: The legal status of the Proposer's , whether as an individual, partnership or corporation, must be indicated above, and all pertinent information as required of the Specifications must be furnished.

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

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

1. This sworn statement is submitted to _____
(print name of the public entity)

by _____
(print individual's name and title)

for _____
(print name of entity submitting sworn statement)

whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is _____

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____.)

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

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

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), **Florida Statutes**, means:

1. A predecessor or successor of a person convicted of a public entity crime; or
2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes

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

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), **Florida Statutes**, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (indicate which statement applies.)

_____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (attach a copy of the final order.)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, **FLORIDA STATUTES** FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(signature)

Sworn to and subscribed before me this _____ day of _____, 20____.

Personally known _____

OR Produced identification _____

(type of identification)

Notary Public - State of Florida

My commission expires _____

(printed, typed or stamped
commissioned name of notary public.)

END OF
SECTION