

PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made this 4th day of May 2021, between **CITY OF SANIBEL** ("OWNER") and **Johnson Engineering, 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 April 6, 2021 to September 30, 2026. 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.

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 "HMGP Mandatory Contract Provisions"

This Agreement (consisting of pages 1 to 9, and including Exhibits A, B and C 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



Signature

By: Judith A. Zimomra

Title City Manager

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

CONSULTANT:

Johnson Engineering, Inc.



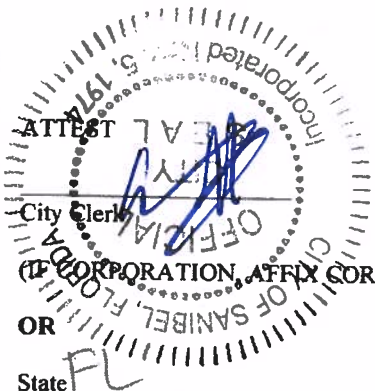
Signature

By: Michael Dickey, PE

Title Vice President

Address for giving notices:

Johnson Engineering, Inc.
2122 Johnson Street
Fort Myers, Florida 33901
Phone (239) 461-0046
Fax (239) 334-3661
E-Mail: mdickey@johnsoneng.com



ATTEST

City Clerk

(IF CORPORATION, AFFIX CORPORATE SEAL)

OR

State

County

The foregoing instrument was acknowledged before me this 31st day of March, 2021 by

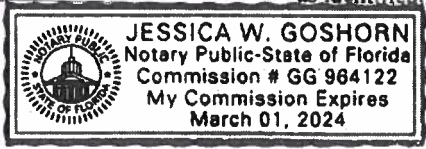
Michael Dickey who is personally known to me or who has produced

as identification.

Jessica W. Goshorn

Notary Public

Jessica W. Goshorn
Name typed, printed or stamped



(Seal)

Approved as to form:

[Signature]
City Attorney

APPROVED FINANCIAL SUFFICIENCY

[Signature]
Steven C. Chaipel, Finance Director



**PROFESSIONAL SERVICES
HOURLY RATE SCHEDULE
(Updated June 19, 2019)**

Professional

9	\$230
8	\$210
7	\$190
6	\$170
5	\$150
4	\$135
3	\$125
2	\$110
1	\$100

Technician

6	\$140
5	\$120
4	\$100
3	\$85
2	\$70
1	\$60

Administrative

3	\$80
2	\$70
1	\$60

Field Crew

4-Person	\$200
3-Person	\$170
2-Person	\$135

Field Equipment

Field Equipment on Separate Schedule

Expert Witness

\$275

**Reimbursable Expenses
and Sub-Consultants**

Cost + 10%

Construction Engineering and Inspection

(CEI) Services

CEI Services Manager	\$160
CEI Senior Project Administrator	\$140
CEI Project Administrator	\$125
Contract Support Specialist	\$110
Senior Inspector	\$100
CEI Inspector III	\$90
CEI Inspector II	\$80
CEI Inspector I	\$70
Compliance Specialist	\$80
CEI Inspector's Aide	\$60

EXHIBIT "B"

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

1. Prepare and submit annual NPDES reports to meet permit conditions and respond to any agency requests regarding the annual report submittals.
2. Prepare and submit the application and provide supporting documentation to renew the City's NPDES permit and respond to any agency request in order to secure said permit.
3. Conduct water quality monitoring program.
4. Conduct stormwater system infrastructure inspections.
5. Perform topographic surveying.
6. Perform property boundary surveying.
7. Perform right-of-way (R/W) surveying and mapping. Present in AutoCAD format.
8. Perform construction surveying/layout and record drawing surveying.
9. Prepare easements and subsequent recording of documents.
10. Civil engineering design and survey work to support road reconstruction, shared use path, drainage, City Park and utility construction projects.
11. Prepare and obtain required permitting for engineering projects.
12. Perform Traffic study and analysis reports. Gather traffic count data.
13. Attend and assist with City Council meeting and open house presentations as related to projects.
14. Perform Engineering design and survey work for enhancement of the Sanibel Slough drainage system and Beach Road Weir Upgrade projects.
15. Assisting the City with responding to public concerns and comments.

16. Other civil engineering and surveying 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

HMGP 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."

HMGP Agreement Attachment H

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

Subcontractor Covered Transactions

- (1) The prospective subcontractor, _____,
of the Sub-Recipient certifies, by submission of this document, that neither it nor its principals is
presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded
from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-Recipient's subcontractor is unable to certify to the above statement, the
prospective subcontractor shall attach an explanation to this form.

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	

Anna M. Hicks

From: Judie A. Zimomra
Sent: Friday, May 7, 2021 7:05 AM
To: sancouncil
Cc: san.dir; san.admin
Subject: City Manager Out-of-Office Sunday, May 9 & Monday, May 10

City Council,

Please be advise I will be out of the office Sunday, May 9th & Monday, May 10th in Pinellas County visiting family. I will remain available throughout this time via phone & will be monitoring text & email. Director Keith Williams is hereby appointed to serve as Acting City Manager during my physical absence from the County.

Acting City Manger Williams can be reached at:

Keith.Williams@mysanibel.com
&/or 239-691-8787

Please do not hesitate to contact me with any questions,

Judie Zimomra
City Manager

MEMORANDUM



DATE: May 5, 2021
TO: Anna Hicks, Deputy City Clerk
Judie Zimomra, City Manager
FROM: Scotty Lynn Kelly, City Clerk *SLK*

SUBJECT: Appointment as Acting City Clerk

I will be out of the office Thursday, May 6, 2021 returning Tuesday, May 18, 2021. Anna Hicks, Deputy City Clerk is hereby designated Acting City Clerk from Thursday, May 6, 2021 through Monday, May 17, 2021. Her duties will include:

- Authenticating official documents
- Responding to public records requests
- Ensuring Public Notices are posted
- Managing staff

Anna's cell number is (239) 777-9299

SLK/me

cc: Judie Zimomra, City Manager
Executive Staff
File