

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (this "Agreement"), made and entered into effective as of the 1st day of November, 2023 by and between Bright Community Trust Inc, a Florida corporation not-for-profit (hereinafter "Consultant"), and City of Sanibel (hereinafter "Customer"):

SECTION I. Scope Of Services.

1.1. Services. Consultant agrees to provide, and Customer agrees to accept, the consulting services described in Exhibit A hereto (the "Services").

1.2. Conduct of Services. All work shall be performed in an efficient and professional manner.

1.3. Method of Performing Services. Consultant shall have the right to determine the method, details, and means of performing the work to be performed for Customer. Customer may, however, require Consultant at all times to observe security and safety policies of Customer. Customer shall be entitled to exercise general power of supervision and control over the results of work performed by Consultant to assure satisfactory performance, including the right to inspect, the right to stop work, the right to make suggestions or recommendations as to the details of the work, and the right to propose modifications to the work.

1.4. Scheduling. The services provided by Consultant are expected to require a substantial part of Consultant's available business time and availability. Consultant will be responsible for determining the scheduling of a given project and advising Customer of such schedule.

1.5. Reporting. Customer and Consultant shall develop appropriate administrative procedures for coordinating with each other. Customer shall periodically provide Consultant with evaluations of Consultant's performance.

1.6. Place of Work. Consultant will perform work remotely. Customer will not provide a place of work.

1.7. Future Services. Notwithstanding anything in this Agreement to the contrary, and regardless of termination of this Agreement by either party for any reason, Consultant agrees to make their services available, when, as and to the extent required by Consultant, to complete or provide follow-on support for any work or projects to which Consultant at any time materially contributed pursuant to this Agreement. Unless otherwise agreed, such services shall be made available at Consultant's actual labor rates otherwise applicable to services provided to Customer pursuant to this Agreement, plus reasonable and actual costs of materials provided or consumed in providing such services and other reasonable expenses.

SECTION II. Term And Termination

2.1. Term. The term of this Agreement shall commence on the date set forth above and shall continue through September 30, 2024, and thereafter for so long as Customer seeks or obtains services from Consultant.

2.2. Termination. This Agreement may be terminated by either party upon thirty (30) days written notice for any reason or no reason.

2.3. Remaining Payments. Within thirty (30) days of termination of this Agreement for any reason, Consultant shall submit to Customer a final itemized invoice for any fees or expenses theretofore accrued under this Agreement. Customer shall pay Consultant pursuant to such invoice within forty-five (45) days of receipt.

SECTION III. Fees, Expenses, and Payment

3.1. Fees. In consideration of the services to be performed by Consultant, Consultant shall be entitled to compensation based on the current schedule of fees for work performed by Consultant as set forth on Exhibit A hereto. Unless otherwise stated, Consultant reserves the right to change such schedule upon at least sixty (60) days advance notice. Consultant shall submit invoices to Customer monthly for the services furnished and other expenses incurred hereunder for the previous monthly. Customer shall pay Consultant within forty-five (45) days after receiving Consultant's invoice.

3.2. Reimbursement of Expenses. In addition to the foregoing, Customer shall pay Consultant their actual out-of-pocket expenses as reasonably incurred by Consultant in furtherance of their performance hereunder, including travel expenses. Consultant agrees to provide Customer with access to such receipts, ledgers, and other records as may be reasonably appropriate for Customer or their accountants to verify the amount and nature of any such expenses. Expenses shall be reimbursed within forty-five (45) days after receipt of Consultant's invoice.

SECTION IV. Responsibilities of Consultant for Taxes and Other Matters

4.1. Taxes. As an independent contractor, Consultant shall pay and report all federal and state income tax withholding, social security taxes, and unemployment insurance applicable to Consultant. Consultant shall not be entitled to any benefits to which employees of Customer may be entitled.

SECTION V. Confidentiality

5.1. Restrictions. Consultant shall maintain in strict confidence and shall use and disclose only as authorized by Customer, all information of a competitively sensitive or proprietary nature which they receive in connection with the work performed for Customer. Customer shall take reasonable steps to identify for the benefit of Consultant any information of a competitively sensitive or proprietary nature, including by using confidentiality notices in written material where appropriate. These restrictions shall not be construed to apply to (1) information generally available to the public, (2) information released by Customer generally without restriction, (3)

information independently developed or acquired by Consultant without reliance in any way on other protected information of Customer, or (4) information approved for the use and disclosure of Consultant without restriction. Notwithstanding the foregoing restrictions, Consultant may use and disclose any information (a) to the extent required by order of any court or other governmental authority, or (b) as necessary for them or them to protect their interest in this Agreement, but in each case only after Customer has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

Furthermore, notwithstanding any other provisions in this Section or in this Agreement, Consultant recognizes Consumer is a public agency subject to Chapter 119, Florida Statutes, the Public Records Law. As Consultant is a service provider to Consumer, 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:

- (1) Keep and maintain public records required by the Consumer in order to perform the service. This shall include all records relating to Consultant's services provided to the Consumer 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."
 - (2) Upon request from the Consumer's custodian of public records, provide the Consumer 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.
 - (3) 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 Consultant does not transfer the records to the Consumer.
 - (4) Upon completion of the contract, transfer, at no cost to the Consumer, all public records in possession of the Consultant, or keep and maintain public records required by the Consumer to perform the service. If the Consultant transfers all public records to the Consumer 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 Consumer, upon request from the Consumer's custodian of public records, in a format that is compatible with the information technology systems of the Consumer.
- (b) As required by Section 119.0701(2)(a), Florida Statutes, the following contact information is provided to the CONTRACTOR in the format required by statute:

IF THE CONSULTANT/CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA

**STATUTES, TO THE CONSULTANT/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

SECTION VI. Rights in Work Product

6.1. Ownership of Work Product. All Work Product (defined below) shall be considered work(s) made by Consultant for hire for Customer and shall belong exclusively to Customer and its designees. If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by Customer automatically upon creation thereof, then Consultant agrees to assign, and hereby assigns, to Customer and its designees the ownership of such Work Product, including all related intellectual property rights.

6.2. Pre-existing Materials. Notwithstanding any provision of this Agreement to the contrary, any materials or processes created, adapted, or used by Consultant in their business generally, including all associated intellectual property rights, shall be and remain the sole property of Consultant, and Customer shall have no interest in or claim to them except as necessary to exercise their rights in the Work Product. In addition, notwithstanding any provision of this Agreement to the contrary, Consultant shall be free to use and employ their general skills, know-how and expertise and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques, or skills, gained or learned during the course of any assignment developed or acquired by Consultant during the performance of this Agreement to the extent obtained and retained by Consultant as impressions and general learning.

6.3. Work Product Defined. As used herein, the term "Work Product" shall mean any notes, reports, analyses, presentations, and any other media, materials, or other objects produced as a result of Consultant's work or delivered by Consultant in the course of performing that work.

SECTION VII. Assurances

7.1. No Conflict. Consultant represents and warrants that they have no obligations to any third party which will in any way limit or restrict their ability to perform consulting services to Customer hereunder. Consultant agrees that they will not disclose to Customer, nor make use in the performance of any work hereunder, any trade secrets or other proprietary information of any third party, unless Consultant may do so without Consultant or Customer incurring any obligation (past or future) to such third party for such work or any future application thereof.

SECTION VIII. Warranties

8.1. Services Warranty. Consultant warrants that the Services will be performed in a manner consistent with customary practice in the industry. Should a failure to comply with this warranty appear within thirty (30) days from the date of completion of such Services, Consultant shall, if promptly notified in writing, at their option, either provide the Services anew or refund to the Customer the price charged for such non-conforming Services. Such reperformance or refund shall be Customer's exclusive remedy and shall constitute fulfillment of all liabilities of Consultant with respect to any nonconformity of or defect or deficiency in Services furnished to Customer.

8.2. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL WARRANTIES OF QUALITY AND PERFORMANCE, WRITTEN, ORAL, OR IMPLIED; ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

SECTION IX. Limitation of Remedies and Liability

9.1. Exclusive Remedies. Consultant's liability on any claim, whether in contract negligence, tort, strict liability or otherwise, arising in whole or in part out of Services performed under this Agreement, shall in no case exceed the lesser of the fees paid to Consultant under this Agreement or the fees paid to Consultant for the portion of Services which give rise to the claim. All causes of action against Consultant arising out of or relating to this Agreement or the performance or breach of this Agreement shall expire unless brought within one (1) year of the date of the first date of performance or breach, which in whole or in part gives rise to the claim. These remedies are exclusive and in lieu of all other remedies available at law or in equity for any act performed in connection with this Agreement, or for any breach of this Agreement, whether brought under a theory of tort liability, contract liability, or any other theory.

9.2. Limitation of Liability. Consultant's liability with respect to the quality and conformity of Services supplied to Customer shall be limited to the provision of the warranties set forth or described in Section 8 above. **IN NO EVENT SHALL CONSULTANT BE LIABLE FOR SPECIAL INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER FOR BREACH OF WARRANTY OR OTHER CONTRACT BREACH, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, OR OTHER THEORIES OF LAW.** Without limiting the generality of the foregoing, Consultant shall have no responsibility to compensate Customer for delays in or loss of use of any of its equipment, including software, computer systems, mechanical or electrical or electronic systems, loss or miscalculation of data, loss of revenue or increased costs, loss of facilities, loss or delays in services, or claims of third parties to whom Customer provides goods or services, loss of profits or revenue, cost of substitute goods, facilities or services, downtime costs, delays.

SECTION X. Miscellaneous

10.1. Force Majeure. Consultant shall not be liable to Customer for any failure or delay caused by events beyond Consultant's control, including, without limitation, Customer's failure to furnish necessary information, sabotage, failure or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials or equipment, or technical failures.

10.2. Governing Law and Compliance.

- (1) This Agreement shall be governed and construed in all respects in accordance with the internal laws of the State of Florida as they apply to a contract entered into and performed in that state.
- (2) In compliance with Section 448.095, Florida Statutes, Consultant and Consultant's sub-consultants, if any, 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, if any, 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 Consumer, 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), Florida Statutes, or the provisions of this section shall terminate the contract with the person or entity.
 - (c) The Consumer, 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-contractor.
 - (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), Florida Statutes. Consultant acknowledges that upon termination of this Agreement by the Consumer 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 Consumer as a result of termination of any contract for a violation of this section.
 - (e) 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-contractor or lower tier sub-contractor with the clauses set forth in this section.

10.3. Independent Contractors. The parties are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Customer and either Consultant or any employee or agent of Consultant.

10.4. Notices. All notices, requests, demands, and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission, or other electronic means of transmitting written documents; or (c) sent to the parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to Consultant, to:

Bright Community Trust, Inc
11923 Oak Trail Way, Suite 111
Port Richey, FL 34668
Attn: Frank Wells

Or to such other person or address as Consultant shall furnish to Customer in writing.

(b) If to Customer, to:

City of Sanibel
c/o City Manager
800 Dunlop Road
Sanibel, FL 33957

With copy to dana.souza@mysanibel.com

If personally delivered, such communication shall be deemed delivered upon actual receipt; if electronically transmitted pursuant to this paragraph, such communication shall be deemed delivered by the next business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this paragraph, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this paragraph, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service, or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any party to this Agreement may change their address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

10.5. Entire Agreement. This Agreement constitutes the entire Agreement of the parties hereto and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing. This Agreement may be modified only in writing and shall be enforceable in accordance with its terms when signed by the party sought to be bound..

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the date and year first above written.

CUSTOMER:

Paula McMichael

By: Paula McMichael
Planning Director

Date: 28 May 2024

CONSULTANT:

Frank Wells

By: Frank Wells, President

Date: 2024 May 27

Exhibit A

Services and Schedule of Fees

1. Services.
 1. See Attachment A.
2. Fees. For Consultant's services hereunder, Customer shall pay Consultant a fixed fee of \$25,000 Dollars, payable based on percentage complete. Such fees shall be in addition to any expenses Consultant incurs.

Attachment A – Scope of Services

Bright Community Trust – Initial Scope of Work for City of Sanibel, updated 2023 September:

1. Below Market Rate (BMR) Housing Needs Assessment
 - a. Reference studies:
 - i. Sanibel Plan, especially BMR housing targets
 - ii. 2013 Sanibel Below Market Rate Housing needs assessment completed by FGCU class
 - iii. 2018 Lee County housing study by Florida Housing Coalition
 - iv. Lee County 2023 CDBG-DR draft plan
 - b. Housing Needs survey of key stakeholders whose employees are likely to need BMR housing options: Restaurants, Resorts, Nonprofits, Retail, City
 - i. Design of survey questions and format in collaboration with FEMA and City
 - ii. City to deliver survey electronically, with reminder/support messages from Chamber of Commerce, businesses, nonprofits and other partners
 - iii. Bright to analyze received responses
 - iv. Focus groups and interviews:
 1. 1-3 focus group meetings (may be as part of already-planned meetings where stakeholders will be present, in-person or virtual – Chamber restaurants working group; nonprofits; homeowners unable to renovate/rebuild due to costs and regulatory challenges; e.g.)
 2. 3-5 individual interviews – Chamber, CHR, FISH, property owners, e.g.
 3. City (with possible assistance from FEMA) to make introductions for focus groups and interviews; Bright to coordinate and facilitate
 - c. Research and analysis of selected pre- and post-storm BMR housing household size, age, income and other characteristics, based on availability of data
 - d. Availability of LMI and other (120-160% AMI, e.g.) BMR housing
 - e. Land availability – inventory of City-owned land
 - f. Determination of disaster impacts and unmet need for LMI and other BMR housing
2. Strategies for addressing housing needs
 - a. On-island vs Off-island, including coordinated strategy with other beach communities and County
 - b. For rent & for sale
 - c. Seniors & workforce (any other target groups?)
 - d. Land trust, shared equity
 - e. Implications of Live Local Act – mixed-use opportunities
3. Other housing & community development functions as needed
4. Deliverables
 - a. Survey questions; survey analysis
 - b. Coordinate and Facilitate Focus Groups & Interviews
 - c. Analysis of Households demographics/incomes

- d. Analysis of Housing Availability
 - e. Analysis of Land Availability
 - f. Report:
 - i. Housing Needs
 - ii. Disaster Impacts & Unmet Needs
 - iii. Housing Strategies report
 - iv. Resource links (previous studies, etc)
 - g. Presentation to City Commission
5. Timeline
- a. October 2023 – Survey; Household demographics/incomes analysis; Start focus groups and interviews
 - b. June 2024 – Survey analysis; Conclude focus groups and interviews
 - c. July 2024 – Report and Presentation