

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS IS AN AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, between **CITY OF SANIBEL** ("OWNER") and **Amy Nowacki Architect, LLC** ("CONSULTANT").

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

### **SECTION 1 – GENERAL**

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#### **Term of Agreement:**

The term of this agreement shall be from \_\_\_\_\_, 2021 to \_\_\_\_\_, 2026. This Agreement may be renewed for ONE additional TWO 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 architectural engineering 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 architectural representative for the tasks or projects assigned to CONSULTANT by OWNER from time to time for purposes of providing architectural consultation and advice with respect thereto. CONSULTANT may, with written approval of the City Community Services 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 architectural 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 Community Services 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 to CONSULTANT for services and expenses in accordance with the OWNER's Prompt Payment Policy, CONSULTANT may, after giving seven day's 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**

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

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.

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.

By OWNER:

For convenience upon seven (7) days written notice to CONSULTANT, effective upon the receipt of OWNER's notice by CONSULTANT.

**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 architectural 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 is initiated by the OWNER against the CONSULTANT and such litigation concludes with the entry of a final judgment favorable to the CONSULTANT, the OWNER shall reimburse the CONSULTANT for all of the CONSULTANT's reasonable attorney's and other reasonable expenses related to the litigation.

In the event litigation in any way related to the Services performed hereunder is initiated by the CONSULTANT against the OWNER and such litigation concludes with the entry of a final judgment favorable to the OWNER, the CONSULTANT shall reimburse the OWNER for all of the OWNER's reasonable attorney's 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:**

Unless specifically exempted by Florida law, in whole or in part, Consultant 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 contractor 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.

**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**

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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”

This Agreement (consisting of pages 1 to 7, and including Exhibits A and B 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:  
Amy Nowacki Architect, LLC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

By: Judith A. Zimomra

By: Amy Nowacki

Title City Manager

Title Principal

Address for giving notices:

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

Address for giving notices:

Amy Nowacki Architect, LLC  
1200 Periwinkle Way  
Sanibel, Florida 33957  
Phone (239) 770-0239  
E-Mail: amy@sancaparchitect.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

**Hourly Rate Schedule for Professional Services**

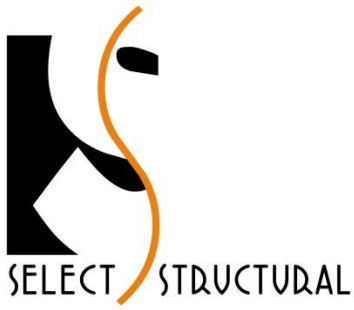
**effective 01-01-2021**

Project Director / Principal.....	\$200.00
Project Manager / Registered Architect.....	\$150.00
Project Manager.....	\$130.00
Architect / Interior Designer I.....	\$95.00
Interior Designer II.....	\$75.00
Draftsperson I.....	\$80.00
Draftsperson II.....	\$65.00
Construction Administration / Field Observation.....	\$130.00
Specification Writer.....	\$95.00
Graphic Design.....	\$70.00
Administrative.....	\$55.00
Legal Proceedings / Expert Witness.....	\$300.00

**Reimbursable Fees**

Printing / Duplication.....	Cost + 15%
In-House Printing.....	
Plans: black/gray tone*	24" x 36" \$1.30/sheet
	30" x 42" \$1.50/sheet
*color prints: provided per quote	36" x 48" \$2.00/sheet
Courier / Shipping.....	At Cost
Mileage (exceeding 50 miles round trip).....	\$0.54/mile





12573 New Brittany Boulevard ■ Fort Myers, FL 33907 ■ Ph: 239-210-5090

## 2021 Fee Schedule

### ENGINEERING:

Principal	\$200.00/hr.
Threshold Engineer	\$155.00/hr.
Senior Engineer	\$155.00/hr.
Engineer	\$125.00/hr.
Engineer In Training	\$100.00/hr.
Drafter	\$ 90.00/hr.
Inspector	\$ 85.00/hr.
Clerical	\$ 50.00/hr.

### REIMBURSIBLES:

Mileage	\$0.50/mile
Printing (in house)	\$2.00/sheet
Printing (print shop)	Cost
Delivery Service	Cost

## MPE Hourly Rate Schedule

<u>Employee Classification</u>	<u>Hourly Billing Rate</u>
Principal Engineer/QC	\$225.00
Sr. Project Manager / Engineer V	\$165.00
Engineer IV	\$140.00
Project Manager	\$130.00
Engineer II / Designer IV / Field Tech III / CAD/BIM Support II	\$110.00
Engineer I / Designer III / Field Tech II	\$95.00
Designer II / Field Tech I / CAD/BIM Tech I	\$80.00
Designer I / CADD Tech / Clerical	\$65.00

Updated 07/27/2020



# HALEY WARD

ENGINEERING | ENVIRONMENTAL | SURVEYING

## SCHEDULE OF CHARGES (Effective November 25, 2020)

Title	Rate Per Hour
Principal	\$205
Senior Project Manager IV	\$200
Senior Project Manager III	\$195
Senior Project Manager II	\$185
Senior Project Manager I	\$175
Project Manager III	\$170
Project Manager II	\$160
Project Manager I	\$140
Senior Project Engineer/Architect/Surveyor/Professional IV	\$200
Senior Project Engineer/Architect/Surveyor/Professional III	\$195
Senior Project Engineer/Architect/Surveyor/Professional II	\$185
Senior Project Engineer/Architect/Surveyor/Professional I	\$175
Project Engineer/Architect/Professional III	\$170
Project Engineer/Architect/Professional II	\$160
Project Engineer/Architect/Professional I	\$140
Engineer/Geologist/Scientist/Architect/Professional	\$125
Senior Land Surveyor	\$150
Land Surveyor	\$125
Senior Designer II	\$145
Senior Designer I	\$130
Designer	\$115
Senior Technician	\$120
Technician	\$105
Technical Aide	\$75
Senior Project Assistant	\$100
Project Assistant	\$85
One Person Robotic Survey Crew	\$180

**LITIGATION/COURT RELATED MATTERS:** When serving as consultants to members of the legal profession and as expert witnesses in courts of law, arbitration proceedings, and administrative adjudication proceedings, hourly fees for personnel will be invoiced at 1½ (one and one-half) times the standard hourly rate. This rate is also applicable to time associated with preparation for these services.

**EXPENSES:** Subconsultant's fees processed through Haley Ward will be marked up 15% to cover our direct costs associated with retaining these services. Mileage will be billed at the rate of \$.65 (sixty-five cents) per mile. Photocopies, blueprints, and other project related reimbursable expenses will be billed at cost.

**INVOICES:** Invoices for personnel time and expenses will be submitted on a monthly basis and will be due when rendered. Interest at a rate of 1½% per month will be assessed where allowed under applicable law, to bills remaining due and not paid within 30 (thirty) days.



**JANUARY 2021**

**BILLING RATES**

Hourly billing rates shall be as follows:

Senior Landscape Architect (per hour)	\$175.00
Landscape Architect Project Manager (per hour)	\$145.00
Landscape Architect (per hour)	\$125.00
Landscape Architect Associate level 2 (per hour)	\$ 95.00
Landscape Architect Associate level 1 (per hour)	\$ 75.00
Construction & permitting documents & meetings (City/County/State) (per hour)	\$145.00
Landscape Construction Administration (per hour)	\$125.00

**REIMBURSABLE EXPENSES**

In house printing shall be billed as follows:

11x17 black and white copies	\$ 1.50 ea.
11x17 color copies	\$ 3.00 ea.
24x36 black and white rendering (\$1 per sq ft)	\$ 6.00 ea.
24x36 color rendering (\$6 per sq ft)	\$ 36.00 ea.

Out of house printing, courier services, photography, and other reimbursable expenses shall be billed x 15% of direct cost.

## EXHIBIT “B”

The scope of services includes, but is not limited to the following:

### GENERAL ARCHITECTURAL ENGINEERING SERVICES:

General architectural engineering services include attendance at meetings, review of materials, permitting services negotiations of various kinds, staff assistance, miscellaneous architectural and other functions relating to the Center 4 Life construction project.

### STUDY AND REPORT SERVICES:

Study and report services consist of facility studies, investigations and studies and preparation of architectural engineering and financial reports and cost estimates pertaining to the Center 4 Life construction project as may be authorized by the City from time to time.

### SUPPLEMENTARY AND SPECIAL SERVICES:

Supplementary and special services as may be authorized by the City from time to time, such as feasibility studies, new construction, building expansion and remodeling/rehabilitation for the Center 4 Life project.

The CONSULTANT 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.