NOTICE OF PUBLIC MEETING/WORKSHOP
CITY COUNCIL
CITY OF BONITA SPRINGS
OFFICIAL AGENDA
WEDNESDAY, FEBRUARY 3, 2021
5:30 P.M.
BONITA SPRINGS RECREATION CENTER
26740 PINE AVENUE
BONITA SPRINGS, FLORIDA 34135

To submit your public comment in writing, please email the City at **CITYMEETINGS@CITYOFBONITASPRINGS.ORG** Any written public comment must be received by 12:00 P.M. on February 3, 2021.

CLICK HERE to watch the meeting online, or visit the City's website at WWW.CITYOFBONITASPRINGS.ORG and click "How do I?" and then click "Watch a meeting live" to access the live stream.

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1. Call to order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Agenda
6. Mayor's Welcome
7. Public Comment on Agenda Items
8. Consent Agenda: (Note: Items on the Consent Agenda will be considered as one unless a specific item is removed by a Council Member for separate discussion.)

   A. Review of December 2020 Quarterly Capital Improvements Project Report. (Greensheet No. 21-02-024)

   B. Approve nine (9) contract agreements for miscellaneous surveying services (RFQ 20-07) for the CDBG-DR Voluntary Home Buyout Program. (Greensheet 21-02-027).

   C. Approve Contract Amendmenet #1 with Florida Department of Emergency Management for the Logan Boulevard Regional Floodway Drainage Improvement Project #4337-265-R. (Greensheet No. 21-02-029)

   D. Consider approval of the applicant's Bald Eagle Management Plan for bald eagle nest LE911 located Latitude 26.353486, Longitude -81.7814714, 26431 Old 41 Road in accordance with LDC Chapter 7 Article III. – Bald Eagles. (Greensheet No. 21-02-028)

   E. Approve contract amendment #1 between the City and the Florida Department of Economic Opportunity (FDEO) for the CDBG-DR Voluntary Home Buyout Program – Contract Agreement #10086. (Greensheet No. 21-02-030)

- OPPORTUNITY FOR CITY COUNCIL COMMENTS ON CONSENT AGENDA ITEMS

9. Mayor and Council Member Items:

10. City Attorney's Items

11. City Manager's Items

12. Mayor and Council Member Reports

13. Approval of Minutes: 1/20/21

14. Public Comment

15. Adjournment Regular Meeting

Short recess

WORKSHOP AGENDA

1. Convene and call to order

2. Roll call

3. Staff introduction of workshop

4. Discussion regarding potential options for the City-owned Bamboo parcel.

5. Review of adopted Vision, Mission and Values Statement

6. Review of adopted Strategic Priorities

7. Discussion of Rules of Conduct for City Council

8. Discussion of Rules of Procedure for City Council

9. Discussion on future workshop topics and schedule

ANY PERSON REQUIRING SPECIAL ACCOMMODATIONS AT ANY OF THE MEETINGS BECAUSE OF A DISABILITY OR PHYSICAL IMPAIRMENT SHOULD CONTACT MEG WEISS, DIRECTOR OF ADMINISTRATIVE SERVICES, AT 239-949-6262, AT LEAST 48 HOURS PRIOR TO THE MEETING. IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS TO BE MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.

NOTE: AGENDAS ARE AVAILABLE FOR VIEW, AND THE MEETING CAN BE VIEWED AT http://www.cityofbonitasprings.org/cms/one.aspx?pageId=13788697 THIS MEETING IS TELEVISED ON COMCAST CHANNEL 98. YOU MAY ALSO VIEW THE MEETING ON HOTWIRE CHANNEL 398; CENTURY LINK/PRISM TV CHANNEL 87; AND SUMMIT BROADBAND CHANNEL 96.

NEXT MEETING: 02/17/21

BONITA SPRINGS CITY COUNCIL	GREEN SHEET:	21-02-024

AGENDA ITEM SUMMARY

REQUESTED MOTION: Review of December 2020 Quarterly Capital Improvement Projects Report

MEETING DATE: 2/3/2021

AGENDA:		REQUIREMENT/PURPOSE: (Specify)		REQUESTOR OF INFORMATION:
☐	PRESENTATIONS	☐	STATUTE	Anne K. Wright, CPA, CGFO Finance Director
☒	CONSENT	☐	ORDINANCE	
☐	PUBLIC HEARING	☐	ADMIN. CODE	
☐	MAYOR AND COUNCIL MEMBER ITEMS	☐	OTHER	
☐	MAYOR AND COUNCIL MEMBER'S REPORTS			
☐	CITY ATTORNEY ITEMS			
☐	CITY MANAGER ITEMS			

BACKGROUND:
Attached is the Capital Improvement Projects Quarterly Report as of December 31, 2020.

This report categorizes the capital projects by the City Council's adopted Strategic Priorities.

As of December 31, 2020, the total Capital Improvement Project budget, including carry-over from the prior year and current year amendments, is $77,104,227. Project expenditures for the three months ended December 31, 2020 total $861,241.

This report is provided for informational purposes.

IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ **YES** ☐ **NO**
IF YES, WHICH STRATEGIC OBJECTIVE? #7 Government Transparency

STAFF RECOMMENDATIONS: Informational item.

REVIEWED BY:

City Manager: **Arleen Hunter**
City Attorney: **Derek Rooney**
City Clerk: **Debra Filipek**
Department Director: **Anne Wright**

COUNCIL ACTION:

☐ **APPROVED**
☐ **DENIED**
☐ **DEFERRED**
☐ **OTHER**

CAPITAL IMPROVEMENT PROJECTS QUARTERLY REPORT

as of December 31, 2020

Capital Projects		Funding/Revenue Source	Budget Carry-over from FY 2020 approved by Council on 12/16/20	FY 2021 Adopted Budget	FY 2021 Adopted Budget with Budget Carry-over and FY 2021 budget transfers	FY 2021 Expenditures as of December 31, 2020	Budget Variance as of December 31, 2020
Account	**Project Description**						
IMPROVE STORM WATER MANAGEMENT (1st STRATEGIC PRIORITY)							
30.250.538.6100	Land acquired for storm water purposes	General Fund	2,665,261	1,000,000	3,665,261	-	3,665,261
		HMGP Grant	-	7,050,000	7,050,000	-	7,050,000
		TOTAL	**2,665,261**	**8,050,000**	**10,715,261**	**-**	**10,715,261**
30.250.538.6106	East Bonita Springs Stormwater Improvement	Loan Proceeds	6,678	-	6,678	-	6,678
30.250.538.6110	Quinn/Downs/Dean Buyout Program	Grant - CDBG-DR	5,000,000	-	5,000,000	1,372	4,998,628
30.250.538.6802	Spring Creek Restoration Plan	General Fund	-	-	-	-	-
30.250.538.6806	Pine Lake Preserve	General Fund	370,000	-	370,000	472	369,528
		Grant - Local Mitigation	580,000	-	580,000	-	580,000
		TOTAL	**950,000**	**-**	**950,000**	**472**	**949,528**
30.250.538.6807	Logan Blvd Regional Floodway/Drainage	General Fund	564,829	-	564,829	-	564,829
		Grant - Local Mitigation	1,762,500	-	1,762,500	-	1,762,500
		TOTAL	**2,327,329**	**-**	**2,327,329**	**-**	**2,327,329**
30.250.538.6808	Storm Water Utility	General Fund	34,360	-	34,360	1,007	33,353
30.250.538.6809	Spring Creek/Bonita Springs Golf Course Flood Improvement	General Fund	2,450,030	-	2,450,030	-	2,450,030
		Grant - Local Mitigation	7,425,000	-	7,425,000	-	7,425,000
		TOTAL	**9,875,030**	**-**	**9,875,030**	**-**	**9,875,030**
30.250.538.6810	Quinn/Downs/Dean/ Imperial Pky Stormwater Improvements	General Fund	-	-	-	-	-
		State Legislative Approp	-	750,000	750,000	-	750,000
		Grant - CDBG-DR	11,021,919	-	11,021,919	-	11,021,919
		TOTAL	**11,021,919**	**750,000**	**11,771,919**	**-**	**11,771,919**
30.250.538.6811	Felts Ave. Bio-Reactor Phase II	General Fund	250,000	150,000	400,000	-	400,000
		Grant - FDEP	400,000	-	400,000	-	400,000
		TOTAL	**650,000**	**150,000**	**800,000**	**-**	**800,000**
30.250.538.6812	Big Bend Road Drainage	Gas Tax	-	65,978	65,978	-	65,978
	TOTAL IMPROVE STORM WATER MANAGEMENT		**32,530,577**	**9,015,978**	**41,546,555**	**2,851**	**41,543,704**
TRANSPORTATION (2nd STRATEGIC PRIORITY)							
Bonita Beach Road Visioning and Quadrant:							
30.250.541.6317	Bonita Bch Rd/US 41 Quadrant	General Fund	182,913	-	182,913	-	182,913
		Gas Tax	899,988	-	899,988	-	899,988
		Road Impact Fee	8,572,164	-	8,572,164	-	8,572,164
		TOTAL	**9,655,065**	**-**	**9,655,065**	**-**	**9,655,065**
30.250.541.6318	Bonita Bch Rd Vision Implementation	General Fund	133,048	750,000	883,048	23,538	859,510
	TOTAL Bonita Beach Road Visioning and Quadrant		**9,788,113**	**750,000**	**10,538,113**	**23,538**	**10,514,575**
Sidewalks and Multi-Use Pathways:							
30.250.541.6320	Multi-Use Pathways & Sidewalks	General Fund	-	-	-		-
		Gas Tax	-	314,538	314,538	-	314,538
		Grant - CDBG	-	332,389	332,389	-	332,389
		Road Impact Fee	-	443,233	443,233	-	443,233
		Park Impact Fee	-	-	-	-	-
		TOTAL	**-**	**1,090,160**	**1,090,160**	**-**	**1,090,160**
30.250.541.6323	W. Terry St. Multi-Use Pathway	General Fund	475,000	250,000	725,000	-	725,000
		Grant - FDEP	200,000	-	200,000	-	200,000
		Grant - CDBG	16,247	-	16,247	-	16,247
		Road Impact Fee	1,542,886	764,705	2,307,591	-	2,307,591
		Park Impact Fee	834,084		834,084	-	834,084
		TOTAL	**3,068,217**	**1,014,705**	**4,082,922**	**-**	**4,082,922**
30.250.541.6324	Sun Trail	Road Impact Fee	4,467,668	200,000	4,667,668	-	4,667,668
		Park Impact Fee	50,000	-	50,000	-	50,000
		TOTAL	**4,517,668**	**200,000**	**4,717,668**	**-**	**4,717,668**
30.250.541.6331	Pine Ave. Multi-use Pathway	Grant - CDBG	13,545	-	13,545	-	13,545
30.250.541.6332	Cochran St./ Pauling Lane Multi-use Pathway	Grant - CDBG	1,900	-	1,900	-	1,900
30.250.541.6333	Bonita Drive Pathway-Old 41 to Streetsboro Lane	General Fund	23,677	-	23,677	-	23,677
		Grant - CDBG	21,659	-	21,659	3,904	17,755
		Road Impact Fee	932,741	-	932,741	-	932,741
		Park Impact Fee	48,769	-	48,769	-	48,769
		TOTAL	**1,026,846**	**-**	**1,026,846**	**3,904**	**1,022,942**

CAPITAL IMPROVEMENT PROJECTS QUARTERLY REPORT

as of December 31, 2020

Capital Projects							
Account	Project Description	Funding/Revenue Source	Budget Carry-over from FY 2020 approved by Council on 12/16/20	FY 2021 Adopted Budget	FY 2021 Adopted Budget with Budget Carry-over and FY 2021 budget transfers	FY 2021 Expenditures as of December 31, 2020	Budget Variance as of December 31, 2020
30.250.541.6334	Maddox Lane Sidewalk	Road Impact Fee	7,556	334,671	342,227	-	342,227
		Park Impact Fee	316,656	-	316,656	-	316,656
		TOTAL	**324,212**	**334,671**	**658,883**	**-**	**658,883**
30.250.541.6335	W. Terry St Pathway Extension East of Pine Ave.	Grant - CDBG	6,064	-	6,064	-	6,064
30.250.541.6336	Imperial Shores Blvd Sidewalk	Road Impact Fee	4,758	-	4,758	-	4,758
30.250.541.6337	Dean St Sidewalks/Infra Mosaic	General Fund	141,843	-	141,843	-	141,843
		Road Impact Fee	-	-	-	-	-
		TOTAL	**141,843**	**-**	**141,843**	**-**	**141,843**
30.250.541.6344	W. Terry-Pine to Railroad	General Fund	**17,634**	**-**	17,634	**-**	17,634
		Gas Tax	478,127	-	478,127	-	478,127
		TOTAL	**495,761**	**-**	**495,761**	**-**	**495,761**
30.250.541.6345	Cockleshell Sidewalk Glen Haven	Park Impact Fee	134,153	-	134,153	-	134,153
	TOTAL Sidewalks and Multi-Use Pathways		**9,734,967**	**2,639,536**	**12,374,503**	**3,904**	**12,370,599**
30.250.541.6300	Minor Road, Sidewalk & Drainage Improvements	Gas Tax	4,267	400,000	404,267	-	404,267
30.250.541.6308	Asphalt Overlays	Gas Tax	190,721	240,000	430,721	-	430,721
30.250.541.6319	Roadway Restriping	Gas Tax	250,000		250,000	-	250,000
30.250.541.6321	Rail Road Crossing Improvements	Gas Tax	353,255		353,255	-	353,255
30.250.541.6327	Goodwin St Pedestrian & Drainage	Gas Tax	-	57,788	57,788	**-**	57,788
		Road Impact Fee	-	407,742	407,742	-	407,742
		TOTAL	**-**	**465,530**	**465,530**	**-**	**465,530**
30.250.541.6328	Decorative St Lights LED conversion	Gas Tax	-	479,661	479,661	409	479,252
30.250.541.6343	Bridge Maintenance	Gas Tax	-	224,672	224,672	-	224,672
30.250.541.6342	Traffic Calming	Gas Tax	-	45,000	45,000	-	45,000
30.250.541.6908	Logan Boulevard	Gas Tax	-	-	-	-	-
	TOTAL TRANSPORTATION		**20,321,323**	**5,244,399**	**25,565,722**	**27,851**	**25,537,871**
ENVIRONMENTAL PROTECTION (4th STRATEGIC PRIORITY)							
30.000.537.6100	Water Issues/Land Acquisition from willing sellers	General Fund	205,060	-	205,060	**-**	205,060
		Building Fees (A)	57,700	-	57,700	**-**	57,700
		TOTAL	**262,760**	**-**	**262,760**	**-**	**262,760**
30.000.537.6105	Environmentally Senditive Land Acquisitions	General Fund	-	200,000	200,000	-	200,000
30.611.537.6000	Beach Renourishment 2024	General Fund	528,588	110,000	638,588	-	638,588
	TOTAL ENVIRONMENTAL PROTECTION		**$ 791,348**	**$ 310,000**	**$ 1,101,348**	**$ -**	**$ 1,101,348**
COMMUNITY AESTHETICS: DEVELOP AND IMPLEMENT URBAN DESIGN (5th STRATEGIC PRIORITY)							
30.000.519.6000	Exotic Removal of FPL ROW Path	General Fund	10,500	-	10,500	-	10,500
30.250.541.6310	FDOT Pond on Arroyal Rd	General Fund	87,168	-	87,168	-	87,168
30.250.541.6314	Street Light Uniformity	Gas Tax	2,321	-	2,321	-	2,321
30.250.541.6315	East Terry Vegetative Buffer/Wall	General Fund	67,642	282,358	350,000	-	350,000
30.250.541.6325	Logan Boulevard Landscape & Lighting	General Fund	297,982	-	297,982	12,600	285,382
		Gas Tax		-	-	-	-
		TOTAL	**297,982**	**-**	**297,982**	**12,600**	**285,382**
30.250.541.6906	Median Landscape Enhancement	General Fund	11,261	750,000	761,261	-	761,261
30.270.519.4910	Highway Monuments/Welcome Signs	General Fund	300,000	-	300,000	-	300,000
30.270.519.4911	Urban Design	General Fund	22,925	100,000	122,925	15,000	107,925
30.270.519.4912	Goodbread Grocery (AKA Dixie Moon)	General Fund	200,148	100,000	300,148	-	300,148
30.270.519.4920	Flagpole along I-75	General Fund	40,000	-	40,000	-	40,000
30.270.519.4932	Dean St. Kayak Launch	Park Impact Fee	12,222	-	12,222	-	12,222
30.270.541.6322	Imperial River US 41 Bridge Beautification Project	General Fund	114,000	-	114,000	-	114,000
30.270.572.6000	Additional Soccer Fields	Park Impact Fees	-	100,000	100,000	-	100,000
30.270.573.4928	Acquisition of Public Art	General Fund	-	50,000	50,000	-	50,000

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as of December 31, 2020

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30.270.575.6014	Everglades Wonder Gardens Café	General Fund	99,684	-	99,684	-	99,684
30.602.572.6022	Small Recreation Building Improvements	General Fund	-	60,000	60,000	-	60,000
30.603.572.6008	Comm Park Sealcoating Parking Lot	General Fund	15,000	37,000	52,000	-	52,000
30.603.572.6015	Baseball Complex Master Plan	General Fund	209,417	550,000	759,417	431,398	328,019
30.604.572.6000	Pool Geothermal Heater/Chiller	General Fund	100,000	-	100,000	-	100,000
30.604.572.6001	Pool & Fountain Resurfacing	General Fund	-	65,000	65,000	-	65,000
30.604.572.6024	Pool Family Restroom	Park Impact Fees	-	100,000	100,000	-	100,000
30.604.572.6023	Pool Roof Replacement	General Fund	-	50,000	50,000	-	50,000
30.605.572.6009	Riverside Park Sealcoating Parking Lot	General Fund	15,000	20,000	35,000	-	35,000
30.605.572.6013	Bandshell Area Improvements, Sidewalk/brick paver and flag pole holder replacement	General Fund	36,009	-	36,009	-	36,009
30.605.572.6017	Riverside Park Bandshell Security	General Fund	-	-	-	-	-
30.610.572.6016	Dog Park Shade Structures	Park Impact Fee	14,653	-	14,653	-	14,653
30.610.572.6021	Dog Park Trail Overlay	General Fund	-	45,000	45,000	-	45,000
30.617.572.6001	Nature Place Shade Structure	Park Impact Fee	18,000	-	18,000	-	18,000
30.621.572.6020	River Park Landscaping & Lighting Enhancemt	TDC Grant	-	270,000	270,000	-	270,000
30.628.572.6001	Mayhood Park Concrete & Exotics Removal	General Fund	35,250	25,000	60,250	-	60,250
31.000.552.6311	Downtown Redevelopment	General Fund	288,294	85,000	373,294	-	373,294
31.602.572.6000	Recreation Center Improvements	General Fund	-	-	-	-	-
31.603.572.6001	Community Park Improvements	General Fund	14,015	-	14,015	-	14,015
31.604.572.6000	Pool Landscaping	General Fund	41,474	-	41,474	-	41,474
31.605.572.6004	Bandshell Resod/Re-grade	General Fund	-	-	-	-	-
31.605.572.6008	Skate Park	FDEP/LWCF Grant	-	279,849	279,849	-	279,849
		Park Impact Fee	278,583	-	278,583	-	278,583
		TOTAL	**278,583**	**279,849**	**558,432**	**-**	**558,432**
31.610.572.6004	E Terry St Park-Dog Park	Park Impact Fee	5,824	-	5,824	-	5,824
31.610.572.6005	Additional Trails/Entrance	Park Impact Fee	7,133	-	7,133	-	7,133
31.615.572.6001	Resod Liles Hotel Plaza Lawn	General Fund	19,563	-	19,563	19,550	13
31.621.572.6007	River Prk-US 41	General Fund	36,500	-	36,500	-	36,500
		Grant - TDC	50,616	-	50,616	-	50,616
		Park Impact Fee	15,900	-	15,900	-	15,900
		TOTAL	**103,016**	**-**	**103,016**	**-**	**103,016**
31.628.572.6000	Mayhood Playground	Park Impact Fee	14,905	-	14,905	-	14,905
	TOTAL COMMUNITY AESTHETICS STRATEGIC PRIORITY		**$ 2,481,989**	**$ 2,969,207**	**$ 5,451,196**	**$ 478,548**	**$ 4,972,648**
GOVERNMENT TRANSPARENCY:INCREASE OUTREACH/ACCESSIBILITY TO CITIZENS (7th STRATEGIC PRIORITY)							
30.240.513.6400	Technology Enhancements- Community Development Building Permits	Building Fee Fund	1,112,000	-	1,112,000	27,200	1,084,800
	TOTAL GOVERNMENT TRANSPARENCY STRATEGIC PRIORITY		**$ 1,112,000**	**$ -**	**$ 1,112,000**	**$ 27,200**	**$ 1,084,800**
OTHER							
30.240.513.6401	Technology Equipment Replacement Reserve	General Fund	180	50,000	50,180	7,959	42,221
30.270.519.4909	Contingency	General Fund	1,811	-	1,811	-	1,811
		Park Impact Fee	36,610	-	36,610	-	36,610
		TOTAL	**38,421**	**-**	**38,421**	**-**	**38,421**
30.270.519.4924	City Facilities Major Repairs	General Fund	1,632,859	-	1,855,892	287,237	1,568,655
30.270.519.6400	Vehicle Major Repairs and Replacement Reserve	General Fund	69,532	55,000	124,532	-	124,532
30.270.519.4927	Security Upgrades in City Facilities	General Fund	-	65,000	65,000	-	65,000
30.402.513.6400	Cameras in Council Chambers	General Fund	-	118,381	118,381	29,595	88,786
30.615.572.6019	Liles Roof Replacement & Stucco Repairs	General Fund	-	75,000	75,000	-	75,000
		Total Other	**1,740,992**	**363,381**	**2,327,406**	**324,791**	**2,002,615**
		TOTAL	**$ 58,978,229**	**$ 17,902,965**	**$ 77,104,227**	**$ 861,241**	**$ 76,242,986**

CAPITAL IMPROVEMENT PROJECTS QUARTERLY REPORT

as of December 31, 2020

Capital Projects		Funding/Revenue Source	Budget Carry-over from FY 2020 approved by Council on 12/16/20	FY 2021 Adopted Budget	FY 2021 Adopted Budget with Budget Carry-over and FY 2021 budget transfers	FY 2021 Expenditures as of December 31, 2020	Budget Variance as of December 31, 2020
Account	**Project Description**						
		FUNDING SOURCES					
		General Fund	11,808,457	5,042,739	17,074,229	828,356	16,245,873
		Gas Tax	2,178,679	1,827,637	4,006,316	409	4,005,907
		Grant	26,499,450	7,932,238	34,431,688	5,276	34,426,412
		Road Impact Fee	15,527,773	2,150,351	17,678,124	-	17,678,124
		Park Impact Fee	1,787,492	200,000	1,987,492	-	1,987,492
		Building Fees	1,169,700	-	1,169,700	27,200	1,142,500
		Loan Proceeds	6,678	-	6,678	-	6,678
		State Legislative Approp.	-	750,000	750,000		750,000
		TOTAL	**$ 58,978,229**	**$ 17,902,965**	**$ 77,104,227**	**$ 861,241**	**$ 76,242,986**

A. This funding source has environmental restrictions, i.e., Option 2 which was exercised by the developer requires that if a fee in lieu is paid to the City of Bonita Springs, the City must purchase, restore, and maintain 0.825 acres of Pine Flatwoods (or higher, oak scrub) to mitigate for this indigenous area. This fee in lieu payment was received under Zoning Ordinance No. 15-03.

BONITA SPRINGS CITY COUNCIL	GREEN SHEET:	21-02-027

AGENDA ITEM SUMMARY

REQUESTED MOTION: Approve nine (9) contract agreements for miscellaneous surveying services (RFQ 20-07) for the CDBG-DR Voluntary Home Buyout Program

MEETING DATE: 2/3/2021

AGENDA:		REQUIREMENT/PURPOSE: (Specify)		REQUESTOR OF INFORMATION:
☐	PRESENTATIONS	☐	STATUTE	Matt Feeney Assistant City Manager Elly Soto McKuen Senior Project Manager
☒	CONSENT	☐	ORDINANCE	
☐	PUBLIC HEARING	☐	ADMIN. CODE	
☐	MAYOR AND COUNCIL MEMBER ITEMS	☒	OTHER	
☐	MAYOR AND COUNCIL MEMBER'S REPORTS			
☐	CITY ATTORNEY ITEMS			
☐	CITY MANAGER ITEMS			

BACKGROUND:
Staff issued a Request for Qualifications (RFQ 20-07) on June 20, 2020 for miscellaneous surveying services for the CDBG-DR Voluntary Home Buyout Program. The City received nine (9) proposals on July 28, 2020.

The Selection Committee met on September 4, 2020 and evaluated the following submittals (in no order of preference): KCI Technologies, Inc.; Atkins, Inc.; Nativetec; Agnoli, Barber Brundage, Inc.; AIM Engineering and Surveying, Inc.; Banks Engineering, Inc.; Hole Montes, Inc.; Grady Minor, Inc.; and RWA Engineering. Based on the selection criteria and experience of the proposals the Committee voted unanimously to recommend approval of all survey companies.

Attachments: Agreements for KCI Technologies, Inc; Atkins Global, Inc.; Nativetec; Agnoli, Barber Brundage, Inc; AIM Engineering and Surveying, Inc.; Banks Engineering, Inc.; Hole Montes, Inc.; Grady Minor, Inc.; RWA Engineering, Inc.

IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ **YES** ☐ **NO**

IF YES, WHICH STRATEGIC OBJECTIVE? 1) Stormwater Management; 3) Strengthen/Enhance City Finances

STAFF RECOMMENDATIONS: Approve nine (9) contract agreements for miscellaneous surveying services for the Voluntary Home Buyout Program

REVIEWED BY:

City Manager: **Arleen Hunter**
City Attorney: **Derek Rooney**
City Clerk: **Debra Filipek**
Department Director: **Matt Feeney**

COUNCIL ACTION:

☐ **APPROVED**
☐ **DENIED**
☐ **DEFERRED**
☐ **OTHER**

CITY OF BONITA SPRINGS, FLORIDA
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this _____ day of _____, 2020, between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and KCI Technologies, Inc. (hereinafter referred to as the "Consultant").

WITNESSETH

WHEREAS, the City desires to obtain the professional services of said Consultant to provide and perform professional services as further described hereinafter concerning the project to be referred to and identified as: Miscellaneous Surveying Services for the Community Development Block Grant-Disaster Recovery (CDBG-DR) Voluntary Home Buyout Program CN 20-07, and

WHEREAS, the Consultant hereby certifies that Consultant has been granted and possesses valid, current licenses to do business in the State of Florida and in the City of Bonita Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultants Competitive Negotiation Act, Florida Statutes §287.055.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a contract shall exist between both parties consisting of:

ARTICLE 1.00-SCOPE OF PROFESSIONAL SERVICES
Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in the Scope of Professional Services, which is attached hereto and made a part of this Agreement.

ARTICLE 2.00-DEFINITIONS
The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 CITY
The term "City" shall refer to the City of Bonita Springs, a municipality incorporated within the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the City's behalf relative to this Agreement.

2.02 CONSULTANT
The term "Consultant" shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all change orders thereto.

2.03 PROFESSIONAL SERVICES
The term "Professional Services" shall refer to all of the services, work materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the Consultant and its employees and any and all sub-consultants and subcontractors the Consultant may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT
The term "Sub-Consultant" shall refer to any individual or firm offering professional services which is engaged by the Consultant to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated, responsible and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any sub-consultant.

2.05 SUBCONTRACTOR
The term "Subcontractor" shall refer to any individual, company or firm providing other than professional services which is engaged by the Consultant to assist the Consultant in contractually obligated, responsible, and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any subcontractor.

2.06 PROJECT
The term "Project" shall refer to such facility, system, program or item as described in the summary statement set forth in the preamble of this Agreement.

2.07 BASIC SERVICES
The term "Basic Services" shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached Scope of Professional Services.

2.08 ADDITIONAL SERVICES
The term "Additional Services" shall refer to such professional services as the City may request and authorize, in writing, the Consultant to provide and perform relative to this Agreement which are not included in the basic services. Additional services shall be authorized by the execution of both parties to this Agreement by a change order agreement.

2.09 CHANGE ORDER
The term "Change Order" shall refer to a written document, change order agreement, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon scope of professional services and tasks, compensation and method of payment, time and schedule of performance, or project guidelines and criteria as such were set forth and agreed to in the initial agreement, supplemental task authorization(s), or previous change orders issued thereto. The change order document, which shall be executed on a City standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all change orders executed and issued under this Agreement shall be understood and agreed by both parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the change order including, but not limited to, any and all direct costs, indirect costs and associated costs which may result from or be caused by the change order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the Consultant's general administrative and overhead costs and profit.

In the event the City decides to delete all, or portions, of the scope of services, task(s), or requirements set forth in the initial agreement, supplemental task authorizations or previously authorized change orders, the City may do so by the unilateral issuance of a written change order to the Consultant. Such a unilaterally issued change order shall set forth, if appropriate, an agreement by both the City and the Consultant establishing changes in the amount of compensation to be paid the Consultant as a result of the deletion or decrease in the services required shall have no effect on, or otherwise prevent the City from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the Consultant.

2.10 SUPPLEMENTAL TASK AUTHORIZATION
The term "Supplemental Task Authorization" as used refers to a written document executed by both parties to an existing professional services agreement setting forth and authorizing a limited number of professional services, tasks, or work.

2.11 CITY MANAGER
The term "City Manager" shall refer to the City Manager or his designee requesting the service, employed by the City Council to serve and act on the City's behalf, as it relates to this project. The City Manager within the authority conferred by the City Council, acting as the City's designated representative shall issue written notification to the Consultant of any and all changes approved by the City in the Consultant's: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to basic services and additional services pursuant to this Agreement or change order(s) or supplemental task authorization(s) pertaining thereto. The City Manager shall be responsible for acting on the City's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, change order(s) or supplemental task authorization(s) issued thereunder.

2.12 PROJECT MANAGER
The term "Project Manager" shall refer to the person employed or retained by the City and designated, in writing, to serve and act on the City's behalf to provide direct contact and communication between the City and Consultant with respect to

providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and such written change order(s) and supplemental task authorization(s) as are authorized. The Project Manager is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; (3) the amount of compensation the City is obligated or committed to pay the Consultant. The Project Manager shall review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and change order(s), supplemental task authorization(s) thereto.

2.13 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or sub-contractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set forth in subsequent work orders, supplemental agreements, and/or change orders agreed to in writing by both parties to this Agreement.

2.14 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the Consultant's compensation to provide and perform the services and work necessary and required pursuant to the tasks set forth in the Scope of Professional Services, and any change orders, supplemental task authorizations, and work orders authorized thereto, is established to be made on a not-to-exceed (NTE) amount basis, it is mutually understood and agreed that such compensation for each completed task shall be made on the following basis:

For the actual hours necessary, required and expected by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in the Compensation and Method of Payment, which is attached hereto and made a part of this Agreement, to the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by sub-consultants and subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the City and the Consultant and as are set forth as a part of the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

With the understanding and agreement that the City shall pay the Consultant for all such costs and expenses within the established NTE amount for each task or sub-task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the City covering all such costs and expenses; and

With the understanding and agreement that the Consultant's invoices and all payments to be made for all NTE amounts shall be subject to the review, acceptance and approval of the City; and with the understanding and agreement that when the Consultant's compensation is established on a NTE basis for a specific task(s) or sub-task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and sub-consultant and subcontractor costs for any such specific task(s) or sub-task(s) shall not exceed the amount of the total NTE compensation established and agreed to for each specific task(s) or sub-task(s). In the event the amount of compensation for any task(s) or sub-task(s) to which the Consultant is entitled on the NTE basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the NTE amount established for the specific task or sub-task, it is understood and agreed that any unexpended amount under a specific task or sub-task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other task(s) or sub-task(s).

ARTICLE 3.00-OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES

The Consultant agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida, Lee County and in the City of Bonita Springs, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement.

3.02 PERSONNEL

1) QUALIFIED PERSONNEL

The Consultant agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all basic services and additional services to be provided pursuant to this Agreement.

2) CONSULTANT'S PROJECT DIRECTOR

The Consultant agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising under this Agreement unless substitute arrangements have been furnished to the City in writing. The Consultant agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance of the City.

3) CONSULTANT'S STAFF

Consultant will specify the technical and support staff who will be assigned to this project. Consultant will notify City's Project Manager of any changes and/or substitution of staff working on the project.

4) REMOVAL OF PERSONNEL

The Consultant agrees, within thirty (30) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the City shall request, in writing, be removed, this request may be made by the City with or without cause.

5) IMMIGRATION LAW COMPLIANCE

Consistent with Bonita Springs Code §36.22, effective June 1, 2009, Contractors providing services to the City, as a condition of each contract, must use E-Verify to verify the employment of any person hired during the contract term by the contractor and assigned by the Contractor to perform work for the City. Before any contract with the City is signed, proof of enrollment with E-Verify must be provided. The Contractor acknowledges that he will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Contractor the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Contractor must also be responsible for entering into an agreement with each and every vendor and subcontractor that states that vendors and subcontractors (and their vendors) are independently responsible for their own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the City. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The City may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all basic services and additional services will be provided, performed and completed in a timely and diligent manner throughout.

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the Consultant and by any sub-consultant(s) and/or subcontractor(s) engaged by the Consultant as set forth in the Scope of Professional Services shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the City approves this Agreement, or which may

subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the Consultant to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services shall serve as a basis for the City to consider the development and issuance of a change order to provide for a change to, or additional services to, the services set forth in this Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1) RESPONSIBILITY TO CORRECT

The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any sub-consultant(s) or subcontractor(s) engaged by the Consultant.

2) CITY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, nor acceptance by the City of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the Consultant, or any sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the City's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the City's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY AND HOLD HARMLESS

To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expenses and in a manner acceptable to and approved by the City, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its sub-consultants and/or subcontractors. This Consultant's obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the City.

The City reserves the right, should the Consultant fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the City for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

1) In the event the services required pursuant to this Agreement include the Consultant preparing and submitting to the City cost estimates, the Consultant, by exercise of this experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under this Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and corrections of any and all such cost

estimates. For purposes of the liability provisions of this article only, the Consultant's estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the City's acceptance of the estimate(s).

2) The cost estimates of Consultants or sub-consultants engaged by Consultants, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions provided in Consultant to Repair Property Damage Caused by the Consultant.

3) COST ESTIMATES

a) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus forty percent (40%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the order of magnitude estimate shall be recoverable by the City.

b) BUDGET ESTIMATE

Budget in this case applies to the City's budget and not to the budget as a project-controlled document. A budget is prepared with the use of flow sheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty percent (20%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the budget estimate shall be recoverable by the City.

c) CONSTRUCTION COST ESTIMATE

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a construction cost estimate is vital to the City's interests because it may be used for such purposes as, but not limited to the following: budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction project.

In the event the City solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a construction cost estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the Consultant's construction cost estimate by more than the percent accuracy set forth hereinabove, the Consultant shall, upon notification by the City, assume responsibility for and proceed to provide and perform the following service without additional compensation.

The Consultant will, subject to the review and approval of the City, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the construction cost estimate prepared by the Consultant. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the City for the project and set forth in this Agreement or change order(s) or supplemental task authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawing prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the Consultant's construction cost estimate, the costs associated with the Consultant's preparation and development of the construction cost estimate shall be recoverable by the City by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the construction cost estimate prepared by the Consultant, the amount of the construction cost estimate submitted by the Consultant shall be adjusted from the date the construction cost estimate was received by the City until the date bids or price proposals are received by the City, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the City receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the Consultant may deem it appropriate to recommend the City reject any such bid(s) or priced proposal(s). If under such circumstances the City concurs with the Consultant's recommendation and rejects the bid(s) or priced proposal(s), the City will not hold the Consultant responsible to, nor will the City require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the City and made payable to the respective governmental body upon the Consultant furnishing the City satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY request the Consultant to provide and perform professional services for this project which are not set forth in the Scope of Professional Services, the Consultant agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

Additional services shall be administered and authorized as change orders or supplemental task authorizations under this Agreement. The Consultant shall not provide or perform, nor shall the City incur or accept any obligation to compensate the Consultant for any additional services unless and until a written change order or supplemental task authorization has been agreed to and executed by both parties.

Each such change order or supplemental task authorization shall set forth a comprehensive, detailed description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said additional services.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The City may request the Consultant to execute a Truth-in-Negotiations Certificate ("Certificate"). The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized. The compensation to be paid the Consultant as set forth in the Compensation and Method of Payment, change orders, and supplemental task authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized thereto as stated above.

ARTICLE 4.00-OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

The City agrees after the execution of this Agreement to promptly advise the Consultant, in writing, of the person designated to serve and act as the City's Project Manager. Such notification shall be provided to the Consultant by the Project Manager.

4.02 AVAILABILITY OF CITY INFORMATION

1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the Consultant regarding requirements the City has established or suggests relative to the project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in the Project Guidelines and Criteria, which is attached hereto and made a part of this Agreement.

2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the Consultant's request, the City agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the City to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the City such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The City agrees that the City Manager and the Project Manager shall be available within a reasonable period of time, with reasonable prior notice given by the Consultant, to meet and/or consult with the Consultant on matters pertaining to the services to be provided and performed by the Consultant. The City further agrees to respond within a reasonable period of time to written requests submitted by the Consultant.

4.04 ACCESS TO CITY PROPERTY

The City agrees, with reasonable prior written notice given by the Consultant, to provide the Consultant with access within a reasonable period of time to City property, facilities, buildings and structures to enable the Consultant to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with City operations, or the operations carried on by others under a lease, or other contractual arrangement with the City, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the Consultant's normal office and/or field workdays and/or work hours.

ARTICLE 5.00-COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC AND ADDITIONAL SERVICES

The City shall pay the Consultant for all requested and authorized basic services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the City in accordance with the provisions for compensation and payment of said basic services set forth and prescribed in the Compensation and Method of Payment or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written change order executed by both parties.

5.02 METHOD OF PAYMENT

1) MONTHLY STATEMENTS

The Consultant shall be entitled to submit no more than one (1) invoice statement to the City each calendar month covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or change order(s) and supplemental task authorization(s) thereunder.

2) PAYMENT FOR SERVICES PERFORMED

The City shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

a) The City shall pay Consultant on the basis of services completed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment, as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the City. No payments shall be made for Consultant's work-in-progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the City. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the City, the City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

b) The City shall pay the Consultant for services performed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment on the basis of an invoice statement covering Consultant's work-in-progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-progress percentages are subject to the review and approval of the City. The decision of the City shall be final as to the work-in-progress

percentages paid. Payment by the City for tasks on a work-in-progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the City of any such service or work-in-progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-progress payments have been made. All tasks to be paid for on a work-in-progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in the Compensation and Method of Payment with the notation (WIPP). Only tasks so identified will be paid on a work-in-progress percentage basis. The City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

3) PAYMENT SCHEDULE

The City shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the City object or take exception to the amount of any Consultant's invoice statement, the City shall notify the Consultant of such objection or exception within the thirty (30) calendar days payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar days' period, the City shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.03 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE CITY

In the event of termination of this Agreement at the convenience of the City, not at the fault of the Consultant, the City shall compensate the Consultant only for the services performed prior to the effective date of termination, reimbursable expenses then due and reasonable expenses incurred by the Consultant in affecting the termination of services and work, and incurred by the submittal to the City of project drawings, plans, data, and other project documents.

5.04 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the City suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the City shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.05 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; (3) and/or are modified by the subsequent issuance of supplemental task authorization(s) and/or change order(s), other than receiving the compensation set forth in Payment When Services are Terminated at the Convenience of the City and Payment When Services are Suspended, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00-TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the City may authorize specific tasks to be completed. Upon agreement on the scope and fee for this work and execution of supplemental task authorization, the City will issue the Consultant a written notice to proceed. Following the issuance of such notice to proceed the Consultant shall be authorized to commence work and the Consultant thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, which is attached hereto and made a part of this Agreement.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the City shall grant the extension if the City determines the delay(s)

encountered by the Consultant, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The Consultant shall be required as a condition of this Agreement to prepare and submit to the City, on a monthly basis, commencing with the issuance of the notice to proceed, a Consultant's work schedule. The work schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's work schedule of planned and actual work progress shall be updated and submitted by the Consultant to the City on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the City at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any change order(s) and supplemental task authorization(s) issued thereto.

ARTICLE 7.00-SECURING AGREEMENT

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

ARTICLE 8.00-CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines that there is a conflict of interest, Consultant or such sub-consultant shall decline the representation upon written notice by the City.

If the City determines that there is not such conflict of interest, then the City shall give its written consent to such representation. If Consultant or sub-consultant accepts such a representation without obtaining the City's prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such sub-consultant under this Agreement, then the Consultant or such sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such sub-consultants to comply with the provisions of this section.

Should the Consultant fail to advise or notify the City as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the City may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00-ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor Consultant, or consulting organization. Nor shall the Consultant subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the City. The Consultant shall have the right, subject to the City's prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The City shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in Consultant's Associated Sub-Consultants and Subcontractors, which is attached hereto and made a part of this Agreement.

ARTICLE 10.00-APPLICABLE LAW
Unless otherwise specified, this Agreement shall be governed by the laws, rules, regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States Government.

ARTICLE 11.00-COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES
The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

ARTICLE 12.00-WAIVER OF BREACH
Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00-INSURANCE
For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

The Vendor shall procure and maintain property insurance (Builder's Risk, Installation Floaters, etc.) upon the entire project, if required, to the full insurable value of the scope of work. The City and the Vendor waive against each other and the City's separate Vendors, Contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and City shall, where appropriate, require similar waivers of subrogation from the City's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. All deductibles for property insurance procured by the Vendor shall be the responsibility of the Vendor.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name the City of Bonita Springs, Florida, as an additional insured including completed operations (and products if applicable). The policy shall be endorsed to be primary to any similar coverage carried by the City.

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all contracts.

ARTICLE 14.00-DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00-REPRESENTATION OF THE CITY

The Consultant in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the City in this manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written change order(s) and supplemental task authorization(s) issued thereunder.

In the event the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the City's behalf, and shall not act on the City's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor; or (2) the time for completing the work as required and agreed to in the construction contract; or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The City will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00-OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the City of a written change order deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the City, shall be delivered by the Consultant to the City within seven (7) calendar days of the City making such a request. In the event the City gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the City of a written change order deleting all or part of the services or work required, the Consultant shall deliver to the City the requested documents as set forth hereinabove, with the mutual understanding and commitment by the City that compensation earned or owing to the commitment by the City that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the notice of termination or change order.

The Consultant, at its expense, may make and retain copies of all documents delivered to the City for reference and internal use. The Consultant shall not, and agrees not to, use any of these documents, data and information contained therein on any other project or for any other client without the prior expressed written permission of the City.

Any use by the City of said documents, data and information contained therein, obtained by the City under the provisions of this Agreement for therein, obtained by the City under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the City, and without liability to the Consultant. The City shall be liable and agrees to be liable for and shall indemnify, defend and hold the Consultant harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the City's use of such documents in a manner contrary to the provisions set forth hereinabove. The City hereby acknowledges receipt of $10.00 (ten and no hundred dollars) and other good and valuable consideration from the Consultant which has been paid as specific consideration for the indemnification provided herein.

ARTICLE 17.00-MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

17.01 COMPLIANCE WITH PUBLIC RECORDS LAW

The Consultant must comply with Florida public records laws, specifically to:

a) Keep and maintain public records required by the City to perform the service.

b) Upon request from the City's custodian of public records, provide the City 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 Florida Statutes §119 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 Consultant does not transfer the records to the City.

d) Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

e) The City will consider it a breach of contract should the Consultant fail to comply with any public records request.

f) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.

g) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESGIN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, debbie.filipek@cityofbonitasprings.org.**

h) If the Consultant is not providing the requested public records, the burden of proof is on the Consultant to show why they did not comply with the request.

ARTICLE 18.00-HEADINGS

The headings of the articles, sections, exhibits, attachments, phases or tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such articles, sections, exhibits, attachments, phases or tasks.

ARTICLE 19.00-ENTIRE AGREEMENT

This Agreement and attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 20.00-NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement to be given by the Consultant to the City shall be in writing and shall be given by the United States Postal Service Department first class mail service postage prepaid, addressed to the following City address of record and sent to the attention of the City's Project Manager unless waived by City:

Elly Soto McKuen, Senior Project Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Copy: City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

20.02 NOTICES BY CITY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the City to the Consultant shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following Consultant's address of record unless waived by Consultant:

Consultant Name: KCI Technologies, Inc.

Consultant Address: ~~6500 N. Andrews Avenue~~ 1425 West Cypress Creek Road, Suite 101

Consultant Address: Fort Lauderdale, FL 33309

Telephone Number: (954) 776-1616

Fax Number: (954) 771-7690

ATTENTION: Benjamin Hoyle, PSM
Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party per above contacts.

ARTICLE 21.00-TERM

This Agreement is effective as of the date first written above and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 22.00-TERMINATION

This Agreement may be terminated by the City at its convenience, or due to the fault of the Consultant, by the City giving thirty (30) calendar days written notice to the Consultant.

If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the City's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the City may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar days written notice, terminate this Agreement.

In addition to the City's contractual right to terminate this Agreement in its entirety as set forth above, the City may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services or the Project Guidelines and Criteria, or as such may be established by change order or supplemental task authorization. The City shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the City dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the City reserves the right to accept or not accept the termination request submitted by the Consultant, effective unless and until Consultant is notified, in writing, by the City of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the Consultant shall deliver to the City all papers, drawings, models, and other material in which the City has exclusive rights by virtue hereof or of any business done, or services or work performed by the Consultant on behalf of the City.

ARTICLE 23.00-AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendment, the requirements, provisions and/or terms of the amendment shall take precedence.

ARTICLE 24.00-MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed change order(s) or supplemental task authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written change order(s), and/or supplemental task authorizations, the latest executed change order(s), and/or supplemental task authorization(s) shall take precedence.

In the event the City issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the City's internal control purposes only, and any and all terms, provisions and conditions contained herein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 25.00-ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: _____
CITY CLERK

DATE: _____

CITY OF BONITA SPRINGS CITY COUNCIL

BY: _____
MAYOR

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

ATTEST:

Kelly A. Stout
(Witness)

Becky Padilla
(Witness)

CONSULTANT

BY: _____
(Authorized Signature)

Benjamin B. Hoyle, PSM/Survey Manager
(Title)

DATE: January 25, 2021

CORPORATE SEAL

KCI TECHNOLOGIES, INC. CORPORATE SEAL 1988 DELAWARE

EXHIBIT A

Scope of Professional Services
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 01/25/21

Basic Services

Section 1 General Scope Statement

The Consultant shall provide and perform the following professional services, which shall constitute the general scope of the basic services under the covenants, terms, and provisions of this Professional Services Agreement.

Section 2 Tasks

Pursuant to the general scope of the basic services stated herein above, the Consultant shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in Compensation and Method of Payment.

The CONSULTANT shall perform engineering, land survey, and aerial photography services necessary for the subject project as outlines; reference all centerline survey control points; establish the benchline on National Geodetic Vertical Datum (1929) throughout the project and tie property lines to comply with Florida Department of Natural Resources Rule, Florida Administrative Code Chapter 16 Q-3 (Florida Statutes 177 - Part Two).

Survey work shall be performed under the responsible charge of a Professional Land Surveyor registered in the State of Florida and shall be accomplished in accordance with the Florida Department of Transportation Policy 760.000-760.012, and Florida Department of Transportation Location Manual. Work must comply with the minimum technical standards for Land Surveyors Rule 2lHH-6, Florida Statutes 472.027; measurements of regular roadway cross-sections may be recorded on electronic data collection equipment.

Surveys shall also be provided in an electronic format, compatible with the following City GIS standards:

- DXF or DWG Format
- Coordinate System:
  1. Horizontal: State Plane FLORIDA WEST, FIPS 0902, NAD83, US Feet
  2. Vertical: NAVD 1988, US Feet
- CAD Layer organization

Administration
City Limits

Transportation
Road Centerline (line)
Pavement Area (polygon)
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)
Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail
Fence
Bridge
Pavement Message (point)

Storm Water
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)

Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail

Landscaping
Irrigation
Median (to be determined)

- Location accuracy requirements: all features should be within + or – one meter from actual position.

Roadway Survey
Provide engineering and land surveys necessary to establish the roadway alignments and intersecting streets within the project limits and obtain topography, cross sections, underground utilities, right-of-way, land ties and required drainage information for existing and proposed drainage systems and in accordance with the master drainage plan/storm run-off treatment areas.

Underground Utilities
Field locate existing underground utilities, based upon information provided in Task 7.01, only as deemed necessary to identify conflicts or potential conflicts with existing utilities during roadway and drainage construction. Horizontal and vertical location of underground utilities will be obtained prior to completion of Task 6.02. This task includes coordination with various utility companies and assumes that the respective utility shall be responsible for "pot holing," said underground systems. The horizontal and vertical location of each utility will be documented, based on the "pot-holing" performed by the respective utility company or the consultant.

Jurisdictional Wetlands Survey
After jurisdictional wetland lines have been flagged and verified by the agencies, the jurisdictional line will be located by GPS to sub-meter accuracy.

Planimetric
The Consultant shall provide planimetric of the project area sufficient to define topographical (two dimensional) details along the proposed roadway for the width of 300 feet either side of the centerline.
The scale Aerial Photography will not be acceptable for plan portion for the plan & profile sheets.

This list of activities is not meant to be complete and absolute. The City reserves the right to add additional related activities as the City implements these programs and survey related projects.

EXHIBIT B

Compensation and Method of Payment
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 01/05/21

Section 1 Basic Services/Task(s)

The City shall compensate the Consultant for providing and performing the task(s) set forth and enumerated in the Scope of Professional Services, as follows:

NOTE: A lump sum (LS) or not-to-exceed (NTE) amount of compensation to be paid the Consultant should be established and set forth below for each task or sub-task described and authorized in the Scope of Professional Services. Tasks to be paid on a work-in-progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
TOTAL				

(Unless list is continued on next page.)

Compensation and Method of Payment – Page 2
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07
Consultant's Personnel Hourly Rate Schedule*

Date: 01/25/21

Should it be mutually agreed to base compensation for additional services on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained below.

CONSULTANT OR SUB-CONSULTANT NAME Q. Grady Minor & Associates, P.A.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct** Payroll Average Hourly Rate
Project Assistant	$70.00
Filed Crew Supervisor	$100.00
CAD Technician	$90.00
Survey Technician	$120.00
Project Surveyor	$140.00
Project Manager	$160.00
Senior Project Manager	$180.00
Practice Leader/Survey Manager	$200.00
Regional Practice Leader	$225.00
2-Person Survey Crew	$140.00
3-Person Survey Crew	$180.00
Laser Scan/Specialty Survey Crew	$350.00
Expert Witness	$350.00

*NOTE: A separate personnel hourly rate schedule should also be attached for each sub-consultant listed in Consultant's Associated Sub-Consultant(s) and Subcontractor(s).

**NOTE: Direct Payroll Hourly Rate means the actual gross hourly wage paid.

EXHIBIT C

Time and Schedule of Performance
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 01/25/21

This Exhibit establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in the Scope of Professional Services. The Time and Schedule of Performance set forth hereinafter is established pursuant to Time and Schedule of Performance.

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 01/25/21

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing services and work on this project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
	N/A	

EXHIBIT E

Project Guidelines and Criteria
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 01/25/21

The City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

NONE

EXHIBIT F

Truth in Negotiation Certificate
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 01/25/21

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Truth-In-Negotiations Certificate.

2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.

3. The truth of statements made herein may be relied upon by the City and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the Consultant, doing business as:

COMPANY NAME: KCI Technologies, Inc.

BY: Benjamin B. Hoyle, PSM

TITLE: Survey Manager

The foregoing instrument was signed and acknowledged before me this 25 day of January, 2021 (in my presence)

by Benjamin B. Hoyle (Print or Type Name) who is personally known OR has produced N/A (Type of Identification & Number)

as identification.

Kelly A Stout
Notary Public Signature

#GG944122/January 5, 2024
Notary Commission Number/Expiration

KELLY A. STOUT
Notary Public-State of Florida
Commission # GG 944122
My Commission Expires
January 05, 2024

EXHIBIT G

Insurance and Bonding Requirements

All policies shall be Best's Rated "A-" or better or subject to approval

Insurance / Bond Type	**Required Limits**
☒ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements. ☒ **The policy shall be endorsed to provide a waiver of subrogation in favor of the City.** NOTE: Any "non-construction industry" company employing more than 3 employees (not including a sole proprietor owner) must have workers' compensation coverage. ALL "construction industry" (as defined by FL Rule # 69L-6.021) companies with ANY employees must have coverage or if no statutory employees, then up to three officers or a sole proprietor MUST have a current exemption certificate from the Division of Workers' Compensation on file.
☒ Employer's Liability	**$**1,000,000 single limit per occurrence (Workers' Compensation Part B)
☒ Commercial General Liability (Occurrence Form) patterned after the current ISO form	Bodily Injury and Property Damage ☒ **$**1,000,000 per occurrence, **$**1,000,000 aggregate (Per Project) for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
☒ Indemnification	To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.
☒ Automobile Liability	☒ **$** 1,000,000 Each Occurrence; Bodily Injury & Property Damage Owned/Non-owned/Hired; Automobile Included
☒ Other insurance as noted:	☐ Watercraft **$** _____ Per Occurrence ☐ United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work. **STATUTORY** ☐ Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. **$** _____ Per Occurrence ☐ Property Insurance (Or Builder's Risk) **Full insurable value of the scope of the work** ☐ Pollution **$** _____ Per Occurrence ☒ Professional Liability **$**1,000,000 per claim and in the aggregate

☐ Railroad Right of Way	☐ Umbrella Excess $ _____ Per Occurrence ☐ Railroad Protective Liability Insurance per occurrence limit of not less than **Two Million Dollars ($2,000,000)** and aggregate limits of **Six Million Dollars ($6,000,000)** to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your General Liability policy coverage to be $5,000,000. They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage. For additional information on their insurance requirements and other requirements such as payment for and scheduling Railroad Inspector / Flagman, please contact Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.
☐ Bid bond	Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
☐ Performance and Payment Bonds	If the box is checked for a project less than $200,000, a performance bond will be required. For projects in excess of $200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. **Per FS §255.05, the Contractor shall provide a certified copy of the recorded bond to the City.**

☒ Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

☒ The City of Bonita Springs must be named as "**ADDITIONAL INSURED, INCLUDING PRODUCTS AND COMPLETED OPERATIONS**" on the Insurance Certificate for Commercial General Liability.

☒ The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

☒ **Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to the City of Bonita Springs.

EXHIBIT H

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Vendor Covered Transactions

(1) The prospective vendor certifies, by submission of this Annual Agreement, that neither it nor its principles are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the vendor is unable to certify to the above statement, the prospective vendor shall attach an explanation to this form.

VENDOR

KCI Technologies, Inc.
Company Name

084993344
DUNS Number

Signature

January 25, 2021
Date

Benjamin B. Hoyle, PSM/Survey Manager
Print Name and Title

1425 W. Cypress Creek Road, Suite 101
Street Address

Fort Lauderdale, FL 33309
City, State, Zip

For City of Bonita Springs use only

To access the debarment search: https://www.sam.gov/SAM/ > Search Records tab > Enter DUNS number > Click Search

Company: [ ] is debarred [ ] is not debarred

Verified by: _____ Date: _____
Name

EXHIBIT I

Scrutinized Companies Statement

SWORN STATEMENT UNDER SECTION 287.135(5), FLORIDA STATUTES: THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number **CN 20-07**, for **Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program.**

2. This sworn statement is submitted by KCI Technologies, Inc. whose business
[Name of entity submitting sworn statement]

   address is 1425 W. Cypress Creek Road, Suite 101, Fort Lauderdale, FL 33309 and (if

   applicable) its Federal Employer Identification Number (FEIN) is 52-1604386 (If the entity has no

   FEIN, include the Social Security Number of the individual signing this sworn statement: _____.

3. My name is Benjamin B. Hoyle, PSM and my relationship to the above is
[Please print name of individual signing]

   Survey Manager, Associate.

4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.

6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.

8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. **[Please indicate which statements apply].**

X Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)
[x] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.

[ ] Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for $1 Million or more)
[x] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.

[ ] Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for $1 Million or more)
[x] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

[ ] Business Operations in Cuba or Syria (bid, proposal or contract renewal for $1 Million or more)
[x] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
[ ] The entity submitting this sworn statement does have business operations in Cuba or Syria.

The City will follow Florida Statute §287.135. If the City determines this Vendor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel after the contract is executed, the contract may be terminated by the City by written notification. If the City determines this Vendor is found to have submitted a false certification, placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations with Cuba or Syria, the City shall notify the Vendor of its determination by written notification.

By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.

AFFIANT

Benjamin B. Hoyle, PSM
Typed Name of AFFIANT

Survey Manager
Title

STATE OF Florida COUNTY OF Broward

The foregoing instrument was executed before me this 25 day of January, 2021,

by Benjamin B. Hoyle, PSM as Survey Manager of

KCI Technologies, Inc., In my presence who personally swore or affirmed that he/she is authorized to execute this document and thereby bind the Corporation, and who is personally known to me OR has

produced N/A as identification.

NOTARY PUBLIC, State of Florida

(stamp)

KELLY A. STOUT
Notary Public-State of Florida
Commission # GG 944122
My Commission Expires
January 05, 2024

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For City of Bonita Springs use only

To access the lists: http://www.sbafla.com/fsb/ > Funds We Manage tab > FRS Pension Plan - Global Governance Mandates > Global Governance Mandate Quarterly Reports > most current quarter

Scrutinized Companies that Boycott Israel List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in Sudan List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:
[ ] entity is **NOT** on list [ ] entity is on list

Business Operations in Cuba or Syria:
[ ] entity is **NOT** on list [ ] entity is on list

Verified by:_____ Date:_____
Print Name

EXHIBIT J

GENERAL PROVISIONS
State and Federal Regulations

1. 24 CFR 570 as amended- All the regulations regarding the CDBG program

2. 24 CFR 58 - The regulations prescribing the Environmental Review procedure.

3. Section I 04(b) and Section I 09 of Title I of the Housing and Community Development Act of 1974 as amended

4. The Fair Housing Act (42 U.S.C. 3601-20) Reasonable Accommodations Under the Fair Housing Act.

5. Executive Order 11063 - Equal Opportunity in Housing

6. Executive Order 11259 - Leadership & Coordination of Fair Housing in Federal Programs

7. 24 CFR Part I 07 - Non- Discrimination and Equal Opportunity in Housing under E.O.

8. Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, as amended

9. 24 CFR 570.60 I Subpart K - The regulations issued pursuant to Executive Order 11063 which prohibits discrimination and promotes equal opportunity in housing.

10. Executive Order 11246 ("Equal Employment Opportunity"), as amended by Executive Orders 11375 and 12086 - which establishes hiring goals for minorities and women on projects assisted with federal funds and as supplemented in Department of Labor regulations. EO I I246.

11. Executive Orders 11375 and 12086.

12. Title VII of the 1968 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972, 42 USC§ 2000e, et. seq. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that it is an Equal Opportunity or Affirmative Action employer.

13. 24 CFR 135 - Regulations outlining requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the CITY, the Consultant and any of the Subcontractor's. Failure to fulfill these requirements shall subject the CITY, the Consultant and any of the Consultant's Subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided, The Consultant certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
The Consultant further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:
"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."
The Consultant further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or

other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low- income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs,

The Consultant certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

14. Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
15. Contract Work Hours and Safety Standards Act, 40 USC 327-332.
16. Section 504 of the Rehabilitation Act of 1973, 29 USC 776(b) (5), 24 CFR 570.614 Subpart K. Section 504: https://www.epa.gov/ocr
17. The Americans with Disabilities Act of 1990: https://www.hud.gov/hudprograms/eohudap
18. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
19. 29 CFR Parts 3 and 5 - Regulations that prescribe the payment of prevailing wages and the use of apprentices and trainees on federally assisted projects. HUD Form 40 IO must be included in all construction contracts funded by CDBG-DR:

    Davis-Bacon Act: 42 USC 276a to 40 USC 276a:

    29 CFR Part 3 - Contractors and Subcontractors on public building or Public Work Financed, in whole or in part, by Loans or Grants from the United States

    29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provision Applicable Subject to the Contract Work Hours and Safety Standards Act)

    Executive Order 11914 - Prohibits discrimination with respect to the handicapped, in federally assisted projects.

    As a supplement to the Davis-Bacon Act requirements, the Consultant agrees to comply with the "Copeland Anti-Kickback Act," which prohibits the Consultant, its contractors, or subcontractors from inducing an employee to relinquish any part of his/her compensation, under the federally-funded contract.
20. Executive Order 11625 and U.S. Department of Housing and Urban Development Circular Letter 79-45 - which prescribes goal percentages for participation of minority businesses in Community Development Block Grant Contracts.
21. E.O. 11625 Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise.
22. The Consultant agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
23. 2 CFR 200 et seq - Uniform Administrative Requirements, Cost Principles, and Audit requirements for Grants and Agreements.
24. Immigration Reform and Control Act of 1986
25. Prohibition of Gifts to CITY Employees - No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service, or other item of value to any CITY employee,
26. Order of Precedence - In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Agreement shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Agreement. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Agreement, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.
27. Venue-Any suit of action brought by either party to this Agreement against the other party, relating to or arising out of this Agreement, must be brought in the appropriate federal or state courts, in Lee County, FL which courts have sole jurisdiction on all such matters. (No reference required for this item).
28. Dispute Resolution - Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. Any situations when negotiations, litigation and/or mediation shall be attended by representatives of Consultant with full decision-making authority and by CITY'S staff person who would make the presentation of any settlement reached during negotiations to CITY for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to

submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under§ 44.102, Florida Statutes. The litigation arising out of this Agreement shall be adjudicated in Lee County, Florida, if in state court and the US District Court, Middle District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, LEE COUNTY AND THE CONSULTANT EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAYE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

29. The Consultant agrees to comply with the following requirements:
Clean Air Act, 41 USC 7401, et seq.
Federal Water Pollution Control Act, 33 USC 1251, et seq., as amended.

30. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4002 and 24 CFR 570.605 Subpart K), the Consultant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained. If appropriate, a letter of map amendment (LOMA) may be obtained from FEMA, which would satisfy this requirement and/or reduce the cost of said flood insurance.

31. The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to the HUD Lead- Based Paint Poisoning Prevention Act, found at 24 CFR 570.608, Subpart K.

32. The Consultant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State or Local historic property list.

33. The Consultant must certify that it will provide drug-free workplaces, in accordance with the Drug-Free Workplace Act of 1988 (41 USC 701).

34. The Consultant certifies 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; and, that the Consultant shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction as outlined in 24 CFR 570.609, Subpart K.

35. The Consultant agrees to comply with the following 0MB Circulars whichever is applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. These requirements are enumerated in 2 CFR 200, et seq.
Single Audits shall be conducted annually, in accordance with 2 CFR 200.501, and shall be submitted to the CITY nine (9) months after the end of the Consultant's fiscal year. The Consultant shall comply with the requirements and standards of 2 CFR 200 Subpart F, Section 500. Consultants exempt from Single Audit requirements shall submit financial statements to the CITY one hundred eighty (180) days after the end of the Consultant's fiscal year. Per 2 CFR 200.344, if this Agreement is closed out prior to the receipt of an audit report, the CITY reserves the right to recover any disallowed costs identified in an audit after such closeout.

36. Any real property acquired by the Consultant for the purpose of carrying on the projects stated herein, and approved by the CITY in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24.10 I, shall be subject to the provisions of CDBG-DR including, but not limited to, the provisions on use and disposition of property. Any real property within Consultant control, which is acquired or improved, in whole or part, with CDBG-DR funds in excess of $25,000, must adhere to the CDBG-DR Regulations at 24 CFR 570.505.

37. As provided in Subsection 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Consultant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof.
This notice is required by§ 287.133 (3) (a), Florida Statutes.

38. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds, other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal

contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, contracts under grants, loans, and cooperative agreements) and that all Consultant's shall certify and disclose accordingly.

39. Travel reimbursement will be based on the U.S. General Services Administration (GSA) per diem rates in effect at the time of travel. Equal access in accordance with the individual's gender identity in community planning and development programs, per 24 CFR 5, I 06.
40. Housing Counseling, including homeownership counseling or rental housing counseling, as defined in §5.100, required under or provided in connection with any program administered by HUD shall be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 170, per 24 CFR 5.111.
41. HUD Final Rule-Implementation of the Violence Against Women Reauthorization Act of2013 which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements. Any rule or regulation determined to be applicable by HUD.
42. Florida Statutes 713 .20, Part I, Construction Liens
43. Florida Statutes 119,021 Records Retention
44. Florida Statutes, 119.071, Contracts and Public Records
45. Limited English Proficiency: The Consultant agrees to take reasonable steps to provide meaningful access to the program/project and activities funded under this Agreement for persons with limited English proficiency pursuant to information located at http://www.lep.gov.
46. Equal Treatment of Faith-Based Organizations: By regulation, DOJ/BJA prohibits all recipient organizations from using financial assistance from DOJ/BJA to fund explicitly religious activities. The Consultant agrees to avoid such prohibited conduct. Discrimination on the basis of religion in employment is generally prohibited by federal law, but the Religious Freedom Restoration Act is interpreted on a case-by-case basis to allow some faith-based organizations to receive DOJ/BJA funds while taking into account religion when hiring staff. Questions in this regard should be directed to the Office for Civil Rights.
47. Arrest and Conviction Records: Federal and state laws restrict use of arrest and conviction records in the employment context, except when specifically, authorized. The Consultant agrees to avoid the misuse of arrest or conviction records to screen applicants for employment or employees for retention or promotion that may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination unless use is otherwise specifically authorized by law.
48. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352): The Consultant will not use and has not used federal appropriated funds to pay at any tier, either directly or indirectly, any person or organization 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 obtaining any federal contract, grant, or any other award or subaward covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award or subaward. Such disclosures are forwarded from tier-to-tier up to the Consultant. The Consultant shall comply with the lobbying restrictions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and (ii) ensure that its officers, employees and its subcontractors hereunder comply with all applicable local, state, and federal laws and regulations governing advocacy of and appearances before any legislative body. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before local, state, or federal legislatures.
49. False Claim; Criminal, or Civil Violation: Consultant must promptly refer to CITY any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either (1) submitted a false claim for grant funds under the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving subaward agreement funds.
50. Political Activities Prohibited: None of the funds provided directly or indirectly under this Agreement shall be used for any political activities or to further the election or defeat of any candidates for public office; Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities or activities for or against the election of a candidate for an elected office.
51. Text Messaging: Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Federal Register 51225 (October I, 2009), DOJ/BJA encourages recipients and subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by DOJ/BJA and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
52. Trafficking in Persons: The Consultant agrees to, at any tier, comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of the Consultant and any employees of the Consultant.

53. Association of Community Organizations for Reform Now (ACORN): The Consultant understands and acknowledges that it cannot use any federal funds, either directly or indirectly, in support of any contract or subaward to either ACORN or its subsidiaries, without the express prior written approval of OJP.

54. If the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this funding agreement, the Consultant must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Busines Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by HUD.

CITY OF BONITA SPRINGS, FLORIDA
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this _____ day of _____, 2020, between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and Atkins North America, Inc. (hereinafter referred to as the "Consultant").

WITNESSETH

WHEREAS, the City desires to obtain the professional services of said Consultant to provide and perform professional services as further described hereinafter concerning the project to be referred to and identified as: Miscellaneous Surveying Services for the Community Development Block Grant-Disaster Recovery (CDBG-DR) Voluntary Home Buyout Program CN 20-07, and

WHEREAS, the Consultant hereby certifies that Consultant has been granted and possesses valid, current licenses to do business in the State of Florida and in the City of Bonita Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultants Competitive Negotiation Act, Florida Statutes §287.055.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a contract shall exist between both parties consisting of:

ARTICLE 1.00-SCOPE OF PROFESSIONAL SERVICES
Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in the Scope of Professional Services, which is attached hereto and made a part of this Agreement.

ARTICLE 2.00-DEFINITIONS
The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 CITY
The term "City" shall refer to the City of Bonita Springs, a municipality incorporated within the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the City's behalf relative to this Agreement.

2.02 CONSULTANT
The term "Consultant" shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all change orders thereto.

2.03 PROFESSIONAL SERVICES
The term "Professional Services" shall refer to all of the services, work materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the Consultant and its employees and any and all sub-consultants and subcontractors the Consultant may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT
The term "Sub-Consultant" shall refer to any individual or firm offering professional services which is engaged by the Consultant to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated, responsible and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any sub-consultant.

2.05 SUBCONTRACTOR
The term "Subcontractor" shall refer to any individual, company or firm providing other than professional services which is engaged by the Consultant to assist the Consultant in contractually obligated, responsible, and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any subcontractor.

2.06 PROJECT
The term "Project" shall refer to such facility, system, program or item as described in the summary statement set forth in the preamble of this Agreement.

2.07 BASIC SERVICES
The term "Basic Services" shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached Scope of Professional Services.

2.08 ADDITIONAL SERVICES
The term "Additional Services" shall refer to such professional services as the City may request and authorize, in writing, the Consultant to provide and perform relative to this Agreement which are not included in the basic services. Additional services shall be authorized by the execution of both parties to this Agreement by a change order agreement.

2.09 CHANGE ORDER
The term "Change Order" shall refer to a written document, change order agreement, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon scope of professional services and tasks, compensation and method of payment, time and schedule of performance, or project guidelines and criteria as such were set forth and agreed to in the initial agreement, supplemental task authorization(s), or previous change orders issued thereto. The change order document, which shall be executed on a City standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all change orders executed and issued under this Agreement shall be understood and agreed by both parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the change order including, but not limited to, any and all direct costs, indirect costs and associated costs which may result from or be caused by the change order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the Consultant's general administrative and overhead costs and profit.

In the event the City decides to delete all, or portions, of the scope of services, task(s), or requirements set forth in the initial agreement, supplemental task authorizations or previously authorized change orders, the City may do so by the unilateral issuance of a written change order to the Consultant. Such a unilaterally issued change order shall set forth, if appropriate, an agreement by both the City and the Consultant establishing changes in the amount of compensation to be paid the Consultant as a result of the deletion or decrease in the services required shall have no effect on, or otherwise prevent the City from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the Consultant.

2.10 SUPPLEMENTAL TASK AUTHORIZATION
The term "Supplemental Task Authorization" as used refers to a written document executed by both parties to an existing professional services agreement setting forth and authorizing a limited number of professional services, tasks, or work.

2.11 CITY MANAGER
The term "City Manager" shall refer to the City Manager or his designee requesting the service, employed by the City Council to serve and act on the City's behalf, as it relates to this project. The City Manager within the authority conferred by the City Council, acting as the City's designated representative shall issue written notification to the Consultant of any and all changes approved by the City in the Consultant's: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to basic services and additional services pursuant to this Agreement or change order(s) or supplemental task authorization(s) pertaining thereto. The City Manager shall be responsible for acting on the City's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, change order(s) or supplemental task authorization(s) issued thereunder.

2.12 PROJECT MANAGER
The term "Project Manager" shall refer to the person employed or retained by the City and designated, in writing, to serve and act on the City's behalf to provide direct contact and communication between the City and Consultant with respect to

providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and such written change order(s) and supplemental task authorization(s) as are authorized. The Project Manager is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; (3) the amount of compensation the City is obligated or committed to pay the Consultant. The Project Manager shall review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and change order(s), supplemental task authorization(s) thereto.

2.13 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or sub-contractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set forth in subsequent work orders, supplemental agreements, and/or change orders agreed to in writing by both parties to this Agreement.

2.14 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the Consultant's compensation to provide and perform the services and work necessary and required pursuant to the tasks set forth in the Scope of Professional Services, and any change orders, supplemental task authorizations, and work orders authorized thereto, is established to be made on a not-to-exceed (NTE) amount basis, it is mutually understood and agreed that such compensation for each completed task shall be made on the following basis:

For the actual hours necessary, required and expected by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in the Compensation and Method of Payment, which is attached hereto and made a part of this Agreement, to the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by sub-consultants and subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the City and the Consultant and as are set forth as a part of the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

With the understanding and agreement that the City shall pay the Consultant for all such costs and expenses within the established NTE amount for each task or sub-task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the City covering all such costs and expenses; and

With the understanding and agreement that the Consultant's invoices and all payments to be made for all NTE amounts shall be subject to the review, acceptance and approval of the City; and with the understanding and agreement that when the Consultant's compensation is established on a NTE basis for a specific task(s) or sub-task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and sub-consultant and subcontractor costs for any such specific task(s) or sub-task(s) shall not exceed the amount of the total NTE compensation established and agreed to for each specific task(s) or sub-task(s). In the event the amount of compensation for any task(s) or sub-task(s) to which the Consultant is entitled on the NTE basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the NTE amount established for the specific task or sub-task, it is understood and agreed that any unexpended amount under a specific task or sub-task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other task(s) or sub-task(s).

ARTICLE 3.00-OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES

The Consultant agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida, Lee County and in the City of Bonita Springs, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement.

3.02 PERSONNEL

1) QUALIFIED PERSONNEL

The Consultant agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all basic services and additional services to be provided pursuant to this Agreement.

2) CONSULTANT'S PROJECT DIRECTOR

The Consultant agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising under this Agreement unless substitute arrangements have been furnished to the City in writing. The Consultant agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance of the City.

3) CONSULTANT'S STAFF

Consultant will specify the technical and support staff who will be assigned to this project. Consultant will notify City's Project Manager of any changes and/or substitution of staff working on the project.

4) REMOVAL OF PERSONNEL

The Consultant agrees, within thirty (30) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the City shall request, in writing, be removed, this request may be made by the City with or without cause.

5) IMMIGRATION LAW COMPLIANCE

Consistent with Bonita Springs Code §36.22, effective June 1, 2009, Consultants providing services to the City, as a condition of each contract, must use E-Verify to verify the employment of any person hired during the contract term by the consultant and assigned by the Consultant to perform work for the City. Before any contract with the City is signed, proof of enrollment with E-Verify must be provided. The Consultant acknowledges that he will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Consultant the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Consultant must also be responsible for entering into an agreement with each and every vendor and subconsultant that states that vendors and subconsultants (and their vendors) are independently responsible for their own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the City. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The City may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all basic services and additional services will be provided, performed and completed in a timely and diligent manner throughout.

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the Consultant and by any sub-consultant(s) and/or subcontractor(s) engaged by the Consultant as set forth in the Scope of Professional Services shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the City approves this Agreement, or which may

subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the Consultant to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services shall serve as a basis for the City to consider the development and issuance of a change order to provide for a change to, or additional services to, the services set forth in this Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1) RESPONSIBILITY TO CORRECT

The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any sub-consultant(s) or subcontractor(s) engaged by the Consultant.

2) CITY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, nor acceptance by the City of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the Consultant, or any sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the City's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the City's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY AND HOLD HARMLESS

To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expenses and in a manner acceptable to and approved by the City, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its sub-consultants and/or subcontractors. This Consultant's obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the City.

The City reserves the right, should the Consultant fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the City for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

1) In the event the services required pursuant to this Agreement include the Consultant preparing and submitting to the City cost estimates, the Consultant, by exercise of this experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under this Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and corrections of any and all such cost

estimates. For purposes of the liability provisions of this article only, the Consultant's estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the City's acceptance of the estimate(s).

2) The cost estimates of Consultants or sub-consultants engaged by Consultants, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions provided in Consultant to Repair Property Damage Caused by the Consultant.

3) COST ESTIMATES

a) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus forty percent (40%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the order of magnitude estimate shall be recoverable by the City.

b) BUDGET ESTIMATE

Budget in this case applies to the City's budget and not to the budget as a project-controlled document. A budget is prepared with the use of flow sheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty percent (20%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the budget estimate shall be recoverable by the City.

c) CONSTRUCTION COST ESTIMATE

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a construction cost estimate is vital to the City's interests because it may be used for such purposes as, but not limited to the following: budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction project.

In the event the City solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a construction cost estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the Consultant's construction cost estimate by more than the percent accuracy set forth hereinabove, the Consultant shall, upon notification by the City, assume responsibility for and proceed to provide and perform the following service without additional compensation.

The Consultant will, subject to the review and approval of the City, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the construction cost estimate prepared by the Consultant. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the City for the project and set forth in this Agreement or change order(s) or supplemental task authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawing prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the Consultant's construction cost estimate, the costs associated with the Consultant's preparation and development of the construction cost estimate shall be recoverable by the City by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the construction cost estimate prepared by the Consultant, the amount of the construction cost estimate submitted by the Consultant shall be adjusted from the date the construction cost estimate was received by the City until the date bids or price proposals are received by the City, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the City receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the Consultant may deem it appropriate to recommend the City reject any such bid(s) or priced proposal(s). If under such circumstances the City concurs with the Consultant's recommendation and rejects the bid(s) or priced proposal(s), the City will not hold the Consultant responsible to, nor will the City require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the City and made payable to the respective governmental body upon the Consultant furnishing the City satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY request the Consultant to provide and perform professional services for this project which are not set forth in the Scope of Professional Services, the Consultant agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

Additional services shall be administered and authorized as change orders or supplemental task authorizations under this Agreement. The Consultant shall not provide or perform, nor shall the City incur or accept any obligation to compensate the Consultant for any additional services unless and until a written change order or supplemental task authorization has been agreed to and executed by both parties.

Each such change order or supplemental task authorization shall set forth a comprehensive, detailed description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said additional services.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The City may request the Consultant to execute a Truth-in-Negotiations Certificate ("Certificate"). The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized. The compensation to be paid the Consultant as set forth in the Compensation and Method of Payment, change orders, and supplemental task authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized thereto as stated above.

ARTICLE 4.00-OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

The City agrees after the execution of this Agreement to promptly advise the Consultant, in writing, of the person designated to serve and act as the City's Project Manager. Such notification shall be provided to the Consultant by the Project Manager.

4.02 AVAILABILITY OF CITY INFORMATION

1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the Consultant regarding requirements the City has established or suggests relative to the project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in the Project Guidelines and Criteria, which is attached hereto and made a part of this Agreement.

2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the Consultant's request, the City agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the City to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the City such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The City agrees that the City Manager and the Project Manager shall be available within a reasonable period of time, with reasonable prior notice given by the Consultant, to meet and/or consult with the Consultant on matters pertaining to the services to be provided and performed by the Consultant. The City further agrees to respond within a reasonable period of time to written requests submitted by the Consultant.

4.04 ACCESS TO CITY PROPERTY

The City agrees, with reasonable prior written notice given by the Consultant, to provide the Consultant with access within a reasonable period of time to City property, facilities, buildings and structures to enable the Consultant to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with City operations, or the operations carried on by others under a lease, or other contractual arrangement with the City, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the Consultant's normal office and/or field workdays and/or work hours.

ARTICLE 5.00-COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC AND ADDITIONAL SERVICES

The City shall pay the Consultant for all requested and authorized basic services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the City in accordance with the provisions for compensation and payment of said basic services set forth and prescribed in the Compensation and Method of Payment or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written change order executed by both parties.

5.02 METHOD OF PAYMENT

1) MONTHLY STATEMENTS

The Consultant shall be entitled to submit no more than one (1) invoice statement to the City each calendar month covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or change order(s) and supplemental task authorization(s) thereunder.

2) PAYMENT FOR SERVICES PERFORMED

The City shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

a) The City shall pay Consultant on the basis of services completed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment, as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the City. No payments shall be made for Consultant's work-in-progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the City. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the City, the City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

b) The City shall pay the Consultant for services performed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment on the basis of an invoice statement covering Consultant's work-in-progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-progress percentages are subject to the review and approval of the City. The decision of the City shall be final as to the work-in-progress

percentages paid. Payment by the City for tasks on a work-in-progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the City of any such service or work-in-progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-progress payments have been made. All tasks to be paid for on a work-in-progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in the Compensation and Method of Payment with the notation (WIPP). Only tasks so identified will be paid on a work-in-progress percentage basis. The City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

3) PAYMENT SCHEDULE

The City shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the City object or take exception to the amount of any Consultant's invoice statement, the City shall notify the Consultant of such objection or exception within the thirty (30) calendar days payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar days' period, the City shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.03 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE CITY

In the event of termination of this Agreement at the convenience of the City, not at the fault of the Consultant, the City shall compensate the Consultant only for the services performed prior to the effective date of termination, reimbursable expenses then due and reasonable expenses incurred by the Consultant in affecting the termination of services and work, and incurred by the submittal to the City of project drawings, plans, data, and other project documents.

5.04 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the City suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the City shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.05 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; (3) and/or are modified by the subsequent issuance of supplemental task authorization(s) and/or change order(s), other than receiving the compensation set forth in Payment When Services are Terminated at the Convenience of the City and Payment When Services are Suspended, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00-TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the City may authorize specific tasks to be completed. Upon agreement on the scope and fee for this work and execution of supplemental task authorization, the City will issue the Consultant a written notice to proceed. Following the issuance of such notice to proceed the Consultant shall be authorized to commence work and the Consultant thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, which is attached hereto and made a part of this Agreement.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the City shall grant the extension if the City determines the delay(s)

encountered by the Consultant, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The Consultant shall be required as a condition of this Agreement to prepare and submit to the City, on a monthly basis, commencing with the issuance of the notice to proceed, a Consultant's work schedule. The work schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's work schedule of planned and actual work progress shall be updated and submitted by the Consultant to the City on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the City at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any change order(s) and supplemental task authorization(s) issued thereto.

ARTICLE 7.00-SECURING AGREEMENT

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

ARTICLE 8.00-CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines that there is a conflict of interest, Consultant or such sub-consultant shall decline the representation upon written notice by the City.

If the City determines that there is not such conflict of interest, then the City shall give its written consent to such representation. If Consultant or sub-consultant accepts such a representation without obtaining the City's prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such sub-consultant under this Agreement, then the Consultant or such sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such sub-consultants to comply with the provisions of this section.

Should the Consultant fail to advise or notify the City as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the City may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00-ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor Consultant, or consulting organization. Nor shall the Consultant subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the City. The Consultant shall have the right, subject to the City's prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The City shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in Consultant's Associated Sub-Consultants and Subcontractors, which is attached hereto and made a part of this Agreement.

ARTICLE 10.00-APPLICABLE LAW
Unless otherwise specified, this Agreement shall be governed by the laws, rules, regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States Government.

ARTICLE 11.00-COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES
The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

ARTICLE 12.00-WAIVER OF BREACH
Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00-INSURANCE
For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

The Vendor shall procure and maintain property insurance (Builder's Risk, Installation Floaters, etc.) upon the entire project, if required, to the full insurable value of the scope of work. The City and the Vendor waive against each other and the City's separate Vendors, Contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and City shall, where appropriate, require similar waivers of subrogation from the City's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. All deductibles for property insurance procured by the Vendor shall be the responsibility of the Vendor.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name the City of Bonita Springs, Florida, as an additional insured including completed operations (and products if applicable). The policy shall be endorsed to be primary to any similar coverage carried by the City.

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all contracts.

ARTICLE 14.00-DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00-REPRESENTATION OF THE CITY

The Consultant in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the City in this manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written change order(s) and supplemental task authorization(s) issued thereunder.

In the event the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the City's behalf, and shall not act on the City's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor; or (2) the time for completing the work as required and agreed to in the construction contract; or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The City will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00-OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the City of a written change order deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the City, shall be delivered by the Consultant to the City within seven (7) calendar days of the City making such a request. In the event the City gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the City of a written change order deleting all or part of the services or work required, the Consultant shall deliver to the City the requested documents as set forth hereinabove, with the mutual understanding and commitment by the City that compensation earned or owing to the commitment by the City that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the notice of termination or change order.

The Consultant, at its expense, may make and retain copies of all documents delivered to the City for reference and internal use. The Consultant shall not, and agrees not to, use any of these documents, data and information contained therein on any other project or for any other client without the prior expressed written permission of the City.

Any use by the City of said documents, data and information contained therein, obtained by the City under the provisions of this Agreement for therein, obtained by the City under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the City, and without liability to the Consultant. The City shall be liable and agrees to be liable for and shall indemnify, defend and hold the Consultant harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the City's use of such documents in a manner contrary to the provisions set forth hereinabove. The City hereby acknowledges receipt of $10.00 (ten and no hundred dollars) and other good and valuable consideration from the Consultant which has been paid as specific consideration for the indemnification provided herein.

ARTICLE 17.00-MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

17.01 COMPLIANCE WITH PUBLIC RECORDS LAW

The Consultant must comply with Florida public records laws, specifically to:

a) Keep and maintain public records required by the City to perform the service.

b) Upon request from the City's custodian of public records, provide the City 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 Florida Statutes §119 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 Consultant does not transfer the records to the City.

d) Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

e) The City will consider it a breach of contract should the Consultant fail to comply with any public records request.

f) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.

g) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESGIN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, debbie.filipek@cityofbonitasprings.org.**

h) If the Consultant is not providing the requested public records, the burden of proof is on the Consultant to show why they did not comply with the request.

ARTICLE 18.00-HEADINGS

The headings of the articles, sections, exhibits, attachments, phases or tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such articles, sections, exhibits, attachments, phases or tasks.

ARTICLE 19.00-ENTIRE AGREEMENT

This Agreement and attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 20.00-NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement to be given by the Consultant to the City shall be in writing and shall be given by the United States Postal Service Department first class mail service postage prepaid, addressed to the following City address of record and sent to the attention of the City's Project Manager unless waived by City:

Elly Soto McKuen, Senior Project Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Copy: City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

20.02 NOTICES BY CITY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the City to the Consultant shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following Consultant's address of record unless waived by Consultant:

Consultant Name: Atkins North America, Inc.

Consultant Address: 1514 Broadway, Suite 202

Consultant Address: Fort Myers, FL 33901

Telephone Number: (239) 334-7275

Fax Number: (239) 334-7277

ATTENTION: David Dowling, P.E.
Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party per above contacts.

ARTICLE 21.00-TERM

This Agreement is effective as of the date first written above and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 22.00-TERMINATION

This Agreement may be terminated by the City at its convenience, or due to the fault of the Consultant, by the City giving thirty (30) calendar days written notice to the Consultant.

If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the City's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the City may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar days written notice, terminate this Agreement.

In addition to the City's contractual right to terminate this Agreement in its entirety as set forth above, the City may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services or the Project Guidelines and Criteria, or as such may be established by change order or supplemental task authorization. The City shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the City dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the City reserves the right to accept or not accept the termination request submitted by the Consultant, effective unless and until Consultant is notified, in writing, by the City of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the Consultant shall deliver to the City all papers, drawings, models, and other material in which the City has exclusive rights by virtue hereof or of any business done, or services or work performed by the Consultant on behalf of the City.

ARTICLE 23.00-AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendment, the requirements, provisions and/or terms of the amendment shall take precedence.

ARTICLE 24.00-MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed change order(s) or supplemental task authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written change order(s), and/or supplemental task authorizations, the latest executed change order(s), and/or supplemental task authorization(s) shall take precedence.

In the event the City issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the City's internal control purposes only, and any and all terms, provisions and conditions contained herein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 25.00-ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: _____
CITY CLERK

DATE: _____

CITY OF BONITA SPRINGS CITY COUNCIL

BY: _____
MAYOR

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

ATTEST:

_____
(Witness)

_____
(Witness)

CONSULTANT Atkins North America, Inc.

BY: _____
Charlotte Maddox

_____
Vice President

DATE: 1/28/2021

CORPORATE SEAL

ATKINS NORTH AMERICA, INC. CORPORATE SEAL 1980 FLORIDA

EXHIBIT A

Scope of Professional Services
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date:_____

Basic Services

Section 1 General Scope Statement

The Consultant shall provide and perform the following professional services, which shall constitute the general scope of the basic services under the covenants, terms, and provisions of this Professional Services Agreement.

Section 2 Tasks

Pursuant to the general scope of the basic services stated herein above, the Consultant shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in Compensation and Method of Payment.

The CONSULTANT shall perform engineering, land survey, and aerial photography services necessary for the subject project as outlines; reference all centerline survey control points; establish the benchline on National Geodetic Vertical Datum (1929) throughout the project and tie property lines to comply with Florida Department of Natural Resources Rule, Florida Administrative Code Chapter 16 Q-3 (Florida Statutes 177 - Part Two).

Survey work shall be performed under the responsible charge of a Professional Land Surveyor registered in the State of Florida and shall be accomplished in accordance with the Florida Department of Transportation Policy 760.000-760.012, and Florida Department of Transportation Location Manual. Work must comply with the minimum technical standards for Land Surveyors Rule 2IHH-6, Florida Statutes 472.027; measurements of regular roadway cross-sections may be recorded on electronic data collection equipment.

Surveys shall also be provided in an electronic format, compatible with the following City GIS standards:

- DXF or DWG Format
- Coordinate System:
  1. Horizontal: State Plane FLORIDA WEST, FIPS 0902, NAD83, US Feet
  2. Vertical: NAVD 1988, US Feet
- CAD Layer organization

Administration
City Limits

Transportation
Road Centerline (line)
Pavement Area (polygon)
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)
Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail
Fence
Bridge
Pavement Message (point)

Storm Water
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)

Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail

Landscaping
Irrigation
Median (to be determined)

- Location accuracy requirements: all features should be within + or – one meter from actual position.

Roadway Survey
Provide engineering and land surveys necessary to establish the roadway alignments and intersecting streets within the project limits and obtain topography, cross sections, underground utilities, right-of-way, land ties and required drainage information for existing and proposed drainage systems and in accordance with the master drainage plan/storm run-off treatment areas.

Underground Utilities
Field locate existing underground utilities, based upon information provided in Task 7.01, only as deemed necessary to identify conflicts or potential conflicts with existing utilities during roadway and drainage construction. Horizontal and vertical location of underground utilities will be obtained prior to completion of Task 6.02. This task includes coordination with various utility companies and assumes that the respective utility shall be responsible for "pot holing," said underground systems. The horizontal and vertical location of each utility will be documented, based on the "pot-holing" performed by the respective utility company or the consultant.

Jurisdictional Wetlands Survey
After jurisdictional wetland lines have been flagged and verified by the agencies, the jurisdictional line will be located by GPS to sub-meter accuracy.

Planimetric
The Consultant shall provide planimetric of the project area sufficient to define topographical (two dimensional) details along the proposed roadway for the width of 300 feet either side of the centerline.
The scale Aerial Photography will not be acceptable for plan portion for the plan & profile sheets.

This list of activities is not meant to be complete and absolute. The City reserves the right to add additional related activities as the City implements these programs and survey related projects.

EXHIBIT B

Compensation and Method of Payment
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

Section 1 Basic Services/Task(s)

The City shall compensate the Consultant for providing and performing the task(s) set forth and enumerated in the Scope of Professional Services, as follows:

NOTE: A lump sum (LS) or not-to-exceed (NTE) amount of compensation to be paid the Consultant should be established and set forth below for each task or sub-task described and authorized in the Scope of Professional Services. Tasks to be paid on a work-in-progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
TOTAL				

(Unless list is continued on next page.)

Compensation and Method of Payment – Page 2
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07
Consultant's Personnel Hourly Rate Schedule*

Date: _____

Should it be mutually agreed to base compensation for additional services on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained below.

CONSULTANT OR SUB-CONSULTANT NAME Q. Grady Minor & Associates, P.A.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct** Payroll Average Hourly Rate
Principal Surveyor	$222.52
Senior Project Manager	$215.26
Project Manager	$169.94
Senior Surveyor	$146.57
Surveyor and Mapper III	$131.76
Surveyor and Mapper II	$117.89
Surveyor and Mapper I	$87.89
Senior GIS Specialist	$104.85
GIS Specialist	$85.94
Survey Four-Man Field Party	$229.80
Survey Three-Man Field Party	$181.58
Survey Two-Man Field Party	$128.27
Survey Technician	$100.78
CADD Technician II	$81.99
CADD Technician III	$103.05

*NOTE: A separate personnel hourly rate schedule should also be attached for each sub-consultant listed in Consultant's Associated Sub-Consultant(s) and Subcontractor(s).

**NOTE: Direct Payroll Hourly Rate means the actual gross hourly wage paid.

EXHIBIT C

Time and Schedule of Performance
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

This Exhibit establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in the Scope of Professional Services. The Time and Schedule of Performance set forth hereinafter is established pursuant to Time and Schedule of Performance.

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing services and work on this project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
	N/A	

EXHIBIT E

Project Guidelines and Criteria
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

The City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

NONE

EXHIBIT F

Truth in Negotiation Certificate
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Truth-In-Negotiations Certificate.

2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.

3. The truth of statements made herein may be relied upon by the City and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the Consultant, doing business as:

COMPANY NAME: _____

BY: _____

TITLE: _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____,

by _____ who is personally known OR has produced _____
(Print or Type Name) (Type of Identification & Number)

as identification.

_____ _____
Notary Public Signature Notary Commission Number/Expiration

EXHIBIT G

Insurance and Bonding Requirements

All policies shall be Best's Rated "A-" or better or subject to approval

Insurance / Bond Type	Required Limits
☒ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements. ☒ **The policy shall be endorsed to provide a waiver of subrogation in favor of the City.** NOTE: Any "non-construction industry" company employing more than 3 employees (not including a sole proprietor owner) must have workers' compensation coverage. ALL "construction industry" (as defined by FL Rule # 69L-6.021) companies with ANY employees must have coverage or if no statutory employees, then up to three officers or a sole proprietor MUST have a current exemption certificate from the Division of Workers' Compensation on file.
☒ Employer's Liability	$1,000,000 single limit per occurrence (Workers' Compensation Part B)
☒ Commercial General Liability (Occurrence Form) patterned after the current ISO form	Bodily Injury and Property Damage ☒ $1,000,000 per occurrence, $1,000,000 aggregate (Per Project) for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
☒ Indemnification	To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.
☒ Automobile Liability	☒ $ 1,000,000 Each Occurrence; Bodily Injury & Property Damage Owned/Non-owned/Hired; Automobile Included
☒ Other insurance as noted:	☐ Watercraft $ _____ Per Occurrence ☐ United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work. **STATUTORY** ☐ Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. $ _____ Per Occurrence ☐ Property Insurance (Or Builder's Risk) **Full insurable value of the scope of the work** ☐ Pollution $ _____ Per Occurrence ☒ Professional Liability $1,000,000 per claim and in the aggregate

	☐ Umbrella Excess $ _____ Per Occurrence
☐ Railroad Right of Way	☐ Railroad Protective Liability Insurance per occurrence limit of not less than **Two Million Dollars ($2,000,000)** and aggregate limits of **Six Million Dollars ($6,000,000)** to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your General Liability policy coverage to be $5,000,000. They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage. For additional information on their insurance requirements and other requirements such as payment for and scheduling Railroad Inspector / Flagman, please contact Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.
☐ Bid bond	Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
☐ Performance and Payment Bonds	If the box is checked for a project less than $200,000, a performance bond will be required. For projects in excess of $200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. **Per FS §255.05, the Contractor shall provide a certified copy of the recorded bond to the City.**

☒ Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

☒ The City of Bonita Springs must be named as "**ADDITIONAL INSURED, INCLUDING PRODUCTS AND COMPLETED OPERATIONS**" on the Insurance Certificate for Commercial General Liability.

☒ The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

☒ **Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to the City of Bonita Springs.

EXHIBIT H

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Vendor Covered Transactions

(1) The prospective vendor certifies, by submission of this Annual Agreement, that neither it nor its principles are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the vendor is unable to certify to the above statement, the prospective vendor shall attach an explanation to this form.

VENDOR

_____ _____
Company Name DUNS Number

_____ _____
Signature Date

_____
Print Name and Title

_____
Street Address

_____
City, State, Zip

For City of Bonita Springs use only

To access the debarment search: https://www.sam.gov/SAM/ > Search Records tab > Enter DUNS number > Click Search

Company: [ ] is debarred [ ] is not debarred

Verified by: _____ Date: _____
Name

EXHIBIT I

Scrutinized Companies Statement

SWORN STATEMENT UNDER SECTION 287.135(5), FLORIDA STATUTES: THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number **CN 20-07**, for **Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program.**

2. This sworn statement is submitted by _____ whose business
[Name of entity submitting sworn statement]

   address is _____ and (if

   applicable) its Federal Employer Identification Number (FEIN) is _____ (If the entity has no

   FEIN, include the Social Security Number of the individual signing this sworn statement: _____

3. My name is _____ and my relationship to the above is
[Please print name of individual signing]

   _____

4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.

6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.

8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. **[Please indicate which statements apply].**

X Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)
[ ] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.

[ ] Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for $1 Million or more)
[ ] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.

[ ] Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for $1 Million or more)
[ ] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

[ ] Business Operations in Cuba or Syria (bid, proposal or contract renewal for $1 Million or more)
[ ] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
[ ] The entity submitting this sworn statement does have business operations in Cuba or Syria.

The City will follow Florida Statute §287.135. If the City determines this Vendor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel after the contract is executed, the contract may be terminated by the City by written notification. If the City determines this Vendor is found to have submitted a false certification, placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations with Cuba or Syria, the City shall notify the Vendor of its determination by written notification.

By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.

_____ _____

AFFIANT Typed Name of AFFIANT

_____

Title

STATE OF _____ COUNTY OF _____

The foregoing instrument was executed before me this _____ day of _____, 20_____,

by _____ as _____ of

_____, who personally swore or affirmed that he/she is authorized to execute this document and thereby bind the Corporation, and who is personally known to me OR has

produced _____ as identification.

_____

NOTARY PUBLIC, State of _____

(stamp)

THIS SPACE INTENTIONALLY LEFT BLANK

For City of Bonita Springs use only

To access the lists: http://www.sbafla.com/fsb/ > Funds We Manage tab > FRS Pension Plan - Global Governance Mandates > Global Governance Mandate Quarterly Reports > most current quarter

Scrutinized Companies that Boycott Israel List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in Sudan List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:
[ ] entity is **NOT** on list [ ] entity is on list

Business Operations in Cuba or Syria:
[ ] entity is **NOT** on list [ ] entity is on list

Verified by:_____ Date:_____
Print Name

EXHIBIT J

GENERAL PROVISIONS
State and Federal Regulations

1. 24 CFR 570 as amended- All the regulations regarding the CDBG program
2. 24 CFR 58 - The regulations prescribing the Environmental Review procedure.
3. Section I 04(b) and Section I 09 of Title I of the Housing and Community Development Act of 1974 as amended
4. The Fair Housing Act (42 U.S.C. 3601-20) Reasonable Accommodations Under the Fair Housing Act.
5. Executive Order 11063 - Equal Opportunity in Housing
6. Executive Order 11259 - Leadership & Coordination of Fair Housing in Federal Programs
7. 24 CFR Part I 07 - Non- Discrimination and Equal Opportunity in Housing under E.O.
8. Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, as amended
9. 24 CFR 570.60 I Subpart K - The regulations issued pursuant to Executive Order 11063 which prohibits discrimination and promotes equal opportunity in housing.
10. Executive Order 11246 ("Equal Employment Opportunity"), as amended by Executive Orders 11375 and 12086 - which establishes hiring goals for minorities and women on projects assisted with federal funds and as supplemented in Department of Labor regulations. EO I I246.
11. Executive Orders 11375 and 12086.
12. Title VII of the 1968 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972, 42 USC§ 2000e, et. seq. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that it is an Equal Opportunity or Affirmative Action employer.
13. 24 CFR 135 - Regulations outlining requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the CITY, the Consultant and any of the Subcontractor's. Failure to fulfill these requirements shall subject the CITY, the Consultant and any of the Consultant's Subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided, The Consultant certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
    The Consultant further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:
    "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."
    The Consultant further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low- income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs,
    The Consultant certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.
14. Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
15. Contract Work Hours and Safety Standards Act, 40 USC 327-332.
16. Section 504 of the Rehabilitation Act of 1973, 29 USC 776(b) (5), 24 CFR 570.614 Subpart K. Section 504: https://www.epa.gov/ocr
17. The Americans with Disabilities Act of 1990: https://www.hud.gov/hudprograms/eohudap

18. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
19. 29 CFR Parts 3 and 5 - Regulations that prescribe the payment of prevailing wages and the use of apprentices and trainees on federally assisted projects. HUD Form 40 IO must be included in all construction contracts funded by CDBG-DR:
    Davis-Bacon Act: 42 USC 276a to 40 USC 276a:
    29 CFR Part 3 - Contractors and Subcontractors on public building or Public Work Financed, in whole or in part, by Loans or Grants from the United States
    29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provision Applicable Subject to the Contract Work Hours and Safety Standards Act)
    Executive Order 11914 - Prohibits discrimination with respect to the handicapped, in federally assisted projects.
    As a supplement to the Davis-Bacon Act requirements, the Consultant agrees to comply with the "Copeland Anti-Kickback Act," which prohibits the Consultant, its contractors, or subcontractors from inducing an employee to relinquish any part of his/her compensation, under the federally-funded contract.
20. Executive Order 11625 and U.S. Department of Housing and Urban Development Circular Letter 79-45 - which prescribes goal percentages for participation of minority businesses in Community Development Block Grant Contracts.
21. E.O. 11625 Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise.
22. The Consultant agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
23. 2 CFR 200 et seq - Uniform Administrative Requirements, Cost Principles, and Audit requirements for Grants and Agreements.
24. Immigration Reform and Control Act of 1986
25. Prohibition of Gifts to CITY Employees - No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service, or other item of value to any CITY employee,
26. Order of Precedence - In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Agreement shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Agreement. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Agreement, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.
27. Venue-Any suit of action brought by either party to this Agreement against the other party, relating to or arising out of this Agreement, must be brought in the appropriate federal or state courts, in Lee County, FL which courts have sole jurisdiction on all such matters. (No reference required for this item).
28. Dispute Resolution - Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. Any situations when negotiations, litigation and/or mediation shall be attended by representatives of Consultant with full decision-making authority and by CITY'S staff person who would make the presentation of any settlement reached during negotiations to CITY for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under§ 44.102, Florida Statutes. The litigation arising out of this Agreement shall be adjudicated in Lee County, Florida, if in state court and the US District Court, Middle District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, LEE COUNTY AND THE CONSULTANT EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAYE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.
29. The Consultant agrees to comply with the following requirements:
    Clean Air Act, 41 USC 7401, et seq.
    Federal Water Pollution Control Act, 33 USC 1251, et seq., as amended.
30. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4002 and 24 CFR 570.605 Subpart K), the Consultant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained. If appropriate, a letter of map amendment (LOMA) may be obtained from FEMA, which would satisfy this requirement and/or reduce the cost of said flood insurance.

31. The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to the HUD Lead- Based Paint Poisoning Prevention Act, found at 24 CFR 570.608, Subpart K.

32. The Consultant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State or Local historic property list.

33. The Consultant must certify that it will provide drug-free workplaces, in accordance with the Drug-Free Workplace Act of 1988 (41 USC 701).

34. The Consultant certifies 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; and, that the Consultant shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction as outlined in 24 CFR 570.609, Subpart K.

35. The Consultant agrees to comply with the following 0MB Circulars whichever is applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. These requirements are enumerated in 2 CFR 200, et seq.
Single Audits shall be conducted annually, in accordance with 2 CFR 200.501, and shall be submitted to the CITY nine (9) months after the end of the Consultant's fiscal year. The Consultant shall comply with the requirements and standards of 2 CFR 200 Subpart F, Section 500. Consultants exempt from Single Audit requirements shall submit financial statements to the CITY one hundred eighty (180) days after the end of the Consultant's fiscal year. Per 2 CFR 200.344, if this Agreement is closed out prior to the receipt of an audit report, the CITY reserves the right to recover any disallowed costs identified in an audit after such closeout.

36. Any real property acquired by the Consultant for the purpose of carrying on the projects stated herein, and approved by the CITY in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24.10 I, shall be subject to the provisions of CDBG-DR including, but not limited to, the provisions on use and disposition of property. Any real property within Consultant control, which is acquired or improved, in whole or part, with CDBG-DR funds in excess of $25,000, must adhere to the CDBG-DR Regulations at 24 CFR 570.505.

37. As provided in Subsection 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Consultant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof.
This notice is required by§ 287.133 (3) (a), Florida Statutes.

38. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds, other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, contracts under grants, loans, and cooperative agreements) and that all Consultant's shall certify and disclose accordingly.

39. Travel reimbursement will be based on the U.S. General Services Administration (GSA) per diem rates in effect at the time of travel. Equal access in accordance with the individual's gender identity in community planning and development programs, per 24 CFR 5, I 06.

40. Housing Counseling, including homeownership counseling or rental housing counseling, as defined in §5.100, required under or provided in connection with any program administered by HUD shall be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 170, per 24 CFR 5.111.

41. HUD Final Rule-Implementation of the Violence Against Women Reauthorization Act of2013 which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements.
Any rule or regulation determined to be applicable by HUD.

42. Florida Statutes 713 .20, Part I, Construction Liens

43. Florida Statutes 119,021 Records Retention

44. Florida Statutes, 119.071, Contracts and Public Records
45. Limited English Proficiency: The Consultant agrees to take reasonable steps to provide meaningful access to the program/project and activities funded under this Agreement for persons with limited English proficiency pursuant to information located at http://www.lep.gov.
46. Equal Treatment of Faith-Based Organizations: By regulation, DOJ/BJA prohibits all recipient organizations from using financial assistance from DOJ/BJA to fund explicitly religious activities. The Consultant agrees to avoid such prohibited conduct. Discrimination on the basis of religion in employment is generally prohibited by federal law, but the Religious Freedom Restoration Act is interpreted on a case-by-case basis to allow some faith-based organizations to receive DOJ/BJA funds while taking into account religion when hiring staff. Questions in this regard should be directed to the Office for Civil Rights.
47. Arrest and Conviction Records: Federal and state laws restrict use of arrest and conviction records in the employment context, except when specifically, authorized. The Consultant agrees to avoid the misuse of arrest or conviction records to screen applicants for employment or employees for retention or promotion that may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination unless use is otherwise specifically authorized by law.
48. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352): The Consultant will not use and has not used federal appropriated funds to pay at any tier, either directly or indirectly, any person or organization 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 obtaining any federal contract, grant, or any other award or subaward covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award or subaward. Such disclosures are forwarded from tier-to-tier up to the Consultant. The Consultant shall comply with the lobbying restrictions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and (ii) ensure that its officers, employees and its subcontractors hereunder comply with all applicable local, state, and federal laws and regulations governing advocacy of and appearances before any legislative body. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before local, state, or federal legislatures.
49. False Claim; Criminal, or Civil Violation: Consultant must promptly refer to CITY any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either (1) submitted a false claim for grant funds under the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving subaward agreement funds.
50. Political Activities Prohibited: None of the funds provided directly or indirectly under this Agreement shall be used for any political activities or to further the election or defeat of any candidates for public office; Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities or activities for or against the election of a candidate for an elected office.
51. Text Messaging: Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Federal Register 51225 (October I, 2009), DOJ/BJA encourages recipients and subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by DOJ/BJA and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
52. Trafficking in Persons: The Consultant agrees to, at any tier, comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of the Consultant and any employees of the Consultant.
53. Association of Community Organizations for Reform Now (ACORN): The Consultant understands and acknowledges that it cannot use any federal funds, either directly or indirectly, in support of any contract or subaward to either ACORN or its subsidiaries, without the express prior written approval of OJP.
54. If the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this funding agreement, the Consultant must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Busines Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by HUD.

CITY OF BONITA SPRINGS, FLORIDA
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this _____ day of _____, 2020, between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and NATIVEtec, LLC, Inc. (hereinafter referred to as the "Consultant").

WITNESSETH

WHEREAS, the City desires to obtain the professional services of said Consultant to provide and perform professional services as further described hereinafter concerning the project to be referred to and identified as: Miscellaneous Surveying Services for the Community Development Block Grant-Disaster Recovery (CDBG-DR) Voluntary Home Buyout Program CN 20-07, and

WHEREAS, the Consultant hereby certifies that Consultant has been granted and possesses valid, current licenses to do business in the State of Florida and in the City of Bonita Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultants Competitive Negotiation Act, Florida Statutes §287.055.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a contract shall exist between both parties consisting of:

ARTICLE 1.00-SCOPE OF PROFESSIONAL SERVICES
Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in the Scope of Professional Services, which is attached hereto and made a part of this Agreement.

ARTICLE 2.00-DEFINITIONS
The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 CITY
The term "City" shall refer to the City of Bonita Springs, a municipality incorporated within the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the City's behalf relative to this Agreement.

2.02 CONSULTANT
The term "Consultant" shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all change orders thereto.

2.03 PROFESSIONAL SERVICES
The term "Professional Services" shall refer to all of the services, work materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the Consultant and its employees and any and all sub-consultants and subcontractors the Consultant may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT
The term "Sub-Consultant" shall refer to any individual or firm offering professional services which is engaged by the Consultant to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated, responsible and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any sub-consultant.

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2.05 SUBCONTRACTOR
The term "Subcontractor" shall refer to any individual, company or firm providing other than professional services which is engaged by the Consultant to assist the Consultant in contractually obligated, responsible, and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any subcontractor.

2.06 PROJECT
The term "Project" shall refer to such facility, system, program or item as described in the summary statement set forth in the preamble of this Agreement.

2.07 BASIC SERVICES
The term "Basic Services" shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached Scope of Professional Services.

2.08 ADDITIONAL SERVICES
The term "Additional Services" shall refer to such professional services as the City may request and authorize, in writing, the Consultant to provide and perform relative to this Agreement which are not included in the basic services. Additional services shall be authorized by the execution of both parties to this Agreement by a change order agreement.

2.09 CHANGE ORDER
The term "Change Order" shall refer to a written document, change order agreement, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon scope of professional services and tasks, compensation and method of payment, time and schedule of performance, or project guidelines and criteria as such were set forth and agreed to in the initial agreement, supplemental task authorization(s), or previous change orders issued thereto. The change order document, which shall be executed on a City standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all change orders executed and issued under this Agreement shall be understood and agreed by both parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the change order including, but not limited to, any and all direct costs, indirect costs and associated costs which may result from or be caused by the change order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the Consultant's general administrative and overhead costs and profit.

In the event the City decides to delete all, or portions, of the scope of services, task(s), or requirements set forth in the initial agreement, supplemental task authorizations or previously authorized change orders, the City may do so by the unilateral issuance of a written change order to the Consultant. Such a unilaterally issued change order shall set forth, if appropriate, an agreement by both the City and the Consultant establishing changes in the amount of compensation to be paid the Consultant as a result of the deletion or decrease in the services required shall have no effect on, or otherwise prevent the City from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the Consultant.

2.10 SUPPLEMENTAL TASK AUTHORIZATION
The term "Supplemental Task Authorization" as used refers to a written document executed by both parties to an existing professional services agreement setting forth and authorizing a limited number of professional services, tasks, or work.

2.11 CITY MANAGER
The term "City Manager" shall refer to the City Manager or his designee requesting the service, employed by the City Council to serve and act on the City's behalf, as it relates to this project. The City Manager within the authority conferred by the City Council, acting as the City's designated representative shall issue written notification to the Consultant of any and all changes approved by the City in the Consultant's: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to basic services and additional services pursuant to this Agreement or change order(s) or supplemental task authorization(s) pertaining thereto. The City Manager shall be responsible for acting on the City's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, change order(s) or supplemental task authorization(s) issued thereunder.

2.12 PROJECT MANAGER
The term "Project Manager" shall refer to the person employed or retained by the City and designated, in writing, to serve and act on the City's behalf to provide direct contact and communication between the City and Consultant with respect to

providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and such written change order(s) and supplemental task authorization(s) as are authorized. The Project Manager is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; (3) the amount of compensation the City is obligated or committed to pay the Consultant. The Project Manager shall review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and change order(s), supplemental task authorization(s) thereto.

2.13 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or sub-contractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set forth in subsequent work orders, supplemental agreements, and/or change orders agreed to in writing by both parties to this Agreement.

2.14 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the Consultant's compensation to provide and perform the services and work necessary and required pursuant to the tasks set forth in the Scope of Professional Services, and any change orders, supplemental task authorizations, and work orders authorized thereto, is established to be made on a not-to-exceed (NTE) amount basis, it is mutually understood and agreed that such compensation for each completed task shall be made on the following basis:

For the actual hours necessary, required and expected by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in the Compensation and Method of Payment, which is attached hereto and made a part of this Agreement, to the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by sub-consultants and subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the City and the Consultant and as are set forth as a part of the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

With the understanding and agreement that the City shall pay the Consultant for all such costs and expenses within the established NTE amount for each task or sub-task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the City covering all such costs and expenses; and

With the understanding and agreement that the Consultant's invoices and all payments to be made for all NTE amounts shall be subject to the review, acceptance and approval of the City; and with the understanding and agreement that when the Consultant's compensation is established on a NTE basis for a specific task(s) or sub-task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and sub-consultant and subcontractor costs for any such specific task(s) or sub-task(s) shall not exceed the amount of the total NTE compensation established and agreed to for each specific task(s) or sub-task(s). In the event the amount of compensation for any task(s) or sub-task(s) to which the Consultant is entitled on the NTE basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the NTE amount established for the specific task or sub-task, it is understood and agreed that any unexpended amount under a specific task or sub-task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other task(s) or sub-task(s).

ARTICLE 3.00-OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES

The Consultant agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida, Lee County and in the City of Bonita Springs, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement.

3.02 PERSONNEL

1) QUALIFIED PERSONNEL

The Consultant agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all basic services and additional services to be provided pursuant to this Agreement.

2) CONSULTANT'S PROJECT DIRECTOR

The Consultant agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising under this Agreement unless substitute arrangements have been furnished to the City in writing. The Consultant agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance of the City.

3) CONSULTANT'S STAFF

Consultant will specify the technical and support staff who will be assigned to this project. Consultant will notify City's Project Manager of any changes and/or substitution of staff working on the project.

4) REMOVAL OF PERSONNEL

The Consultant agrees, within thirty (30) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the City shall request, in writing, be removed, this request may be made by the City with or without cause.

5) IMMIGRATION LAW COMPLIANCE

Consistent with Bonita Springs Code §36.22, effective June 1, 2009, Contractors providing services to the City, as a condition of each contract, must use E-Verify to verify the employment of any person hired during the contract term by the contractor and assigned by the Contractor to perform work for the City. Before any contract with the City is signed, proof of enrollment with E-Verify must be provided. The Contractor acknowledges that he will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Contractor the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Contractor must also be responsible for entering into an agreement with each and every vendor and subcontractor that states that vendors and subcontractors (and their vendors) are independently responsible for their own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the City. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The City may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all basic services and additional services will be provided, performed and completed in a timely and diligent manner throughout.

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the Consultant and by any sub-consultant(s) and/or subcontractor(s) engaged by the Consultant as set forth in the Scope of Professional Services shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the City approves this Agreement, or which may

subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the Consultant to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services shall serve as a basis for the City to consider the development and issuance of a change order to provide for a change to, or additional services to, the services set forth in this Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1) RESPONSIBILITY TO CORRECT

The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any sub-consultant(s) or subcontractor(s) engaged by the Consultant.

2) CITY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, nor acceptance by the City of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the Consultant, or any sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the City's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the City's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY AND HOLD HARMLESS

To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expenses and in a manner acceptable to and approved by the City, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its sub-consultants and/or subcontractors. This Consultant's obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the City.

The City reserves the right, should the Consultant fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the City for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

1) In the event the services required pursuant to this Agreement include the Consultant preparing and submitting to the City cost estimates, the Consultant, by exercise of this experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under this Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and corrections of any and all such cost

estimates. For purposes of the liability provisions of this article only, the Consultant's estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the City's acceptance of the estimate(s).

2) The cost estimates of Consultants or sub-consultants engaged by Consultants, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions provided in Consultant to Repair Property Damage Caused by the Consultant.

3) COST ESTIMATES

a) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus forty percent (40%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the order of magnitude estimate shall be recoverable by the City.

b) BUDGET ESTIMATE

Budget in this case applies to the City's budget and not to the budget as a project-controlled document. A budget is prepared with the use of flow sheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty percent (20%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the budget estimate shall be recoverable by the City.

c) CONSTRUCTION COST ESTIMATE

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a construction cost estimate is vital to the City's interests because it may be used for such purposes as, but not limited to the following: budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction project.

In the event the City solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a construction cost estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the Consultant's construction cost estimate by more than the percent accuracy set forth hereinabove, the Consultant shall, upon notification by the City, assume responsibility for and proceed to provide and perform the following service without additional compensation.

The Consultant will, subject to the review and approval of the City, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the construction cost estimate prepared by the Consultant. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the City for the project and set forth in this Agreement or change order(s) or supplemental task authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawing prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the Consultant's construction cost estimate, the costs associated with the Consultant's preparation and development of the construction cost estimate shall be recoverable by the City by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the construction cost estimate prepared by the Consultant, the amount of the construction cost estimate submitted by the Consultant shall be adjusted from the date the construction cost estimate was received by the City until the date bids or price proposals are received by the City, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the City receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the Consultant may deem it appropriate to recommend the City reject any such bid(s) or priced proposal(s). If under such circumstances the City concurs with the Consultant's recommendation and rejects the bid(s) or priced proposal(s), the City will not hold the Consultant responsible to, nor will the City require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the City and made payable to the respective governmental body upon the Consultant furnishing the City satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY request the Consultant to provide and perform professional services for this project which are not set forth in the Scope of Professional Services, the Consultant agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

Additional services shall be administered and authorized as change orders or supplemental task authorizations under this Agreement. The Consultant shall not provide or perform, nor shall the City incur or accept any obligation to compensate the Consultant for any additional services unless and until a written change order or supplemental task authorization has been agreed to and executed by both parties.

Each such change order or supplemental task authorization shall set forth a comprehensive, detailed description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said additional services.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The City may request the Consultant to execute a Truth-in-Negotiations Certificate ("Certificate"). The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized. The compensation to be paid the Consultant as set forth in the Compensation and Method of Payment, change orders, and supplemental task authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized thereto as stated above.

ARTICLE 4.00-OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

The City agrees after the execution of this Agreement to promptly advise the Consultant, in writing, of the person designated to serve and act as the City's Project Manager. Such notification shall be provided to the Consultant by the Project Manager.

4.02 AVAILABILITY OF CITY INFORMATION

1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the Consultant regarding requirements the City has established or suggests relative to the project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in the Project Guidelines and Criteria, which is attached hereto and made a part of this Agreement.

2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the Consultant's request, the City agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the City to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the City such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The City agrees that the City Manager and the Project Manager shall be available within a reasonable period of time, with reasonable prior notice given by the Consultant, to meet and/or consult with the Consultant on matters pertaining to the services to be provided and performed by the Consultant. The City further agrees to respond within a reasonable period of time to written requests submitted by the Consultant.

4.04 ACCESS TO CITY PROPERTY

The City agrees, with reasonable prior written notice given by the Consultant, to provide the Consultant with access within a reasonable period of time to City property, facilities, buildings and structures to enable the Consultant to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with City operations, or the operations carried on by others under a lease, or other contractual arrangement with the City, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the Consultant's normal office and/or field workdays and/or work hours.

ARTICLE 5.00-COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC AND ADDITIONAL SERVICES

The City shall pay the Consultant for all requested and authorized basic services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the City in accordance with the provisions for compensation and payment of said basic services set forth and prescribed in the Compensation and Method of Payment or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written change order executed by both parties.

5.02 METHOD OF PAYMENT

1) MONTHLY STATEMENTS

The Consultant shall be entitled to submit no more than one (1) invoice statement to the City each calendar month covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or change order(s) and supplemental task authorization(s) thereunder.

2) PAYMENT FOR SERVICES PERFORMED

The City shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

a) The City shall pay Consultant on the basis of services completed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment, as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the City. No payments shall be made for Consultant's work-in-progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the City. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the City, the City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

b) The City shall pay the Consultant for services performed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment on the basis of an invoice statement covering Consultant's work-in-progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-progress percentages are subject to the review and approval of the City. The decision of the City shall be final as to the work-in-progress

percentages paid. Payment by the City for tasks on a work-in-progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the City of any such service or work-in-progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-progress payments have been made. All tasks to be paid for on a work-in-progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in the Compensation and Method of Payment with the notation (WIPP). Only tasks so identified will be paid on a work-in-progress percentage basis. The City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

3) PAYMENT SCHEDULE

The City shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the City object or take exception to the amount of any Consultant's invoice statement, the City shall notify the Consultant of such objection or exception within the thirty (30) calendar days payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar days' period, the City shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.03 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE CITY

In the event of termination of this Agreement at the convenience of the City, not at the fault of the Consultant, the City shall compensate the Consultant only for the services performed prior to the effective date of termination, reimbursable expenses then due and reasonable expenses incurred by the Consultant in affecting the termination of services and work, and incurred by the submittal to the City of project drawings, plans, data, and other project documents.

5.04 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the City suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the City shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.05 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; (3) and/or are modified by the subsequent issuance of supplemental task authorization(s) and/or change order(s), other than receiving the compensation set forth in Payment When Services are Terminated at the Convenience of the City and Payment When Services are Suspended, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00-TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the City may authorize specific tasks to be completed. Upon agreement on the scope and fee for this work and execution of supplemental task authorization, the City will issue the Consultant a written notice to proceed. Following the issuance of such notice to proceed the Consultant shall be authorized to commence work and the Consultant thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, which is attached hereto and made a part of this Agreement.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the City shall grant the extension if the City determines the delay(s)

encountered by the Consultant, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The Consultant shall be required as a condition of this Agreement to prepare and submit to the City, on a monthly basis, commencing with the issuance of the notice to proceed, a Consultant's work schedule. The work schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's work schedule of planned and actual work progress shall be updated and submitted by the Consultant to the City on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the City at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any change order(s) and supplemental task authorization(s) issued thereto.

ARTICLE 7.00-SECURING AGREEMENT

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

ARTICLE 8.00-CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines that there is a conflict of interest, Consultant or such sub-consultant shall decline the representation upon written notice by the City.

If the City determines that there is not such conflict of interest, then the City shall give its written consent to such representation. If Consultant or sub-consultant accepts such a representation without obtaining the City's prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such sub-consultant under this Agreement, then the Consultant or such sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such sub-consultants to comply with the provisions of this section.

Should the Consultant fail to advise or notify the City as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the City may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00-ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor Consultant, or consulting organization. Nor shall the Consultant subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the City. The Consultant shall have the right, subject to the City's prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The City shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in Consultant's Associated Sub-Consultants and Subcontractors, which is attached hereto and made a part of this Agreement.

ARTICLE 10.00-APPLICABLE LAW
Unless otherwise specified, this Agreement shall be governed by the laws, rules, regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States Government.

ARTICLE 11.00-COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES
The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

ARTICLE 12.00-WAIVER OF BREACH
Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00-INSURANCE
For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

The Vendor shall procure and maintain property insurance (Builder's Risk, Installation Floaters, etc.) upon the entire project, if required, to the full insurable value of the scope of work. The City and the Vendor waive against each other and the City's separate Vendors, Contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and City shall, where appropriate, require similar waivers of subrogation from the City's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. All deductibles for property insurance procured by the Vendor shall be the responsibility of the Vendor.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name the City of Bonita Springs, Florida, as an additional insured including completed operations (and products if applicable). The policy shall be endorsed to be primary to any similar coverage carried by the City.

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all contracts.

ARTICLE 14.00-DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00-REPRESENTATION OF THE CITY

The Consultant in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the City in this manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written change order(s) and supplemental task authorization(s) issued thereunder.

In the event the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the City's behalf, and shall not act on the City's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor; or (2) the time for completing the work as required and agreed to in the construction contract; or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The City will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00-OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the City of a written change order deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the City, shall be delivered by the Consultant to the City within seven (7) calendar days of the City making such a request. In the event the City gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the City of a written change order deleting all or part of the services or work required, the Consultant shall deliver to the City the requested documents as set forth hereinabove, with the mutual understanding and commitment by the City that compensation earned or owing to the commitment by the City that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the notice of termination or change order.

The Consultant, at its expense, may make and retain copies of all documents delivered to the City for reference and internal use. The Consultant shall not, and agrees not to, use any of these documents, data and information contained therein on any other project or for any other client without the prior expressed written permission of the City.

Any use by the City of said documents, data and information contained therein, obtained by the City under the provisions of this Agreement for therein, obtained by the City under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the City, and without liability to the Consultant. The City shall be liable and agrees to be liable for and shall indemnify, defend and hold the Consultant harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the City's use of such documents in a manner contrary to the provisions set forth hereinabove. The City hereby acknowledges receipt of $10.00 (ten and no hundred dollars) and other good and valuable consideration from the Consultant which has been paid as specific consideration for the indemnification provided herein.

ARTICLE 17.00-MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

17.01 COMPLIANCE WITH PUBLIC RECORDS LAW

The Consultant must comply with Florida public records laws, specifically to:

a) Keep and maintain public records required by the City to perform the service.

b) Upon request from the City's custodian of public records, provide the City 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 Florida Statutes §119 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 Consultant does not transfer the records to the City.

d) Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

e) The City will consider it a breach of contract should the Consultant fail to comply with any public records request.

f) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.

g) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESGIN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, debbie.filipek@cityofbonitasprings.org.**

h) If the Consultant is not providing the requested public records, the burden of proof is on the Consultant to show why they did not comply with the request.

ARTICLE 18.00-HEADINGS

The headings of the articles, sections, exhibits, attachments, phases or tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such articles, sections, exhibits, attachments, phases or tasks.

ARTICLE 19.00-ENTIRE AGREEMENT

This Agreement and attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 20.00-NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement to be given by the Consultant to the City shall be in writing and shall be given by the United States Postal Service Department first class mail service postage prepaid, addressed to the following City address of record and sent to the attention of the City's Project Manager unless waived by City:

Elly Soto McKuen, Senior Project Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Copy: City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

20.02 NOTICES BY CITY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the City to the Consultant shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following Consultant's address of record unless waived by Consultant:

Consultant Name: NATIVEtec, LLC

Consultant Address: 4100 Evans Avenue #7

Consultant Address: Fort Myers, FL 33901

Telephone Number: (239) 332-1505

Fax Number: (239) 236-0444

ATTENTION: Robert E. Marini, PE, LA and Wetland Scientist
Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party per above contacts.

ARTICLE 21.00-TERM

This Agreement is effective as of the date first written above and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 22.00-TERMINATION

This Agreement may be terminated by the City at its convenience, or due to the fault of the Consultant, by the City giving thirty (30) calendar days written notice to the Consultant.

If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the City's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the City may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar days written notice, terminate this Agreement.

In addition to the City's contractual right to terminate this Agreement in its entirety as set forth above, the City may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services or the Project Guidelines and Criteria, or as such may be established by change order or supplemental task authorization. The City shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the City dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the City reserves the right to accept or not accept the termination request submitted by the Consultant, effective unless and until Consultant is notified, in writing, by the City of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the Consultant shall deliver to the City all papers, drawings, models, and other material in which the City has exclusive rights by virtue hereof or of any business done, or services or work performed by the Consultant on behalf of the City.

ARTICLE 23.00-AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendment, the requirements, provisions and/or terms of the amendment shall take precedence.

ARTICLE 24.00-MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed change order(s) or supplemental task authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written change order(s), and/or supplemental task authorizations, the latest executed change order(s), and/or supplemental task authorization(s) shall take precedence.

In the event the City issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the City's internal control purposes only, and any and all terms, provisions and conditions contained herein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 25.00-ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: _____
CITY CLERK

DATE: _____

CITY OF BONITA SPRINGS CITY COUNCIL

BY: _____
MAYOR

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

ATTEST:

_____ Angel Arias
(Witness)

_____ Dickinson Joseph
(Witness)

CORPORATE SEAL

CONSULTANT

BY: _____
(Authorized Signature)

Principal & Owner of FNativeTEC, LLC
(Title)

DATE: 1/7/21 Rev 1/8/21

EXHIBIT A

Scope of Professional Services
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/8/21

Basic Services

Section 1 General Scope Statement

The Consultant shall provide and perform the following professional services, which shall constitute the general scope of the basic services under the covenants, terms, and provisions of this Professional Services Agreement.

Section 2 Tasks

Pursuant to the general scope of the basic services stated herein above, the Consultant shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in Compensation and Method of Payment.

The CONSULTANT shall perform engineering, land survey, and aerial photography services necessary for the subject project as outlines; reference all centerline survey control points; establish the benchline on National Geodetic Vertical Datum (1929) throughout the project and tie property lines to comply with Florida Department of Natural Resources Rule, Florida Administrative Code Chapter 16 Q-3 (Florida Statutes 177 - Part Two).

Survey work shall be performed under the responsible charge of a Professional Land Surveyor registered in the State of Florida and shall be accomplished in accordance with the Florida Department of Transportation Policy 760.000-760.012, and Florida Department of Transportation Location Manual. Work must comply with the minimum technical standards for Land Surveyors Rule 2IHH-6, Florida Statutes 472.027; measurements of regular roadway cross-sections may be recorded on electronic data collection equipment.

Surveys shall also be provided in an electronic format, compatible with the following City GIS standards:

- DXF or DWG Format
- Coordinate System:
  1. Horizontal: State Plane FLORIDA WEST, FIPS 0902, NAD83, US Feet
  2. Vertical: NAVD 1988, US Feet
- CAD Layer organization

Administration
City Limits

Transportation
Road Centerline (line)
Pavement Area (polygon)
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)
Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail
Fence
Bridge
Pavement Message (point)

Storm Water
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)

Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail

Landscaping
Irrigation
Median (to be determined)

- Location accuracy requirements: all features should be within + or – one meter from actual position.

Roadway Survey
Provide engineering and land surveys necessary to establish the roadway alignments and intersecting streets within the project limits and obtain topography, cross sections, underground utilities, right-of-way, land ties and required drainage information for existing and proposed drainage systems and in accordance with the master drainage plan/storm run-off treatment areas.

Underground Utilities
Field locate existing underground utilities, based upon information provided in Task 7.01, only as deemed necessary to identify conflicts or potential conflicts with existing utilities during roadway and drainage construction. Horizontal and vertical location of underground utilities will be obtained prior to completion of Task 6.02. This task includes coordination with various utility companies and assumes that the respective utility shall be responsible for "pot holing," said underground systems. The horizontal and vertical location of each utility will be documented, based on the "pot-holing" performed by the respective utility company or the consultant.

Jurisdictional Wetlands Survey
After jurisdictional wetland lines have been flagged and verified by the agencies, the jurisdictional line will be located by GPS to sub-meter accuracy.

Planimetric
The Consultant shall provide planimetric of the project area sufficient to define topographical (two dimensional) details along the proposed roadway for the width of 300 feet either side of the centerline.
The scale Aerial Photography will not be acceptable for plan portion for the plan & profile sheets.

This list of activities is not meant to be complete and absolute. The City reserves the right to add additional related activities as the City implements these programs and survey related projects.

EXHIBIT B

Compensation and Method of Payment
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/8/21

Section 1 Basic Services/Task(s)

The City shall compensate the Consultant for providing and performing the task(s) set forth and enumerated in the Scope of Professional Services, as follows:

NOTE: A lump sum (LS) or not-to-exceed (NTE) amount of compensation to be paid the Consultant should be established and set forth below for each task or sub-task described and authorized in the Scope of Professional Services. Tasks to be paid on a work-in-progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
TOTAL				

(Unless list is continued on next page.)

Consultant's Personnel Hourly Rate Schedule*

Date: 1/8/21

Should it be mutually agreed to base compensation for additional services on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained below.

CONSULTANT OR SUB-CONSULTANT NAME NATIVEtec, LLC.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct** Payroll Average Hourly Rate
Professional Surveyor and Mapper	$175
2-Person Survey Team	$275
Field/Office Technician	$125
Office Administrator	$ 75
Principal	$250
Professional Engineer	$175
Environmental Scientist	$175
Landscape Architect	$175
Architect	$175
Mileage	$.55/mile
Reimbursable Expenses	Actual Cost

*NOTE: A separate personnel hourly rate schedule should also be attached for each sub-consultant listed in Consultant's Associated Sub-Consultant(s) and Subcontractor(s).

**NOTE: Direct Payroll Hourly Rate means the actual gross hourly wage paid.

EXHIBIT C

Time and Schedule of Performance
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/8/21

This Exhibit establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in the Scope of Professional Services. The Time and Schedule of Performance set forth hereinafter is established pursuant to Time and Schedule of Performance.

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/8/21

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing services and work on this project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
	N/A	

EXHIBIT E

Project Guidelines and Criteria
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/8/21

The City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

NONE

EXHIBIT F

Truth in Negotiation Certificate
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/8/21

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Truth-In-Negotiations Certificate.

2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.

3. The truth of statements made herein may be relied upon by the City and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the Consultant, doing business as:

COMPANY NAME: NATIVEtec, LLC

BY: Robert E. Marini

TITLE: Principal & Owner

The foregoing instrument was signed and acknowledged before me this 8th day of January,

by Robert E. Marini who is personally known OR has produced Florida Driver License
(Print or Type Name) (Type of Identification & Number)

as identification.

DICKINSON JOSEPH
Notary Public, State of Florida
Commission# GG 277246
My comm. expires Jan. 14, 2023

Notary Public Signature

Notary Commission Number/Expiration

EXHIBIT G

Insurance and Bonding Requirements

All policies shall be Best's Rated "A-" or better or subject to approval

Insurance / Bond Type	Required Limits
☒ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements. ☒ **The policy shall be endorsed to provide a waiver of subrogation in favor of the City.** NOTE: Any "non-construction industry" company employing more than 3 employees (not including a sole proprietor owner) must have workers' compensation coverage. ALL "construction industry" (as defined by FL Rule # 69L-6.021) companies with ANY employees must have coverage or if no statutory employees, then up to three officers or a sole proprietor MUST have a current exemption certificate from the Division of Workers' Compensation on file.
☒ Employer's Liability	$1,000,000 single limit per occurrence (Workers' Compensation Part B)
☒ Commercial General Liability (Occurrence Form) patterned after the current ISO form	Bodily Injury and Property Damage ☒ $1,000,000 per occurrence, $1,000,000 aggregate (Per Project) for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
☒ Indemnification	To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.
☒ Automobile Liability	☒ $ 1,000,000 Each Occurrence; Bodily Injury & Property Damage Owned/Non-owned/Hired; Automobile Included
☒ Other insurance as noted:	☐ Watercraft $ _____ Per Occurrence ☐ United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work. **STATUTORY** ☐ Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. $ _____ Per Occurrence ☐ Property Insurance (Or Builder's Risk) **Full insurable value of the scope of the work** ☐ Pollution $ _____ Per Occurrence ☒ Professional Liability $1,000,000 per claim and in the aggregate

☐ Railroad Right of Way	☐ Umbrella Excess $ _____ Per Occurrence ☐ Railroad Protective Liability Insurance per occurrence limit of not less than **Two Million Dollars ($2,000,000)** and aggregate limits of **Six Million Dollars ($6,000,000)** to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your General Liability policy coverage to be $5,000,000. They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage. For additional information on their insurance requirements and other requirements such as payment for and scheduling Railroad Inspector / Flagman, please contact Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.
☐ Bid bond	Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
☐ Performance and Payment Bonds	If the box is checked for a project less than $200,000, a performance bond will be required. For projects in excess of $200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. **Per FS §255.05, the Contractor shall provide a certified copy of the recorded bond to the City.**

☒ Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

☒ The City of Bonita Springs must be named as **"ADDITIONAL INSURED, INCLUDING PRODUCTS AND COMPLETED OPERATIONS"** on the Insurance Certificate for Commercial General Liability.

☒ The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

☒ **Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to the City of Bonita Springs.

EXHIBIT H

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Vendor Covered Transactions

(1) The prospective vendor certifies, by submission of this Annual Agreement, that neither it nor its principles are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the vendor is unable to certify to the above statement, the prospective vendor shall attach an explanation to this form.

VENDOR

NATIVE tee, LLC
Company Name

#930618491
DUNS Number

Signature

1/8/21
Date

Robert E. Marini Principal/Owner
Print Name and Title

4100 Evans Ave #7
Street Address

Ft Myers, FL 33901
City, State, Zip

For City of Bonita Springs use only

To access the debarment search: https://www.sam.gov/SAM/ > Search Records tab > Enter DUNS number > Click Search

Company: [ ] is debarred [ ] is not debarred

Verified by: _____ Date: _____
Name

EXHIBIT I

Scrutinized Companies Statement

SWORN STATEMENT UNDER SECTION 287.135(5), FLORIDA STATUTES: THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number **CN 20-07**, for **Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program.**

2. This sworn statement is submitted by NATIVETEC, LLC whose business
[Name of entity submitting sworn statement]
address is 4100 Evans Ave #7 Ft. Myers, FL 33901 and (if applicable) its Federal Employer Identification Number (FEIN) is 47-2576630 (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement:_____.

3. My name is Robert E. Marini and my relationship to the above is
[Please print name of individual signing]
Sole Owner of LLC.

4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.

6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.

8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. **[Please indicate which statements apply].**

X Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)
[ ] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.

[ ] Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for $1 Million or more)
[ ] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.

[ ] Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for $1 Million or more)
[ ] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

[ ] Business Operations in Cuba or Syria (bid, proposal or contract renewal for $1 Million or more)
[ ] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
[ ] The entity submitting this sworn statement does have business operations in Cuba or Syria.

The City will follow Florida Statute §287.135. If the City determines this Vendor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel after the contract is executed, the contract may be terminated by the City by written notification. If the City determines this Vendor is found to have submitted a false certification, placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations with Cuba or Syria, the City shall notify the Vendor of its determination by written notification.

By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.

Robert E Marini
AFFIANT

Robert E Marini
Typed Name of AFFIANT

Principal/Owner
Title

STATE OF Florida COUNTY OF Lee

The foregoing instrument was executed before me this 8th day of January, 20 21,
by Robert E. Marini as Owner and Principle of
Nativetec LLC, who personally swore or affirmed that he/she is authorized to execute this document and thereby bind the Corporation, and who is personally known to me OR has
produced Florida Driver License as identification.

(stamp)

DICKINSON JOSEPH
Notary Public, State of Florida
Commission# GG 277246
My comm. expires Jan. 14, 2023

NOTARY PUBLIC, State of Florida

THIS SPACE INTENTIONALLY LEFT BLANK

For City of Bonita Springs use only

To access the lists: http://www.sbafla.com/fsb/ > Funds We Manage tab > FRS Pension Plan - Global Governance Mandates > Global Governance Mandate Quarterly Reports > most current quarter

Scrutinized Companies that Boycott Israel List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in Sudan List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:
[ ] entity is **NOT** on list [ ] entity is on list

Business Operations in Cuba or Syria:
[ ] entity is **NOT** on list [ ] entity is on list

Verified by:_____ Date:_____
Print Name

EXHIBIT J

GENERAL PROVISIONS
State and Federal Regulations

1. 24 CFR 570 as amended- All the regulations regarding the CDBG program

2. 24 CFR 58 - The regulations prescribing the Environmental Review procedure.

3. Section I 04(b) and Section I 09 of Title I of the Housing and Community Development Act of 1974 as amended

4. The Fair Housing Act (42 U.S.C. 3601-20) Reasonable Accommodations Under the Fair Housing Act.

5. Executive Order 11063 - Equal Opportunity in Housing

6. Executive Order 11259 - Leadership & Coordination of Fair Housing in Federal Programs

7. 24 CFR Part I 07 - Non- Discrimination and Equal Opportunity in Housing under E.O.

8. Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, as amended

9. 24 CFR 570.60 I Subpart K - The regulations issued pursuant to Executive Order 11063 which prohibits discrimination and promotes equal opportunity in housing.

10. Executive Order 11246 ("Equal Employment Opportunity"), as amended by Executive Orders 11375 and 12086 - which establishes hiring goals for minorities and women on projects assisted with federal funds and as supplemented in Department of Labor regulations. EO I I246.

11. Executive Orders 11375 and 12086.

12. Title VII of the 1968 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972, 42 USC§ 2000e, et. seq. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that it is an Equal Opportunity or Affirmative Action employer.

13. 24 CFR 135 - Regulations outlining requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the CITY, the Consultant and any of the Subcontractor's. Failure to fulfill these requirements shall subject the CITY, the Consultant and any of the Consultant's Subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided, The Consultant certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
The Consultant further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:
"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."
The Consultant further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area

in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low- income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs,

The Consultant certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

14. Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
15. Contract Work Hours and Safety Standards Act, 40 USC 327-332.
16. Section 504 of the Rehabilitation Act of 1973, 29 USC 776(b) (5), 24 CFR 570.614 Subpart K. Section 504: https://www.epa.gov/ocr
17. The Americans with Disabilities Act of 1990: https://www.hud.gov/hudprograms/eohudap
18. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
19. 29 CFR Parts 3 and 5 - Regulations that prescribe the payment of prevailing wages and the use of apprentices and trainees on federally assisted projects. HUD Form 40 IO must be included in all construction contracts funded by CDBG-DR:

    Davis-Bacon Act: 42 USC 276a to 40 USC 276a:

    29 CFR Part 3 - Contractors and Subcontractors on public building or Public Work Financed, in whole or in part, by Loans or Grants from the United States

    29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provision Applicable Subject to the Contract Work Hours and Safety Standards Act)

    Executive Order 11914 - Prohibits discrimination with respect to the handicapped, in federally assisted projects.

    As a supplement to the Davis-Bacon Act requirements, the Consultant agrees to comply with the "Copeland Anti-Kickback Act," which prohibits the Consultant, its contractors, or subcontractors from inducing an employee to relinquish any part of his/her compensation, under the federally-funded contract.
20. Executive Order 11625 and U.S. Department of Housing and Urban Development Circular Letter 79-45 - which prescribes goal percentages for participation of minority businesses in Community Development Block Grant Contracts.
21. E.O. 11625 Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise.
22. The Consultant agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
23. 2 CFR 200 et seq - Uniform Administrative Requirements, Cost Principles, and Audit requirements for Grants and Agreements.
24. Immigration Reform and Control Act of 1986
25. Prohibition of Gifts to CITY Employees - No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service, or other item of value to any CITY employee,
26. Order of Precedence - In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Agreement shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Agreement. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Agreement, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.
27. Venue-Any suit of action brought by either party to this Agreement against the other party, relating to or arising out of this Agreement, must be brought in the appropriate federal or state courts, in Lee County, FL which courts have sole jurisdiction on all such matters. (No reference required for this item).
28. Dispute Resolution - Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. Any situations when negotiations, litigation and/or mediation shall be attended by representatives of Consultant with full decision-making authority and by CITY'S staff person who would make the presentation of any settlement reached during negotiations to CITY for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under§

44.102, Florida Statutes. The litigation arising out of this Agreement shall be adjudicated in Lee County, Florida, if in state court and the US District Court, Middle District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, LEE COUNTY AND THE CONSULTANT EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAYE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

29. The Consultant agrees to comply with the following requirements:
Clean Air Act, 41 USC 7401, et seq.
Federal Water Pollution Control Act, 33 USC 1251, et seq., as amended.

30. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4002 and 24 CFR 570.605 Subpart K), the Consultant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained. If appropriate, a letter of map amendment (LOMA) may be obtained from FEMA, which would satisfy this requirement and/or reduce the cost of said flood insurance.

31. The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to the HUD Lead- Based Paint Poisoning Prevention Act, found at 24 CFR 570.608, Subpart K.

32. The Consultant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State or Local historic property list.

33. The Consultant must certify that it will provide drug-free workplaces, in accordance with the Drug-Free Workplace Act of 1988 (41 USC 701).

34. The Consultant certifies 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; and, that the Consultant shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction as outlined in 24 CFR 570.609, Subpart K.

35. The Consultant agrees to comply with the following 0MB Circulars whichever is applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. These requirements are enumerated in 2 CFR 200, et seq.
Single Audits shall be conducted annually, in accordance with 2 CFR 200.501, and shall be submitted to the CITY nine (9) months after the end of the Consultant's fiscal year. The Consultant shall comply with the requirements and standards of 2 CFR 200 Subpart F, Section 500. Consultants exempt from Single Audit requirements shall submit financial statements to the CITY one hundred eighty (180) days after the end of the Consultant's fiscal year. Per 2 CFR 200.344, if this Agreement is closed out prior to the receipt of an audit report, the CITY reserves the right to recover any disallowed costs identified in an audit after such closeout.

36. Any real property acquired by the Consultant for the purpose of carrying on the projects stated herein, and approved by the CITY in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24.10 I, shall be subject to the provisions of CDBG-DR including, but not limited to, the provisions on use and disposition of property. Any real property within Consultant control, which is acquired or improved, in whole or part, with CDBG-DR funds in excess of $25,000, must adhere to the CDBG-DR Regulations at 24 CFR 570.505.

37. As provided in Subsection 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Consultant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof.
This notice is required by§ 287.133 (3) (a), Florida Statutes.

38. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds, other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL,

"Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, contracts under grants, loans, and cooperative agreements) and that all Consultant's shall certify and disclose accordingly.

39. Travel reimbursement will be based on the U.S. General Services Administration (GSA) per diem rates in effect at the time of travel. Equal access in accordance with the individual's gender identity in community planning and development programs, per 24 CFR 5, I 06.
40. Housing Counseling, including homeownership counseling or rental housing counseling, as defined in §5.100, required under or provided in connection with any program administered by HUD shall be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 170, per 24 CFR 5.111.
41. HUD Final Rule-Implementation of the Violence Against Women Reauthorization Act of2013 which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements. Any rule or regulation determined to be applicable by HUD.
42. Florida Statutes 713 .20, Part I, Construction Liens
43. Florida Statutes 119,021 Records Retention
44. Florida Statutes, 119.071, Contracts and Public Records
45. Limited English Proficiency: The Consultant agrees to take reasonable steps to provide meaningful access to the program/project and activities funded under this Agreement for persons with limited English proficiency pursuant to information located at http://www.lep.gov.
46. Equal Treatment of Faith-Based Organizations: By regulation, DOJ/BJA prohibits all recipient organizations from using financial assistance from DOJ/BJA to fund explicitly religious activities. The Consultant agrees to avoid such prohibited conduct. Discrimination on the basis of religion in employment is generally prohibited by federal law, but the Religious Freedom Restoration Act is interpreted on a case-by-case basis to allow some faith-based organizations to receive DOJ/BJA funds while taking into account religion when hiring staff. Questions in this regard should be directed to the Office for Civil Rights.
47. Arrest and Conviction Records: Federal and state laws restrict use of arrest and conviction records in the employment context, except when specifically, authorized. The Consultant agrees to avoid the misuse of arrest or conviction records to screen applicants for employment or employees for retention or promotion that may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination unless use is otherwise specifically authorized by law.
48. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352): The Consultant will not use and has not used federal appropriated funds to pay at any tier, either directly or indirectly, any person or organization 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 obtaining any federal contract, grant, or any other award or subaward covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award or subaward. Such disclosures are forwarded from tier-to-tier up to the Consultant. The Consultant shall comply with the lobbying restrictions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and (ii) ensure that its officers, employees and its subcontractors hereunder comply with all applicable local, state, and federal laws and regulations governing advocacy of and appearances before any legislative body. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before local, state, or federal legislatures.
49. False Claim; Criminal, or Civil Violation: Consultant must promptly refer to CITY any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either (1) submitted a false claim for grant funds under the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving subaward agreement funds.
50. Political Activities Prohibited: None of the funds provided directly or indirectly under this Agreement shall be used for any political activities or to further the election or defeat of any candidates for public office; Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities or activities for or against the election of a candidate for an elected office.
51. Text Messaging: Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Federal Register 51225 (October I, 2009), DOJ/BJA encourages recipients and subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by DOJ/BJA and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
52. Trafficking in Persons: The Consultant agrees to, at any tier, comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of the Consultant and any employees of the Consultant.

53. Association of Community Organizations for Reform Now (ACORN): The Consultant understands and acknowledges that it cannot use any federal funds, either directly or indirectly, in support of any contract or subaward to either ACORN or its subsidiaries, without the express prior written approval of OJP.

54. If the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this funding agreement, the Consultant must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Busines Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by HUD.

CITY OF BONITA SPRINGS, FLORIDA
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this _____ day of _____, 2020, between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and Agnoli, Barber & Brundage, Inc. (hereinafter referred to as the "Consultant").

WITNESSETH

WHEREAS, the City desires to obtain the professional services of said Consultant to provide and perform professional services as further described hereinafter concerning the project to be referred to and identified as: Miscellaneous Surveying Services for the Community Development Block Grant-Disaster Recovery (CDBG-DR) Voluntary Home Buyout Program CN 20-07, and

WHEREAS, the Consultant hereby certifies that Consultant has been granted and possesses valid, current licenses to do business in the State of Florida and in the City of Bonita Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultants Competitive Negotiation Act, Florida Statutes §287.055.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a contract shall exist between both parties consisting of:

ARTICLE 1.00-SCOPE OF PROFESSIONAL SERVICES
Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in the Scope of Professional Services, which is attached hereto and made a part of this Agreement.

ARTICLE 2.00-DEFINITIONS
The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 CITY
The term "City" shall refer to the City of Bonita Springs, a municipality incorporated within the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the City's behalf relative to this Agreement.

2.02 CONSULTANT
The term "Consultant" shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all change orders thereto.

2.03 PROFESSIONAL SERVICES
The term "Professional Services" shall refer to all of the services, work materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the Consultant and its employees and any and all sub-consultants and subcontractors the Consultant may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT
The term "Sub-Consultant" shall refer to any individual or firm offering professional services which is engaged by the Consultant to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated, responsible and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any sub-consultant.

2.05 SUBCONTRACTOR
The term "Subcontractor" shall refer to any individual, company or firm providing other than professional services which is engaged by the Consultant to assist the Consultant in contractually obligated, responsible, and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any subcontractor.

2.06 PROJECT
The term "Project" shall refer to such facility, system, program or item as described in the summary statement set forth in the preamble of this Agreement.

2.07 BASIC SERVICES
The term "Basic Services" shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached Scope of Professional Services.

2.08 ADDITIONAL SERVICES
The term "Additional Services" shall refer to such professional services as the City may request and authorize, in writing, the Consultant to provide and perform relative to this Agreement which are not included in the basic services. Additional services shall be authorized by the execution of both parties to this Agreement by a change order agreement.

2.09 CHANGE ORDER
The term "Change Order" shall refer to a written document, change order agreement, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon scope of professional services and tasks, compensation and method of payment, time and schedule of performance, or project guidelines and criteria as such were set forth and agreed to in the initial agreement, supplemental task authorization(s), or previous change orders issued thereto. The change order document, which shall be executed on a City standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all change orders executed and issued under this Agreement shall be understood and agreed by both parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the change order including, but not limited to, any and all direct costs, indirect costs and associated costs which may result from or be caused by the change order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the Consultant's general administrative and overhead costs and profit.

In the event the City decides to delete all, or portions, of the scope of services, task(s), or requirements set forth in the initial agreement, supplemental task authorizations or previously authorized change orders, the City may do so by the unilateral issuance of a written change order to the Consultant. Such a unilaterally issued change order shall set forth, if appropriate, an agreement by both the City and the Consultant establishing changes in the amount of compensation to be paid the Consultant as a result of the deletion or decrease in the services required shall have no effect on, or otherwise prevent the City from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the Consultant.

2.10 SUPPLEMENTAL TASK AUTHORIZATION
The term "Supplemental Task Authorization" as used refers to a written document executed by both parties to an existing professional services agreement setting forth and authorizing a limited number of professional services, tasks, or work.

2.11 CITY MANAGER
The term "City Manager" shall refer to the City Manager or his designee requesting the service, employed by the City Council to serve and act on the City's behalf, as it relates to this project. The City Manager within the authority conferred by the City Council, acting as the City's designated representative shall issue written notification to the Consultant of any and all changes approved by the City in the Consultant's: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to basic services and additional services pursuant to this Agreement or change order(s) or supplemental task authorization(s) pertaining thereto. The City Manager shall be responsible for acting on the City's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, change order(s) or supplemental task authorization(s) issued thereunder.

2.12 PROJECT MANAGER
The term "Project Manager" shall refer to the person employed or retained by the City and designated, in writing, to serve and act on the City's behalf to provide direct contact and communication between the City and Consultant with respect to

providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and such written change order(s) and supplemental task authorization(s) as are authorized. The Project Manager is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; (3) the amount of compensation the City is obligated or committed to pay the Consultant. The Project Manager shall review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and change order(s), supplemental task authorization(s) thereto.

2.13 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or sub-contractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set forth in subsequent work orders, supplemental agreements, and/or change orders agreed to in writing by both parties to this Agreement.

2.14 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the Consultant's compensation to provide and perform the services and work necessary and required pursuant to the tasks set forth in the Scope of Professional Services, and any change orders, supplemental task authorizations, and work orders authorized thereto, is established to be made on a not-to-exceed (NTE) amount basis, it is mutually understood and agreed that such compensation for each completed task shall be made on the following basis:

For the actual hours necessary, required and expected by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in the Compensation and Method of Payment, which is attached hereto and made a part of this Agreement, to the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by sub-consultants and subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the City and the Consultant and as are set forth as a part of the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

With the understanding and agreement that the City shall pay the Consultant for all such costs and expenses within the established NTE amount for each task or sub-task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the City covering all such costs and expenses; and

With the understanding and agreement that the Consultant's invoices and all payments to be made for all NTE amounts shall be subject to the review, acceptance and approval of the City; and with the understanding and agreement that when the Consultant's compensation is established on a NTE basis for a specific task(s) or sub-task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and sub-consultant and subcontractor costs for any such specific task(s) or sub-task(s) shall not exceed the amount of the total NTE compensation established and agreed to for each specific task(s) or sub-task(s). In the event the amount of compensation for any task(s) or sub-task(s) to which the Consultant is entitled on the NTE basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the NTE amount established for the specific task or sub-task, it is understood and agreed that any unexpended amount under a specific task or sub-task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other task(s) or sub-task(s).

ARTICLE 3.00-OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES

The Consultant agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida, Lee County and in the City of Bonita Springs, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement.

3.02 PERSONNEL

1) QUALIFIED PERSONNEL

The Consultant agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all basic services and additional services to be provided pursuant to this Agreement.

2) CONSULTANT'S PROJECT DIRECTOR

The Consultant agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising under this Agreement unless substitute arrangements have been furnished to the City in writing. The Consultant agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance of the City.

3) CONSULTANT'S STAFF

Consultant will specify the technical and support staff who will be assigned to this project. Consultant will notify City's Project Manager of any changes and/or substitution of staff working on the project.

4) REMOVAL OF PERSONNEL

The Consultant agrees, within thirty (30) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the City shall request, in writing, be removed, this request may be made by the City with or without cause.

5) IMMIGRATION LAW COMPLIANCE

Consistent with Bonita Springs Code §36.22, effective June 1, 2009, Contractors providing services to the City, as a condition of each contract, must use E-Verify to verify the employment of any person hired during the contract term by the contractor and assigned by the Contractor to perform work for the City. Before any contract with the City is signed, proof of enrollment with E-Verify must be provided. The Contractor acknowledges that he will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Contractor the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Contractor must also be responsible for entering into an agreement with each and every vendor and subcontractor that states that vendors and subcontractors (and their vendors) are independently responsible for their own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the City. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The City may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all basic services and additional services will be provided, performed and completed in a timely and diligent manner throughout.

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the Consultant and by any sub-consultant(s) and/or subcontractor(s) engaged by the Consultant as set forth in the Scope of Professional Services shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the City approves this Agreement, or which may

subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the Consultant to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services shall serve as a basis for the City to consider the development and issuance of a change order to provide for a change to, or additional services to, the services set forth in this Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1) RESPONSIBILITY TO CORRECT

The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any sub-consultant(s) or subcontractor(s) engaged by the Consultant.

2) CITY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, nor acceptance by the City of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the Consultant, or any sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the City's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the City's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY AND HOLD HARMLESS

To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expenses and in a manner acceptable to and approved by the City, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its sub-consultants and/or subcontractors. This Consultant's obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the City.

The City reserves the right, should the Consultant fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the City for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

1) In the event the services required pursuant to this Agreement include the Consultant preparing and submitting to the City cost estimates, the Consultant, by exercise of this experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under this Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and corrections of any and all such cost

estimates. For purposes of the liability provisions of this article only, the Consultant's estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the City's acceptance of the estimate(s).

2) The cost estimates of Consultants or sub-consultants engaged by Consultants, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions provided in Consultant to Repair Property Damage Caused by the Consultant.

3) COST ESTIMATES

a) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus forty percent (40%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the order of magnitude estimate shall be recoverable by the City.

b) BUDGET ESTIMATE

Budget in this case applies to the City's budget and not to the budget as a project-controlled document. A budget is prepared with the use of flow sheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty percent (20%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the budget estimate shall be recoverable by the City.

c) CONSTRUCTION COST ESTIMATE

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a construction cost estimate is vital to the City's interests because it may be used for such purposes as, but not limited to the following: budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction project.

In the event the City solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a construction cost estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the Consultant's construction cost estimate by more than the percent accuracy set forth hereinabove, the Consultant shall, upon notification by the City, assume responsibility for and proceed to provide and perform the following service without additional compensation.

The Consultant will, subject to the review and approval of the City, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the construction cost estimate prepared by the Consultant. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the City for the project and set forth in this Agreement or change order(s) or supplemental task authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawing prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the Consultant's construction cost estimate, the costs associated with the Consultant's preparation and development of the construction cost estimate shall be recoverable by the City by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the construction cost estimate prepared by the Consultant, the amount of the construction cost estimate submitted by the Consultant shall be adjusted from the date the construction cost estimate was received by the City until the date bids or price proposals are received by the City, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the City receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the Consultant may deem it appropriate to recommend the City reject any such bid(s) or priced proposal(s). If under such circumstances the City concurs with the Consultant's recommendation and rejects the bid(s) or priced proposal(s), the City will not hold the Consultant responsible to, nor will the City require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the City and made payable to the respective governmental body upon the Consultant furnishing the City satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY request the Consultant to provide and perform professional services for this project which are not set forth in the Scope of Professional Services, the Consultant agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

Additional services shall be administered and authorized as change orders or supplemental task authorizations under this Agreement. The Consultant shall not provide or perform, nor shall the City incur or accept any obligation to compensate the Consultant for any additional services unless and until a written change order or supplemental task authorization has been agreed to and executed by both parties.

Each such change order or supplemental task authorization shall set forth a comprehensive, detailed description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said additional services.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The City may request the Consultant to execute a Truth-in-Negotiations Certificate ("Certificate"). The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized. The compensation to be paid the Consultant as set forth in the Compensation and Method of Payment, change orders, and supplemental task authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized thereto as stated above.

ARTICLE 4.00-OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

The City agrees after the execution of this Agreement to promptly advise the Consultant, in writing, of the person designated to serve and act as the City's Project Manager. Such notification shall be provided to the Consultant by the Project Manager.

4.02 AVAILABILITY OF CITY INFORMATION

1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the Consultant regarding requirements the City has established or suggests relative to the project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in the Project Guidelines and Criteria, which is attached hereto and made a part of this Agreement.

2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the Consultant's request, the City agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the City to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the City such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The City agrees that the City Manager and the Project Manager shall be available within a reasonable period of time, with reasonable prior notice given by the Consultant, to meet and/or consult with the Consultant on matters pertaining to the services to be provided and performed by the Consultant. The City further agrees to respond within a reasonable period of time to written requests submitted by the Consultant.

4.04 ACCESS TO CITY PROPERTY

The City agrees, with reasonable prior written notice given by the Consultant, to provide the Consultant with access within a reasonable period of time to City property, facilities, buildings and structures to enable the Consultant to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with City operations, or the operations carried on by others under a lease, or other contractual arrangement with the City, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the Consultant's normal office and/or field workdays and/or work hours.

ARTICLE 5.00-COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC AND ADDITIONAL SERVICES

The City shall pay the Consultant for all requested and authorized basic services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the City in accordance with the provisions for compensation and payment of said basic services set forth and prescribed in the Compensation and Method of Payment or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written change order executed by both parties.

5.02 METHOD OF PAYMENT

1) MONTHLY STATEMENTS

The Consultant shall be entitled to submit no more than one (1) invoice statement to the City each calendar month covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or change order(s) and supplemental task authorization(s) thereunder.

2) PAYMENT FOR SERVICES PERFORMED

The City shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

a) The City shall pay Consultant on the basis of services completed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment, as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the City. No payments shall be made for Consultant's work-in-progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the City. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the City, the City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

b) The City shall pay the Consultant for services performed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment on the basis of an invoice statement covering Consultant's work-in-progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-progress percentages are subject to the review and approval of the City. The decision of the City shall be final as to the work-in-progress

percentages paid. Payment by the City for tasks on a work-in-progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the City of any such service or work-in-progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-progress payments have been made. All tasks to be paid for on a work-in-progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in the Compensation and Method of Payment with the notation (WIPP). Only tasks so identified will be paid on a work-in-progress percentage basis. The City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

3) PAYMENT SCHEDULE

The City shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the City object or take exception to the amount of any Consultant's invoice statement, the City shall notify the Consultant of such objection or exception within the thirty (30) calendar days payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar days' period, the City shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.03 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE CITY

In the event of termination of this Agreement at the convenience of the City, not at the fault of the Consultant, the City shall compensate the Consultant only for the services performed prior to the effective date of termination, reimbursable expenses then due and reasonable expenses incurred by the Consultant in affecting the termination of services and work, and incurred by the submittal to the City of project drawings, plans, data, and other project documents.

5.04 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the City suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the City shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.05 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; (3) and/or are modified by the subsequent issuance of supplemental task authorization(s) and/or change order(s), other than receiving the compensation set forth in Payment When Services are Terminated at the Convenience of the City and Payment When Services are Suspended, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00-TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the City may authorize specific tasks to be completed. Upon agreement on the scope and fee for this work and execution of supplemental task authorization, the City will issue the Consultant a written notice to proceed. Following the issuance of such notice to proceed the Consultant shall be authorized to commence work and the Consultant thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, which is attached hereto and made a part of this Agreement.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the City shall grant the extension if the City determines the delay(s)

encountered by the Consultant, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The Consultant shall be required as a condition of this Agreement to prepare and submit to the City, on a monthly basis, commencing with the issuance of the notice to proceed, a Consultant's work schedule. The work schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's work schedule of planned and actual work progress shall be updated and submitted by the Consultant to the City on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the City at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any change order(s) and supplemental task authorization(s) issued thereto.

ARTICLE 7.00-SECURING AGREEMENT

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

ARTICLE 8.00-CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines that there is a conflict of interest, Consultant or such sub-consultant shall decline the representation upon written notice by the City.

If the City determines that there is not such conflict of interest, then the City shall give its written consent to such representation. If Consultant or sub-consultant accepts such a representation without obtaining the City's prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such sub-consultant under this Agreement, then the Consultant or such sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such sub-consultants to comply with the provisions of this section.

Should the Consultant fail to advise or notify the City as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the City may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00-ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor Consultant, or consulting organization. Nor shall the Consultant subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the City. The Consultant shall have the right, subject to the City's prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The City shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in Consultant's Associated Sub-Consultants and Subcontractors, which is attached hereto and made a part of this Agreement.

ARTICLE 10.00-APPLICABLE LAW
Unless otherwise specified, this Agreement shall be governed by the laws, rules, regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States Government.

ARTICLE 11.00-COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES
The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

ARTICLE 12.00-WAIVER OF BREACH
Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00-INSURANCE
For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

The Vendor shall procure and maintain property insurance (Builder's Risk, Installation Floaters, etc.) upon the entire project, if required, to the full insurable value of the scope of work. The City and the Vendor waive against each other and the City's separate Vendors, Contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and City shall, where appropriate, require similar waivers of subrogation from the City's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. All deductibles for property insurance procured by the Vendor shall be the responsibility of the Vendor.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name the City of Bonita Springs, Florida, as an additional insured including completed operations (and products if applicable). The policy shall be endorsed to be primary to any similar coverage carried by the City.

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all contracts.

ARTICLE 14.00-DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00-REPRESENTATION OF THE CITY

The Consultant in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the City in this manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written change order(s) and supplemental task authorization(s) issued thereunder.

In the event the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the City's behalf, and shall not act on the City's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor; or (2) the time for completing the work as required and agreed to in the construction contract; or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The City will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00-OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the City of a written change order deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the City, shall be delivered by the Consultant to the City within seven (7) calendar days of the City making such a request. In the event the City gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the City of a written change order deleting all or part of the services or work required, the Consultant shall deliver to the City the requested documents as set forth hereinabove, with the mutual understanding and commitment by the City that compensation earned or owing to the commitment by the City that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the notice of termination or change order.

The Consultant, at its expense, may make and retain copies of all documents delivered to the City for reference and internal use. The Consultant shall not, and agrees not to, use any of these documents, data and information contained therein on any other project or for any other client without the prior expressed written permission of the City.

Any use by the City of said documents, data and information contained therein, obtained by the City under the provisions of this Agreement for therein, obtained by the City under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the City, and without liability to the Consultant. The City shall be liable and agrees to be liable for and shall indemnify, defend and hold the Consultant harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the City's use of such documents in a manner contrary to the provisions set forth hereinabove. The City hereby acknowledges receipt of $10.00 (ten and no hundred dollars) and other good and valuable consideration from the Consultant which has been paid as specific consideration for the indemnification provided herein.

ARTICLE 17.00-MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

17.01 COMPLIANCE WITH PUBLIC RECORDS LAW

The Consultant must comply with Florida public records laws, specifically to:

a) Keep and maintain public records required by the City to perform the service.

b) Upon request from the City's custodian of public records, provide the City 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 Florida Statutes §119 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 Consultant does not transfer the records to the City.

d) Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

e) The City will consider it a breach of contract should the Consultant fail to comply with any public records request.

f) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.

g) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESGIN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, debbie.filipek@cityofbonitasprings.org.**

h) If the Consultant is not providing the requested public records, the burden of proof is on the Consultant to show why they did not comply with the request.

ARTICLE 18.00-HEADINGS

The headings of the articles, sections, exhibits, attachments, phases or tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such articles, sections, exhibits, attachments, phases or tasks.

ARTICLE 19.00-ENTIRE AGREEMENT

This Agreement and attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 20.00-NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement to be given by the Consultant to the City shall be in writing and shall be given by the United States Postal Service Department first class mail service postage prepaid, addressed to the following City address of record and sent to the attention of the City's Project Manager unless waived by City:

Elly Soto McKuen, Senior Project Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Copy: City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

20.02 NOTICES BY CITY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the City to the Consultant shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following Consultant's address of record unless waived by Consultant:

Consultant Name: Agnoli, Barber & Brundage, Inc.

Consultant Address: 7400 Trail Boulevard, Suite 200

Consultant Address: Naples, FL 34108

Telephone Number: (239) 597-3111

Fax Number: (239) 566-2203

ATTENTION: Wayne D. Agnoli, Principal & Vice President
Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party per above contacts.

ARTICLE 21.00-TERM

This Agreement is effective as of the date first written above and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 22.00-TERMINATION

This Agreement may be terminated by the City at its convenience, or due to the fault of the Consultant, by the City giving thirty (30) calendar days written notice to the Consultant.

If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the City's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the City may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar days written notice, terminate this Agreement.

In addition to the City's contractual right to terminate this Agreement in its entirety as set forth above, the City may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services or the Project Guidelines and Criteria, or as such may be established by change order or supplemental task authorization. The City shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the City dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the City reserves the right to accept or not accept the termination request submitted by the Consultant, effective unless and until Consultant is notified, in writing, by the City of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the Consultant shall deliver to the City all papers, drawings, models, and other material in which the City has exclusive rights by virtue hereof or of any business done, or services or work performed by the Consultant on behalf of the City.

ARTICLE 23.00-AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendment, the requirements, provisions and/or terms of the amendment shall take precedence.

ARTICLE 24.00-MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed change order(s) or supplemental task authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written change order(s), and/or supplemental task authorizations, the latest executed change order(s), and/or supplemental task authorization(s) shall take precedence.

In the event the City issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the City's internal control purposes only, and any and all terms, provisions and conditions contained herein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 25.00-ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: _____
CITY CLERK

DATE: _____

CITY OF BONITA SPRINGS CITY COUNCIL

BY: _____
MAYOR

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

ATTEST:

_____
(Witness)

_____
(Witness)

CORPORATE SEAL

CONSULTANT

BY: _____
Dominick J. Amico
President
(Title)

DATE: 1-6-2021

EXHIBIT A

Scope of Professional Services
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: January 6, 2021

Basic Services

Section 1 General Scope Statement

The Consultant shall provide and perform the following professional services, which shall constitute the general scope of the basic services under the covenants, terms, and provisions of this Professional Services Agreement.

Section 2 Tasks

Pursuant to the general scope of the basic services stated herein above, the Consultant shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in Compensation and Method of Payment.

The CONSULTANT shall perform engineering, land survey, and aerial photography services necessary for the subject project as outlines; reference all centerline survey control points; establish the benchline on National Geodetic Vertical Datum (1929) throughout the project and tie property lines to comply with Florida Department of Natural Resources Rule, Florida Administrative Code Chapter 16 Q-3 (Florida Statutes 177 - Part Two).

Survey work shall be performed under the responsible charge of a Professional Land Surveyor registered in the State of Florida and shall be accomplished in accordance with the Florida Department of Transportation Policy 760.000-760.012, and Florida Department of Transportation Location Manual. Work must comply with the minimum technical standards for Land Surveyors Rule 2lHH-6, Florida Statutes 472.027; measurements of regular roadway cross-sections may be recorded on electronic data collection equipment.

Surveys shall also be provided in an electronic format, compatible with the following City GIS standards:

- DXF or DWG Format
- Coordinate System:
  1. Horizontal: State Plane FLORIDA WEST, FIPS 0902, NAD83, US Feet
  2. Vertical: NAVD 1988, US Feet
- CAD Layer organization

Administration
City Limits

Transportation
Road Centerline (line)
Pavement Area (polygon)
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)
Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail
Fence
Bridge
Pavement Message (point)

Storm Water
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)

Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail

Landscaping
Irrigation
Median (to be determined)

- Location accuracy requirements: all features should be within + or – one meter from actual position.

Roadway Survey
Provide engineering and land surveys necessary to establish the roadway alignments and intersecting streets within the project limits and obtain topography, cross sections, underground utilities, right-of-way, land ties and required drainage information for existing and proposed drainage systems and in accordance with the master drainage plan/storm run-off treatment areas.

Underground Utilities
Field locate existing underground utilities, based upon information provided in Task 7.01, only as deemed necessary to identify conflicts or potential conflicts with existing utilities during roadway and drainage construction. Horizontal and vertical location of underground utilities will be obtained prior to completion of Task 6.02. This task includes coordination with various utility companies and assumes that the respective utility shall be responsible for "pot holing," said underground systems. The horizontal and vertical location of each utility will be documented, based on the "pot-holing" performed by the respective utility company or the consultant.

Jurisdictional Wetlands Survey
After jurisdictional wetland lines have been flagged and verified by the agencies, the jurisdictional line will be located by GPS to sub-meter accuracy.

Planimetric
The Consultant shall provide planimetric of the project area sufficient to define topographical (two dimensional) details along the proposed roadway for the width of 300 feet either side of the centerline.
The scale Aerial Photography will not be acceptable for plan portion for the plan & profile sheets.

This list of activities is not meant to be complete and absolute. The City reserves the right to add additional related activities as the City implements these programs and survey related projects.

EXHIBIT B

Compensation and Method of Payment
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: January 6, 2021

Section 1 Basic Services/Task(s)

The City shall compensate the Consultant for providing and performing the task(s) set forth and enumerated in the Scope of Professional Services, as follows:

NOTE: A lump sum (LS) or not-to-exceed (NTE) amount of compensation to be paid the Consultant should be established and set forth below for each task or sub-task described and authorized in the Scope of Professional Services. Tasks to be paid on a work-in-progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
TOTAL				

(Unless list is continued on next page.)

Compensation and Method of Payment – Page 2
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07
Consultant's Personnel Hourly Rate Schedule*

Date: January 6, 2021

Should it be mutually agreed to base compensation for additional services on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained below.

CONSULTANT OR SUB-CONSULTANT NAME Agnoli, Barber & Brundage, Inc.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct** Payroll Average Hourly Rate
Principal	$238
Senior Project Manager	$201
Project Manager	$165
Surveyor and Mapper	$142
Survey Crew – 2 man	$152
Survey Crew – 3 man	$185
Survey Crew – 4 man	$218
GPS (1 man) Robotics	$120
GPS (2 man) Robotics	$152
GIS Specialist	$114
Senior Technician	$102
Technician	$ 83
CADD Technician	$ 95
Clerical/Administrative	$ 73

*NOTE: A separate personnel hourly rate schedule should also be attached for each sub-consultant listed in Consultant's Associated Sub-Consultant(s) and Subcontractor(s).

**NOTE: Direct Payroll Hourly Rate means the actual gross hourly wage paid.

EXHIBIT C

Time and Schedule of Performance
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: January 6, 2021

This Exhibit establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in the Scope of Professional Services. The Time and Schedule of Performance set forth hereinafter is established pursuant to Time and Schedule of Performance.

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: January 6, 2021

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing services and work on this project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
Subsurface Utility Engineering	Earth View, LLC	Yes

EXHIBIT E

Project Guidelines and Criteria
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: January 6, 2021

The City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

NONE

EXHIBIT F

Truth in Negotiation Certificate
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: January 6, 2021

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Truth-In-Negotiations Certificate.

2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.

3. The truth of statements made herein may be relied upon by the City and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the Consultant, doing business as:

COMPANY NAME: Agnoli, Barber & Brundage, Inc.

BY: _____
Dominick J. Amico

TITLE: President

The foregoing instrument was signed and acknowledged before me this 6th day of January, 2021

by Dominick J. Amico who is personally known OR has produced _____
(Print or Type Name) (Type of Identification & Number)

as identification.

DENISE R. RAKICH
Commission # GG 210191
Expires May 24, 2022
Bonded Thru Budget Notary Services

Notary Public Signature

Notary Commission Number/Expiration

Denise R Rakich

EXHIBIT G

Insurance and Bonding Requirements

All policies shall be Best's Rated "A-" or better or subject to approval

Insurance / Bond Type	Required Limits
☒ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements. ☒ **The policy shall be endorsed to provide a waiver of subrogation in favor of the City.** NOTE: Any "non-construction industry" company employing more than 3 employees (not including a sole proprietor owner) must have workers' compensation coverage. ALL "construction industry" (as defined by FL Rule # 69L-6.021) companies with ANY employees must have coverage or if no statutory employees, then up to three officers or a sole proprietor MUST have a current exemption certificate from the Division of Workers' Compensation on file.
☒ Employer's Liability	$1,000,000 single limit per occurrence (Workers' Compensation Part B)
☒ Commercial General Liability (Occurrence Form) patterned after the current ISO form	Bodily Injury and Property Damage ☒ $1,000,000 per occurrence, $1,000,000 aggregate (Per Project) for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
☒ Indemnification	To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.
☒ Automobile Liability	☒ $ 1,000,000 Each Occurrence; Bodily Injury & Property Damage Owned/Non-owned/Hired; Automobile Included
☒ Other insurance as noted:	☐ Watercraft $ _____ Per Occurrence ☐ United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work. **STATUTORY** ☐ Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. $ _____ Per Occurrence ☐ Property Insurance (Or Builder's Risk) **Full insurable value of the scope of the work** ☐ Pollution $ _____ Per Occurrence ☒ Professional Liability $1,000,000 per claim and in the aggregate

☐ Railroad Right of Way	☐ Umbrella Excess **$** _____ Per Occurrence ☐ Railroad Protective Liability Insurance per occurrence limit of not less than **Two Million Dollars ($2,000,000)** and aggregate limits of **Six Million Dollars ($6,000,000)** to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your General Liability policy coverage to be $5,000,000. They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage. For additional information on their insurance requirements and other requirements such as payment for and scheduling Railroad Inspector / Flagman, please contact Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.
☐ Bid bond	Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
☐ Performance and Payment Bonds	If the box is checked for a project less than $200,000, a performance bond will be required. For projects in excess of $200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. **Per FS §255.05, the Contractor shall provide a certified copy of the recorded bond to the City.**

☒ Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

☒ The City of Bonita Springs must be named as **"ADDITIONAL INSURED, INCLUDING PRODUCTS AND COMPLETED OPERATIONS"** on the Insurance Certificate for Commercial General Liability.

☒ The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

☒ **Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to the City of Bonita Springs.

EXHIBIT H

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Vendor Covered Transactions

(1) The prospective vendor certifies, by submission of this Annual Agreement, that neither it nor its principles are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the vendor is unable to certify to the above statement, the prospective vendor shall attach an explanation to this form.

VENDOR

Agnoli, Barber & Brundage, Inc.
Company Name

11-413-9991
DUNS Number


Signature

January 6, 2021
Date

Dominick J. Amico, President
Print Name and Title

7400 Trail Boulevard, Suite 200
Street Address

Naples, FL 34108
City, State, Zip

For City of Bonita Springs use only

To access the debarment search: https://www.sam.gov/SAM/ > Search Records tab > Enter DUNS number > Click Search

Company: [ ] is debarred [ ] is not debarred

Verified by: _____ Date: _____
Name

EXHIBIT I

Scrutinized Companies Statement

SWORN STATEMENT UNDER SECTION 287.135(5), FLORIDA STATUTES: THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number **CN 20-07**, for **Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program.**

2. This sworn statement is submitted by Agnoli, Barber & Brundage, Inc. whose business
[Name of entity submitting sworn statement]

address is 7400 Trail Boulevard, Suite 200, Naples, FL 34108 and (if

applicable) its Federal Employer Identification Number (FEIN) is 59-2287155 (If the entity has no

FEIN, include the Social Security Number of the individual signing this sworn statement:_____.

3. My name is Dominick J. Amico and my relationship to the above is
[Please print name of individual signing]

President.

4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.

6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.

8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. **[Please indicate which statements apply].**

X Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.

[ ] Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.

[ ] Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

[ ] Business Operations in Cuba or Syria (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
[ ] The entity submitting this sworn statement does have business operations in Cuba or Syria.

The City will follow Florida Statute §287.135. If the City determines this Vendor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel after the contract is executed, the contract may be terminated by the City by written notification. If the City determines this Vendor is found to have submitted a false certification, placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations with Cuba or Syria, the City shall notify the Vendor of its determination by written notification.

By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.

Dominick J. Amico

AFFIANT

Dominick J. Amico

Typed Name of AFFIANT

President

Title

STATE OF FLORIDA COUNTY OF COLLIER

The foregoing instrument was executed before me this 6th day of January, 2021,

by Dominick J. Amico as President of

Agnoli, Barber & Brundage, Inc., who personally swore or affirmed that he/she is authorized to execute this document and thereby bind the Corporation, and who is personally known to me OR has

produced _____ as identification.

(stamp)

DENISE R. RAKICH
Commission # GG 210191
Expires May 24, 2022
Bonded Thru Budget Notary Services

Denise R Rakich

NOTARY PUBLIC, State of Florida

Denise R Rakich

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For City of Bonita Springs use only

To access the lists: http://www.sbafla.com/fsb/ > Funds We Manage tab > FRS Pension Plan - Global Governance Mandates > Global Governance Mandate Quarterly Reports > most current quarter

Scrutinized Companies that Boycott Israel List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in Sudan List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:
[ ] entity is **NOT** on list [ ] entity is on list

Business Operations in Cuba or Syria:
[ ] entity is **NOT** on list [ ] entity is on list

Verified by:_____ Date:_____
Print Name

EXHIBIT J

GENERAL PROVISIONS
State and Federal Regulations

1. 24 CFR 570 as amended- All the regulations regarding the CDBG program

2. 24 CFR 58 - The regulations prescribing the Environmental Review procedure.

3. Section I 04(b) and Section I 09 of Title I of the Housing and Community Development Act of 1974 as amended

4. The Fair Housing Act (42 U.S.C. 3601-20) Reasonable Accommodations Under the Fair Housing Act.

5. Executive Order 11063 - Equal Opportunity in Housing

6. Executive Order 11259 - Leadership & Coordination of Fair Housing in Federal Programs

7. 24 CFR Part I 07 - Non- Discrimination and Equal Opportunity in Housing under E.O.

8. Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, as amended

9. 24 CFR 570.60 I Subpart K - The regulations issued pursuant to Executive Order 11063 which prohibits discrimination and promotes equal opportunity in housing.

10. Executive Order 11246 ("Equal Employment Opportunity"), as amended by Executive Orders 11375 and 12086 - which establishes hiring goals for minorities and women on projects assisted with federal funds and as supplemented in Department of Labor regulations. EO I I246.

11. Executive Orders 11375 and 12086.

12. Title VII of the 1968 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972, 42 USC§ 2000e, et. seq. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that it is an Equal Opportunity or Affirmative Action employer.

13. 24 CFR 135 - Regulations outlining requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the CITY, the Consultant and any of the Subcontractor's. Failure to fulfill these requirements shall subject the CITY, the Consultant and any of the Consultant's Subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided, The Consultant certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
The Consultant further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:
"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."
The Consultant further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area

in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low- income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs,

The Consultant certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

14. Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
15. Contract Work Hours and Safety Standards Act, 40 USC 327-332.
16. Section 504 of the Rehabilitation Act of 1973, 29 USC 776(b) (5), 24 CFR 570.614 Subpart K. Section 504.
17. The Americans with Disabilities Act of 1990.
18. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
19. 29 CFR Parts 3 and 5 - Regulations that prescribe the payment of prevailing wages and the use of apprentices and trainees on federally assisted projects. HUD Form 40 IO must be included in all construction contracts funded by CDBG-DR:

    Davis-Bacon Act: 42 USC 276a to 40 USC 276a.

    29 CFR Part 3 - Contractors and Subcontractors on public building or Public Work Financed, in whole or in part, by Loans or Grants from the United States

    29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provision Applicable Subject to the Contract Work Hours and Safety Standards Act)

    Executive Order 11914 - Prohibits discrimination with respect to the handicapped, in federally assisted projects.

    As a supplement to the Davis-Bacon Act requirements, the Consultant agrees to comply with the "Copeland Anti-Kickback Act," which prohibits the Consultant, its contractors, or subcontractors from inducing an employee to relinquish any part of his/her compensation, under the federally-funded contract.
20. Executive Order 11625 and U.S. Department of Housing and Urban Development Circular Letter 79-45 - which prescribes goal percentages for participation of minority businesses in Community Development Block Grant Contracts.
21. E.O. 11625 Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise.
22. The Consultant agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
23. 2 CFR 200 et seq - Uniform Administrative Requirements, Cost Principles, and Audit requirements for Grants and Agreements.
24. Immigration Reform and Control Act of 1986
25. Prohibition of Gifts to CITY Employees - No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service, or other item of value to any CITY employee,
26. Order of Precedence - In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Agreement shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Agreement. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Agreement, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.
27. Venue-Any suit of action brought by either party to this Agreement against the other party, relating to or arising out of this Agreement, must be brought in the appropriate federal or state courts, in Lee County, FL which courts have sole jurisdiction on all such matters. (No reference required for this item).
28. Dispute Resolution - Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. Any situations when negotiations, litigation and/or mediation shall be attended by representatives of Consultant with full decision-making authority and by CITY'S staff person who would make the presentation of any settlement reached during negotiations to CITY for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under§ 44.102, Florida Statutes. The litigation arising out of this Agreement shall be adjudicated in Lee County, Florida, if in

state court and the US District Court, Middle District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, LEE COUNTY AND THE CONSULTANT EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAYE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

29. The Consultant agrees to comply with the following requirements:
Clean Air Act, 41 USC 7401, et seq.
Federal Water Pollution Control Act, 33 USC 1251, et seq., as amended.

30. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4002 and 24 CFR 570.605 Subpart K), the Consultant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained. If appropriate, a letter of map amendment (LOMA) may be obtained from FEMA, which would satisfy this requirement and/or reduce the cost of said flood insurance.

31. The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to the HUD Lead- Based Paint Poisoning Prevention Act, found at 24 CFR 570.608, Subpart K.

32. The Consultant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State or Local historic property list.

33. The Consultant must certify that it will provide drug-free workplaces, in accordance with the Drug-Free Workplace Act of 1988 (41 USC 701).

34. The Consultant certifies 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; and, that the Consultant shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction as outlined in 24 CFR 570.609, Subpart K.

35. The Consultant agrees to comply with the following 0MB Circulars whichever is applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. These requirements are enumerated in 2 CFR 200, et seq.
Single Audits shall be conducted annually, in accordance with 2 CFR 200.501, and shall be submitted to the CITY nine (9) months after the end of the Consultant's fiscal year. The Consultant shall comply with the requirements and standards of 2 CFR 200 Subpart F, Section 500. Consultants exempt from Single Audit requirements shall submit financial statements to the CITY one hundred eighty (180) days after the end of the Consultant's fiscal year. Per 2 CFR 200.344, if this Agreement is closed out prior to the receipt of an audit report, the CITY reserves the right to recover any disallowed costs identified in an audit after such closeout.

36. Any real property acquired by the Consultant for the purpose of carrying on the projects stated herein, and approved by the CITY in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24.10 I, shall be subject to the provisions of CDBG-DR including, but not limited to, the provisions on use and disposition of property. Any real property within Consultant control, which is acquired or improved, in whole or part, with CDBG-DR funds in excess of $25,000, must adhere to the CDBG-DR Regulations at 24 CFR 570.505.

37. As provided in Subsection 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Consultant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof.
This notice is required by§ 287.133 (3) (a), Florida Statutes.

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

language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, contracts under grants, loans, and cooperative agreements) and that all Consultant's shall certify and disclose accordingly.

39. Travel reimbursement will be based on the U.S. General Services Administration (GSA) per diem rates in effect at the time of travel. Equal access in accordance with the individual's gender identity in community planning and development programs, per 24 CFR 5, I 06.
40. Housing Counseling, including homeownership counseling or rental housing counseling, as defined in §5.100, required under or provided in connection with any program administered by HUD shall be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 170, per 24 CFR 5.111.
41. HUD Final Rule-Implementation of the Violence Against Women Reauthorization Act of2013 which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements. Any rule or regulation determined to be applicable by HUD.
42. Florida Statutes 713 .20, Part I, Construction Liens
43. Florida Statutes 119,021 Records Retention
44. Florida Statutes, 119.071, Contracts and Public Records
45. Limited English Proficiency: The Consultant agrees to take reasonable steps to provide meaningful access to the program/project and activities funded under this Agreement for persons with limited English proficiency pursuant to information located at http://www.lep.gov.
46. Equal Treatment of Faith-Based Organizations: By regulation, DOJ/BJA prohibits all recipient organizations from using financial assistance from DOJ/BJA to fund explicitly religious activities. The Consultant agrees to avoid such prohibited conduct. Discrimination on the basis of religion in employment is generally prohibited by federal law, but the Religious Freedom Restoration Act is interpreted on a case-by-case basis to allow some faith-based organizations to receive DOJ/BJA funds while taking into account religion when hiring staff. Questions in this regard should be directed to the Office for Civil Rights.
47. Arrest and Conviction Records: Federal and state laws restrict use of arrest and conviction records in the employment context, except when specifically, authorized. The Consultant agrees to avoid the misuse of arrest or conviction records to screen applicants for employment or employees for retention or promotion that may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination unless use is otherwise specifically authorized by law.
48. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352): The Consultant will not use and has not used federal appropriated funds to pay at any tier, either directly or indirectly, any person or organization 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 obtaining any federal contract, grant, or any other award or subaward covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award or subaward. Such disclosures are forwarded from tier-to-tier up to the Consultant. The Consultant shall comply with the lobbying restrictions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and (ii) ensure that its officers, employees and its subcontractors hereunder comply with all applicable local, state, and federal laws and regulations governing advocacy of and appearances before any legislative body. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before local, state, or federal legislatures.
49. False Claim; Criminal, or Civil Violation: Consultant must promptly refer to CITY any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either (1) submitted a false claim for grant funds under the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving subaward agreement funds.
50. Political Activities Prohibited: None of the funds provided directly or indirectly under this Agreement shall be used for any political activities or to further the election or defeat of any candidates for public office; Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities or activities for or against the election of a candidate for an elected office.
51. Text Messaging: Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Federal Register 51225 (October I, 2009), DOJ/BJA encourages recipients and subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by DOJ/BJA and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
52. Trafficking in Persons: The Consultant agrees to, at any tier, comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of the Consultant and any employees of the Consultant.

53. Association of Community Organizations for Reform Now (ACORN): The Consultant understands and acknowledges that it cannot use any federal funds, either directly or indirectly, in support of any contract or subaward to either ACORN or its subsidiaries, without the express prior written approval of OJP.

54. If the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this funding agreement, the Consultant must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Busines Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by HUD.

CITY OF BONITA SPRINGS, FLORIDA
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this _____ day of _____, 2020, between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and AIM Engineering & Surveying, Inc. (hereinafter referred to as the "Consultant").

WITNESSETH

WHEREAS, the City desires to obtain the professional services of said Consultant to provide and perform professional services as further described hereinafter concerning the project to be referred to and identified as: Miscellaneous Surveying Services for the Community Development Block Grant-Disaster Recovery (CDBG-DR) Voluntary Home Buyout Program CN 20-07, and

WHEREAS, the Consultant hereby certifies that Consultant has been granted and possesses valid, current licenses to do business in the State of Florida and in the City of Bonita Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultants Competitive Negotiation Act, Florida Statutes §287.055.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a contract shall exist between both parties consisting of:

ARTICLE 1.00-SCOPE OF PROFESSIONAL SERVICES
Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in the Scope of Professional Services, which is attached hereto and made a part of this Agreement.

ARTICLE 2.00-DEFINITIONS
The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 CITY
The term "City" shall refer to the City of Bonita Springs, a municipality incorporated within the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the City's behalf relative to this Agreement.

2.02 CONSULTANT
The term "Consultant" shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all change orders thereto.

2.03 PROFESSIONAL SERVICES
The term "Professional Services" shall refer to all of the services, work materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the Consultant and its employees and any and all sub-consultants and subcontractors the Consultant may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT
The term "Sub-Consultant" shall refer to any individual or firm offering professional services which is engaged by the Consultant to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated, responsible and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any sub-consultant.

2.05 SUBCONTRACTOR
The term "Subcontractor" shall refer to any individual, company or firm providing other than professional services which is engaged by the Consultant to assist the Consultant in contractually obligated, responsible, and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any subcontractor.

2.06 PROJECT
The term "Project" shall refer to such facility, system, program or item as described in the summary statement set forth in the preamble of this Agreement.

2.07 BASIC SERVICES
The term "Basic Services" shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached Scope of Professional Services.

2.08 ADDITIONAL SERVICES
The term "Additional Services" shall refer to such professional services as the City may request and authorize, in writing, the Consultant to provide and perform relative to this Agreement which are not included in the basic services. Additional services shall be authorized by the execution of both parties to this Agreement by a change order agreement.

2.09 CHANGE ORDER
The term "Change Order" shall refer to a written document, change order agreement, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon scope of professional services and tasks, compensation and method of payment, time and schedule of performance, or project guidelines and criteria as such were set forth and agreed to in the initial agreement, supplemental task authorization(s), or previous change orders issued thereto. The change order document, which shall be executed on a City standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all change orders executed and issued under this Agreement shall be understood and agreed by both parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the change order including, but not limited to, any and all direct costs, indirect costs and associated costs which may result from or be caused by the change order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the Consultant's general administrative and overhead costs and profit.

In the event the City decides to delete all, or portions, of the scope of services, task(s), or requirements set forth in the initial agreement, supplemental task authorizations or previously authorized change orders, the City may do so by the unilateral issuance of a written change order to the Consultant. Such a unilaterally issued change order shall set forth, if appropriate, an agreement by both the City and the Consultant establishing changes in the amount of compensation to be paid the Consultant as a result of the deletion or decrease in the services required shall have no effect on, or otherwise prevent the City from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the Consultant.

2.10 SUPPLEMENTAL TASK AUTHORIZATION
The term "Supplemental Task Authorization" as used refers to a written document executed by both parties to an existing professional services agreement setting forth and authorizing a limited number of professional services, tasks, or work.

2.11 CITY MANAGER
The term "City Manager" shall refer to the City Manager or his designee requesting the service, employed by the City Council to serve and act on the City's behalf, as it relates to this project. The City Manager within the authority conferred by the City Council, acting as the City's designated representative shall issue written notification to the Consultant of any and all changes approved by the City in the Consultant's: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to basic services and additional services pursuant to this Agreement or change order(s) or supplemental task authorization(s) pertaining thereto. The City Manager shall be responsible for acting on the City's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, change order(s) or supplemental task authorization(s) issued thereunder.

2.12 PROJECT MANAGER
The term "Project Manager" shall refer to the person employed or retained by the City and designated, in writing, to serve and act on the City's behalf to provide direct contact and communication between the City and Consultant with respect to

providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and such written change order(s) and supplemental task authorization(s) as are authorized. The Project Manager is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; (3) the amount of compensation the City is obligated or committed to pay the Consultant. The Project Manager shall review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and change order(s), supplemental task authorization(s) thereto.

2.13 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or sub-contractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set forth in subsequent work orders, supplemental agreements, and/or change orders agreed to in writing by both parties to this Agreement.

2.14 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the Consultant's compensation to provide and perform the services and work necessary and required pursuant to the tasks set forth in the Scope of Professional Services, and any change orders, supplemental task authorizations, and work orders authorized thereto, is established to be made on a not-to-exceed (NTE) amount basis, it is mutually understood and agreed that such compensation for each completed task shall be made on the following basis:

For the actual hours necessary, required and expected by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in the Compensation and Method of Payment, which is attached hereto and made a part of this Agreement, to the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by sub-consultants and subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the City and the Consultant and as are set forth as a part of the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

With the understanding and agreement that the City shall pay the Consultant for all such costs and expenses within the established NTE amount for each task or sub-task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the City covering all such costs and expenses; and

With the understanding and agreement that the Consultant's invoices and all payments to be made for all NTE amounts shall be subject to the review, acceptance and approval of the City; and with the understanding and agreement that when the Consultant's compensation is established on a NTE basis for a specific task(s) or sub-task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and sub-consultant and subcontractor costs for any such specific task(s) or sub-task(s) shall not exceed the amount of the total NTE compensation established and agreed to for each specific task(s) or sub-task(s). In the event the amount of compensation for any task(s) or sub-task(s) to which the Consultant is entitled on the NTE basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the NTE amount established for the specific task or sub-task, it is understood and agreed that any unexpended amount under a specific task or sub-task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other task(s) or sub-task(s).

ARTICLE 3.00-OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES

The Consultant agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida, Lee County and in the City of Bonita Springs, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement.

3.02 PERSONNEL

1) QUALIFIED PERSONNEL

The Consultant agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all basic services and additional services to be provided pursuant to this Agreement.

2) CONSULTANT'S PROJECT DIRECTOR

The Consultant agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising under this Agreement unless substitute arrangements have been furnished to the City in writing. The Consultant agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance of the City.

3) CONSULTANT'S STAFF

Consultant will specify the technical and support staff who will be assigned to this project. Consultant will notify City's Project Manager of any changes and/or substitution of staff working on the project.

4) REMOVAL OF PERSONNEL

The Consultant agrees, within thirty (30) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the City shall request, in writing, be removed, this request may be made by the City with or without cause.

5) IMMIGRATION LAW COMPLIANCE

Consistent with Bonita Springs Code §36.22, effective June 1, 2009, Contractors providing services to the City, as a condition of each contract, must use E-Verify to verify the employment of any person hired during the contract term by the contractor and assigned by the Contractor to perform work for the City. Before any contract with the City is signed, proof of enrollment with E-Verify must be provided. The Contractor acknowledges that he will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Contractor the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Contractor must also be responsible for entering into an agreement with each and every vendor and subcontractor that states that vendors and subcontractors (and their vendors) are independently responsible for their own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the City. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The City may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all basic services and additional services will be provided, performed and completed in a timely and diligent manner throughout.

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the Consultant and by any sub-consultant(s) and/or subcontractor(s) engaged by the Consultant as set forth in the Scope of Professional Services shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the City approves this Agreement, or which may

subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the Consultant to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services shall serve as a basis for the City to consider the development and issuance of a change order to provide for a change to, or additional services to, the services set forth in this Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1) RESPONSIBILITY TO CORRECT

The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any sub-consultant(s) or subcontractor(s) engaged by the Consultant.

2) CITY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, nor acceptance by the City of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the Consultant, or any sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the City's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the City's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY AND HOLD HARMLESS

To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expenses and in a manner acceptable to and approved by the City, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its sub-consultants and/or subcontractors. This Consultant's obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the City.

The City reserves the right, should the Consultant fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the City for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

1) In the event the services required pursuant to this Agreement include the Consultant preparing and submitting to the City cost estimates, the Consultant, by exercise of this experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under this Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and corrections of any and all such cost

estimates. For purposes of the liability provisions of this article only, the Consultant's estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the City's acceptance of the estimate(s).

2) The cost estimates of Consultants or sub-consultants engaged by Consultants, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions provided in Consultant to Repair Property Damage Caused by the Consultant.

3) COST ESTIMATES

a) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus forty percent (40%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the order of magnitude estimate shall be recoverable by the City.

b) BUDGET ESTIMATE

Budget in this case applies to the City's budget and not to the budget as a project-controlled document. A budget is prepared with the use of flow sheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty percent (20%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the budget estimate shall be recoverable by the City.

c) CONSTRUCTION COST ESTIMATE

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a construction cost estimate is vital to the City's interests because it may be used for such purposes as, but not limited to the following: budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction project.

In the event the City solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a construction cost estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the Consultant's construction cost estimate by more than the percent accuracy set forth hereinabove, the Consultant shall, upon notification by the City, assume responsibility for and proceed to provide and perform the following service without additional compensation.

The Consultant will, subject to the review and approval of the City, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the construction cost estimate prepared by the Consultant. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the City for the project and set forth in this Agreement or change order(s) or supplemental task authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawing prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the Consultant's construction cost estimate, the costs associated with the Consultant's preparation and development of the construction cost estimate shall be recoverable by the City by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the construction cost estimate prepared by the Consultant, the amount of the construction cost estimate submitted by the Consultant shall be adjusted from the date the construction cost estimate was received by the City until the date bids or price proposals are received by the City, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the City receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the Consultant may deem it appropriate to recommend the City reject any such bid(s) or priced proposal(s). If under such circumstances the City concurs with the Consultant's recommendation and rejects the bid(s) or priced proposal(s), the City will not hold the Consultant responsible to, nor will the City require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the City and made payable to the respective governmental body upon the Consultant furnishing the City satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY request the Consultant to provide and perform professional services for this project which are not set forth in the Scope of Professional Services, the Consultant agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

Additional services shall be administered and authorized as change orders or supplemental task authorizations under this Agreement. The Consultant shall not provide or perform, nor shall the City incur or accept any obligation to compensate the Consultant for any additional services unless and until a written change order or supplemental task authorization has been agreed to and executed by both parties.

Each such change order or supplemental task authorization shall set forth a comprehensive, detailed description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said additional services.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The City may request the Consultant to execute a Truth-in-Negotiations Certificate ("Certificate"). The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized. The compensation to be paid the Consultant as set forth in the Compensation and Method of Payment, change orders, and supplemental task authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized thereto as stated above.

ARTICLE 4.00-OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

The City agrees after the execution of this Agreement to promptly advise the Consultant, in writing, of the person designated to serve and act as the City's Project Manager. Such notification shall be provided to the Consultant by the Project Manager.

4.02 AVAILABILITY OF CITY INFORMATION

1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the Consultant regarding requirements the City has established or suggests relative to the project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in the Project Guidelines and Criteria, which is attached hereto and made a part of this Agreement.

2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the Consultant's request, the City agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the City to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the City such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The City agrees that the City Manager and the Project Manager shall be available within a reasonable period of time, with reasonable prior notice given by the Consultant, to meet and/or consult with the Consultant on matters pertaining to the services to be provided and performed by the Consultant. The City further agrees to respond within a reasonable period of time to written requests submitted by the Consultant.

4.04 ACCESS TO CITY PROPERTY

The City agrees, with reasonable prior written notice given by the Consultant, to provide the Consultant with access within a reasonable period of time to City property, facilities, buildings and structures to enable the Consultant to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with City operations, or the operations carried on by others under a lease, or other contractual arrangement with the City, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the Consultant's normal office and/or field workdays and/or work hours.

ARTICLE 5.00-COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC AND ADDITIONAL SERVICES

The City shall pay the Consultant for all requested and authorized basic services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the City in accordance with the provisions for compensation and payment of said basic services set forth and prescribed in the Compensation and Method of Payment or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written change order executed by both parties.

5.02 METHOD OF PAYMENT

1) MONTHLY STATEMENTS

The Consultant shall be entitled to submit no more than one (1) invoice statement to the City each calendar month covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or change order(s) and supplemental task authorization(s) thereunder.

2) PAYMENT FOR SERVICES PERFORMED

The City shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

a) The City shall pay Consultant on the basis of services completed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment, as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the City. No payments shall be made for Consultant's work-in-progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the City. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the City, the City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

b) The City shall pay the Consultant for services performed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment on the basis of an invoice statement covering Consultant's work-in-progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-progress percentages are subject to the review and approval of the City. The decision of the City shall be final as to the work-in-progress

percentages paid. Payment by the City for tasks on a work-in-progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the City of any such service or work-in-progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-progress payments have been made. All tasks to be paid for on a work-in-progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in the Compensation and Method of Payment with the notation (WIPP). Only tasks so identified will be paid on a work-in-progress percentage basis. The City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

3) PAYMENT SCHEDULE

The City shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the City object or take exception to the amount of any Consultant's invoice statement, the City shall notify the Consultant of such objection or exception within the thirty (30) calendar days payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar days' period, the City shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.03 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE CITY

In the event of termination of this Agreement at the convenience of the City, not at the fault of the Consultant, the City shall compensate the Consultant only for the services performed prior to the effective date of termination, reimbursable expenses then due and reasonable expenses incurred by the Consultant in affecting the termination of services and work, and incurred by the submittal to the City of project drawings, plans, data, and other project documents.

5.04 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the City suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the City shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.05 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; (3) and/or are modified by the subsequent issuance of supplemental task authorization(s) and/or change order(s), other than receiving the compensation set forth in Payment When Services are Terminated at the Convenience of the City and Payment When Services are Suspended, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00-TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the City may authorize specific tasks to be completed. Upon agreement on the scope and fee for this work and execution of supplemental task authorization, the City will issue the Consultant a written notice to proceed. Following the issuance of such notice to proceed the Consultant shall be authorized to commence work and the Consultant thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, which is attached hereto and made a part of this Agreement.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the City shall grant the extension if the City determines the delay(s)

encountered by the Consultant, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The Consultant shall be required as a condition of this Agreement to prepare and submit to the City, on a monthly basis, commencing with the issuance of the notice to proceed, a Consultant's work schedule. The work schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's work schedule of planned and actual work progress shall be updated and submitted by the Consultant to the City on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the City at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any change order(s) and supplemental task authorization(s) issued thereto.

ARTICLE 7.00-SECURING AGREEMENT

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

ARTICLE 8.00-CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines that there is a conflict of interest, Consultant or such sub-consultant shall decline the representation upon written notice by the City.

If the City determines that there is not such conflict of interest, then the City shall give its written consent to such representation. If Consultant or sub-consultant accepts such a representation without obtaining the City's prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such sub-consultant under this Agreement, then the Consultant or such sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such sub-consultants to comply with the provisions of this section.

Should the Consultant fail to advise or notify the City as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the City may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00-ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor Consultant, or consulting organization. Nor shall the Consultant subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the City. The Consultant shall have the right, subject to the City's prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The City shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in Consultant's Associated Sub-Consultants and Subcontractors, which is attached hereto and made a part of this Agreement.

ARTICLE 10.00-APPLICABLE LAW
Unless otherwise specified, this Agreement shall be governed by the laws, rules, regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States Government.

ARTICLE 11.00-COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES
The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

ARTICLE 12.00-WAIVER OF BREACH
Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00-INSURANCE
For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

The Vendor shall procure and maintain property insurance (Builder's Risk, Installation Floaters, etc.) upon the entire project, if required, to the full insurable value of the scope of work. The City and the Vendor waive against each other and the City's separate Vendors, Contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and City shall, where appropriate, require similar waivers of subrogation from the City's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. All deductibles for property insurance procured by the Vendor shall be the responsibility of the Vendor.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name the City of Bonita Springs, Florida, as an additional insured including completed operations (and products if applicable). The policy shall be endorsed to be primary to any similar coverage carried by the City.

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all contracts.

ARTICLE 14.00-DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00-REPRESENTATION OF THE CITY

The Consultant in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the City in this manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written change order(s) and supplemental task authorization(s) issued thereunder.

In the event the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the City's behalf, and shall not act on the City's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor; or (2) the time for completing the work as required and agreed to in the construction contract; or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The City will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00-OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the City of a written change order deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the City, shall be delivered by the Consultant to the City within seven (7) calendar days of the City making such a request. In the event the City gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the City of a written change order deleting all or part of the services or work required, the Consultant shall deliver to the City the requested documents as set forth hereinabove, with the mutual understanding and commitment by the City that compensation earned or owing to the commitment by the City that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the notice of termination or change order.

The Consultant, at its expense, may make and retain copies of all documents delivered to the City for reference and internal use. The Consultant shall not, and agrees not to, use any of these documents, data and information contained therein on any other project or for any other client without the prior expressed written permission of the City.

Any use by the City of said documents, data and information contained therein, obtained by the City under the provisions of this Agreement for therein, obtained by the City under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the City, and without liability to the Consultant. The City shall be liable and agrees to be liable for and shall indemnify, defend and hold the Consultant harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the City's use of such documents in a manner contrary to the provisions set forth hereinabove. The City hereby acknowledges receipt of $10.00 (ten and no hundred dollars) and other good and valuable consideration from the Consultant which has been paid as specific consideration for the indemnification provided herein.

ARTICLE 17.00-MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

17.01 COMPLIANCE WITH PUBLIC RECORDS LAW

The Consultant must comply with Florida public records laws, specifically to:

a) Keep and maintain public records required by the City to perform the service.

b) Upon request from the City's custodian of public records, provide the City 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 Florida Statutes §119 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 Consultant does not transfer the records to the City.

d) Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

e) The City will consider it a breach of contract should the Consultant fail to comply with any public records request.

f) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.

g) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESGIN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, debbie.filipek@cityofbonitasprings.org.**

h) If the Consultant is not providing the requested public records, the burden of proof is on the Consultant to show why they did not comply with the request.

ARTICLE 18.00-HEADINGS

The headings of the articles, sections, exhibits, attachments, phases or tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such articles, sections, exhibits, attachments, phases or tasks.

ARTICLE 19.00-ENTIRE AGREEMENT

This Agreement and attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 20.00-NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement to be given by the Consultant to the City shall be in writing and shall be given by the United States Postal Service Department first class mail service postage prepaid, addressed to the following City address of record and sent to the attention of the City's Project Manager unless waived by City:

Elly Soto McKuen, Senior Project Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Copy: City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

20.02 NOTICES BY CITY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the City to the Consultant shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following Consultant's address of record unless waived by Consultant:

Consultant Name: AIM Engineering & Surveying, Inc.

Consultant Address: 2161 Fowler Street, Suite 100

Consultant Address: Fort Myers, FL 33901

Telephone Number: (239) 332-4569

Fax Number: (855) 731-7971

ATTENTION: Grant Fichter, Survey Manager
Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party per above contacts.

ARTICLE 21.00-TERM

This Agreement is effective as of the date first written above and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 22.00-TERMINATION

This Agreement may be terminated by the City at its convenience, or due to the fault of the Consultant, by the City giving thirty (30) calendar days written notice to the Consultant.

If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the City's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the City may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar days written notice, terminate this Agreement.

In addition to the City's contractual right to terminate this Agreement in its entirety as set forth above, the City may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services or the Project Guidelines and Criteria, or as such may be established by change order or supplemental task authorization. The City shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the City dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the City reserves the right to accept or not accept the termination request submitted by the Consultant, effective unless and until Consultant is notified, in writing, by the City of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the Consultant shall deliver to the City all papers, drawings, models, and other material in which the City has exclusive rights by virtue hereof or of any business done, or services or work performed by the Consultant on behalf of the City.

ARTICLE 23.00-AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendment, the requirements, provisions and/or terms of the amendment shall take precedence.

ARTICLE 24.00-MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed change order(s) or supplemental task authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written change order(s), and/or supplemental task authorizations, the latest executed change order(s), and/or supplemental task authorization(s) shall take precedence.

In the event the City issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the City's internal control purposes only, and any and all terms, provisions and conditions contained herein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 25.00-ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: _____
CITY CLERK

DATE: _____

CITY OF BONITA SPRINGS CITY COUNCIL

BY: _____
MAYOR

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

ATTEST:

_____
(Witness)

_____
(Witness)

CORPORATE SEAL

CONSULTANT

BY: _____
(Authorized Signature)

Treasurer
(Title)

DATE: 1/20/2021

EXHIBIT A

Scope of Professional Services
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/20/2021

Basic Services

Section 1 General Scope Statement

The Consultant shall provide and perform the following professional services, which shall constitute the general scope of the basic services under the covenants, terms, and provisions of this Professional Services Agreement.

Section 2 Tasks

Pursuant to the general scope of the basic services stated herein above, the Consultant shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in Compensation and Method of Payment.

The CONSULTANT shall perform engineering, land survey, and aerial photography services necessary for the subject project as outlines; reference all centerline survey control points; establish the benchline on National Geodetic Vertical Datum (1929) throughout the project and tie property lines to comply with Florida Department of Natural Resources Rule, Florida Administrative Code Chapter 16 Q-3 (Florida Statutes 177 - Part Two).

Survey work shall be performed under the responsible charge of a Professional Land Surveyor registered in the State of Florida and shall be accomplished in accordance with the Florida Department of Transportation Policy 760.000-760.012, and Florida Department of Transportation Location Manual. Work must comply with the minimum technical standards for Land Surveyors Rule 2IHH-6, Florida Statutes 472.027; measurements of regular roadway cross-sections may be recorded on electronic data collection equipment.

Surveys shall also be provided in an electronic format, compatible with the following City GIS standards:

- DXF or DWG Format
- Coordinate System:
  1. Horizontal: State Plane FLORIDA WEST, FIPS 0902, NAD83, US Feet
  2. Vertical: NAVD 1988, US Feet
- CAD Layer organization

Administration
City Limits

Transportation
Road Centerline (line)
Pavement Area (polygon)
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)
Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail
Fence
Bridge
Pavement Message (point)

Storm Water
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)

Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail

Landscaping
Irrigation
Median (to be determined)

- Location accuracy requirements: all features should be within + or – one meter from actual position.

Roadway Survey
Provide engineering and land surveys necessary to establish the roadway alignments and intersecting streets within the project limits and obtain topography, cross sections, underground utilities, right-of-way, land ties and required drainage information for existing and proposed drainage systems and in accordance with the master drainage plan/storm run-off treatment areas.

Underground Utilities
Field locate existing underground utilities, based upon information provided in Task 7.01, only as deemed necessary to identify conflicts or potential conflicts with existing utilities during roadway and drainage construction. Horizontal and vertical location of underground utilities will be obtained prior to completion of Task 6.02. This task includes coordination with various utility companies and assumes that the respective utility shall be responsible for "pot holing," said underground systems. The horizontal and vertical location of each utility will be documented, based on the "pot-holing" performed by the respective utility company or the consultant.

Jurisdictional Wetlands Survey
After jurisdictional wetland lines have been flagged and verified by the agencies, the jurisdictional line will be located by GPS to sub-meter accuracy.

Planimetric
The Consultant shall provide planimetric of the project area sufficient to define topographical (two dimensional) details along the proposed roadway for the width of 300 feet either side of the centerline.
The scale Aerial Photography will not be acceptable for plan portion for the plan & profile sheets.

This list of activities is not meant to be complete and absolute. The City reserves the right to add additional related activities as the City implements these programs and survey related projects.

EXHIBIT B

Compensation and Method of Payment
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/20/2021

Section 1 Basic Services/Task(s)

The City shall compensate the Consultant for providing and performing the task(s) set forth and enumerated in the Scope of Professional Services, as follows:

NOTE: A lump sum (LS) or not-to-exceed (NTE) amount of compensation to be paid the Consultant should be established and set forth below for each task or sub-task described and authorized in the Scope of Professional Services. Tasks to be paid on a work-in-progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
TOTAL				

(Unless list is continued on next page.)

Consultant's Personnel Hourly Rate Schedule*

Date: 1/20/2021

Should it be mutually agreed to base compensation for additional services on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained below.

CONSULTANT OR SUB-CONSULTANT NAME AIM Engineering & Surveying, Inc.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct** Payroll Average Hourly Rate
Survey Services	
Principal Land Surveyor	$195
Professional Surveyor/Survey Manager	$150
Field Crew Supervisor	$ 95
ROW Mapping Technician	$ 95
CAiCE/EFB Technician	$ 85
Survey CAD Technician	$ 95
Field Crew	
Survey Crew – 2 man	$130
Survey Crew – 3 man	$160
Survey Crew – 4 man	$185
Survey Crew – 5 man	$205
Subsurface Utility Engineering	
Project Engineer	$150
Utility Coordinator	$ 90
2-Man Designating Crew	$170
3-Man Designating Crew	$205
2-Man Locating Crew	$195
3-Man Locating Crew	$230
4-Man Locating Crew	$265

*NOTE: A separate personnel hourly rate schedule should also be attached for each sub-consultant listed in Consultant's Associated Sub-Consultant(s) and Subcontractor(s).

**NOTE: Direct Payroll Hourly Rate means the actual gross hourly wage paid.

EXHIBIT C

Time and Schedule of Performance
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/20/2021

This Exhibit establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in the Scope of Professional Services. The Time and Schedule of Performance set forth hereinafter is established pursuant to Time and Schedule of Performance.

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/20/2024

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing services and work on this project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
	N/A	

EXHIBIT E

Project Guidelines and Criteria
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/20/2021

The City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

NONE

EXHIBIT F

Truth in Negotiation Certificate
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/20/2021

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Truth-In-Negotiations Certificate.

2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.

3. The truth of statements made herein may be relied upon by the City and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the Consultant, doing business as:

COMPANY NAME: AIM Engineering + Surveying, Inc.

BY: [signature]

TITLE: Treasurer

The foregoing instrument was signed and acknowledged before me this 20th day of January 2021

by Tracy A Ley who is personally known OR has produced _____
(Print or Type Name) (Type of Identification & Number)

as identification.

Notary Public State of Florida
Georgetta L Caler
My Commission HH 040350
Expires 09/08/2024

[signature]
Notary Public Signature

Notary Commission Number/Expiration

EXHIBIT G

Insurance and Bonding Requirements

All policies shall be Best's Rated "A-" or better or subject to approval

Insurance / Bond Type	**Required Limits**
☒ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements. ☒ **The policy shall be endorsed to provide a waiver of subrogation in favor of the City.** NOTE: Any "non-construction industry" company employing more than 3 employees (not including a sole proprietor owner) must have workers' compensation coverage. ALL "construction industry" (as defined by FL Rule # 69L-6.021) companies with ANY employees must have coverage or if no statutory employees, then up to three officers or a sole proprietor MUST have a current exemption certificate from the Division of Workers' Compensation on file.
☒ Employer's Liability	$1,000,000 single limit per occurrence (Workers' Compensation Part B)
☒ Commercial General Liability (Occurrence Form) patterned after the current ISO form	Bodily Injury and Property Damage ☒ $1,000,000 per occurrence, $1,000,000 aggregate (Per Project) for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
☒ Indemnification	To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.
☒ Automobile Liability	☒ $ 1,000,000 Each Occurrence; Bodily Injury & Property Damage Owned/Non-owned/Hired; Automobile Included
☒ Other insurance as noted:	☐ Watercraft $ _____ Per Occurrence ☐ United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work. **STATUTORY** ☐ Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. $ _____ Per Occurrence ☐ Property Insurance (Or Builder's Risk) **Full insurable value of the scope of the work** ☐ Pollution $ _____ Per Occurrence ☒ Professional Liability $1,000,000 per claim and in the aggregate

☐ Railroad Right of Way	☐ Umbrella Excess $ _____ Per Occurrence ☐ Railroad Protective Liability Insurance per occurrence limit of not less than **Two Million Dollars ($2,000,000)** and aggregate limits of **Six Million Dollars ($6,000,000)** to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your General Liability policy coverage to be $5,000,000. They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage. For additional information on their insurance requirements and other requirements such as payment for and scheduling Railroad Inspector / Flagman, please contact Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.
☐ Bid bond	Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
☐ Performance and Payment Bonds	If the box is checked for a project less than $200,000, a performance bond will be required. For projects in excess of $200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. **Per FS §255.05, the Contractor shall provide a certified copy of the recorded bond to the City.**

☒ Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

☒ The City of Bonita Springs must be named as "**ADDITIONAL INSURED, INCLUDING PRODUCTS AND COMPLETED OPERATIONS"** on the Insurance Certificate for Commercial General Liability.

☒ The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

☒ **Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to the City of Bonita Springs.

EXHIBIT H

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Vendor Covered Transactions

(1) The prospective vendor certifies, by submission of this Annual Agreement, that neither it nor its principles are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the vendor is unable to certify to the above statement, the prospective vendor shall attach an explanation to this form.

VENDOR

AIM Engineering + Surveying, INC — Company Name

15-279-2537 — DUNS Number

Tracy A Levy — Signature

1/20/2021 — Date

Tracy A Levy - Treasurer — Print Name and Title

2161 Fowler St #100 — Street Address

Ft Myers, FL 33901 — City, State, Zip

For City of Bonita Springs use only

To access the debarment search: https://www.sam.gov/SAM/ > Search Records tab > Enter DUNS number > Click Search

Company: [ ] is debarred [ ] is not debarred

Verified by: _____ Date: _____
Name

EXHIBIT I

Scrutinized Companies Statement

SWORN STATEMENT UNDER SECTION 287.135(5), FLORIDA STATUTES: THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number **CN 20-07**, for **Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program.**

2. This sworn statement is submitted by AIM Engineering + Surveying, Inc whose business
[Name of entity submitting sworn statement]
address is 2161 Fowler St #100, Ft Myers, FL 33901 and (if applicable) its Federal Employer Identification Number (FEIN) is 65-0197775 (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement:_____.

3. My name is Tracy A Levy and my relationship to the above is
[Please print name of individual signing]
Treasurer.

4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.

6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.

8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. **[Please indicate which statements apply].**

X Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)
[ ] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.

[ ] Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for $1 Million or more)
[ ] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.

[ ] Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for $1 Million or more)
[ ] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

[ ] Business Operations in Cuba or Syria (bid, proposal or contract renewal for $1 Million or more)
[ ] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
[ ] The entity submitting this sworn statement does have business operations in Cuba or Syria.

The City will follow Florida Statute §287.135. If the City determines this Vendor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel after the contract is executed, the contract may be terminated by the City by written notification. If the City determines this Vendor is found to have submitted a false certification, placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations with Cuba or Syria, the City shall notify the Vendor of its determination by written notification.

By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.

Gary D Levy
AFFIANT

Tracy A Levy
Typed Name of AFFIANT

Treasurer
Title

STATE OF Florida COUNTY OF Lee

The foregoing instrument was executed before me this 20th day of January, 2021, by Tracy A Levy as Treasurer of AIM Engineering & Surveying, Inc, who personally swore or affirmed that he/she is authorized to execute this document and thereby bind the Corporation, and who is personally known to me OR has produced _____ as identification.

(stamp)

Notary Public State of Florida
Georgetta L Caler
My Commission HH 040350
Expires 09/08/2024

Georgetta L Caler
NOTARY PUBLIC, State of Florida

THIS SPACE INTENTIONALLY LEFT BLANK

For City of Bonita Springs use only

To access the lists: http://www.sbafla.com/fsb/ > Funds We Manage tab > FRS Pension Plan - Global Governance Mandates > Global Governance Mandate Quarterly Reports > most current quarter

Scrutinized Companies that Boycott Israel List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in Sudan List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:
[ ] entity is **NOT** on list [ ] entity is on list

Business Operations in Cuba or Syria:
[ ] entity is **NOT** on list [ ] entity is on list

Verified by:_____ Date:_____
Print Name

EXHIBIT J

GENERAL PROVISIONS
State and Federal Regulations

1. 24 CFR 570 as amended- All the regulations regarding the CDBG program

2. 24 CFR 58 - The regulations prescribing the Environmental Review procedure.

3. Section I 04(b) and Section I 09 of Title I of the Housing and Community Development Act of 1974 as amended

4. The Fair Housing Act (42 U.S.C. 3601-20) Reasonable Accommodations Under the Fair Housing Act.

5. Executive Order 11063 - Equal Opportunity in Housing

6. Executive Order 11259 - Leadership & Coordination of Fair Housing in Federal Programs

7. 24 CFR Part I 07 - Non- Discrimination and Equal Opportunity in Housing under E.O.

8. Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, as amended

9. 24 CFR 570.60 I Subpart K - The regulations issued pursuant to Executive Order 11063 which prohibits discrimination and promotes equal opportunity in housing.

10. Executive Order 11246 ("Equal Employment Opportunity"), as amended by Executive Orders 11375 and 12086 - which establishes hiring goals for minorities and women on projects assisted with federal funds and as supplemented in Department of Labor regulations. EO I l246.

11. Executive Orders 11375 and 12086.

12. Title VII of the 1968 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972, 42 USC§ 2000e, et. seq. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that it is an Equal Opportunity or Affirmative Action employer.

13. 24 CFR 135 - Regulations outlining requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the CITY, the Consultant and any of the Subcontractor's. Failure to fulfill these requirements shall subject the CITY, the Consultant and any of the Consultant's Subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided, The Consultant certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
The Consultant further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:
"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."
The Consultant further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project are given to low and very low-income persons residing within the metropolitan area

in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low- income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs,

The Consultant certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

14. Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
15. Contract Work Hours and Safety Standards Act, 40 USC 327-332.
16. Section 504 of the Rehabilitation Act of 1973, 29 USC 776(b) (5), 24 CFR 570.614 Subpart K. Section 504: https://www.epa.gov/ocr
17. The Americans with Disabilities Act of 1990: https://www.hud.gov/hudprograms/eohudap
18. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
19. 29 CFR Parts 3 and 5 - Regulations that prescribe the payment of prevailing wages and the use of apprentices and trainees on federally assisted projects. HUD Form 40 IO must be included in all construction contracts funded by CDBG-DR:

    Davis-Bacon Act: 42 USC 276a to 40 USC 276a:

    29 CFR Part 3 - Contractors and Subcontractors on public building or Public Work Financed, in whole or in part, by Loans or Grants from the United States

    29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provision Applicable Subject to the Contract Work Hours and Safety Standards Act)

    Executive Order 11914 - Prohibits discrimination with respect to the handicapped, in federally assisted projects.

    As a supplement to the Davis-Bacon Act requirements, the Consultant agrees to comply with the "Copeland Anti-Kickback Act," which prohibits the Consultant, its contractors, or subcontractors from inducing an employee to relinquish any part of his/her compensation, under the federally-funded contract.
20. Executive Order 11625 and U.S. Department of Housing and Urban Development Circular Letter 79-45 - which prescribes goal percentages for participation of minority businesses in Community Development Block Grant Contracts.
21. E.O. 11625 Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise.
22. The Consultant agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
23. 2 CFR 200 et seq - Uniform Administrative Requirements, Cost Principles, and Audit requirements for Grants and Agreements.
24. Immigration Reform and Control Act of 1986
25. Prohibition of Gifts to CITY Employees - No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service, or other item of value to any CITY employee,
26. Order of Precedence - In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Agreement shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Agreement. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Agreement, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.
27. Venue-Any suit of action brought by either party to this Agreement against the other party, relating to or arising out of this Agreement, must be brought in the appropriate federal or state courts, in Lee County, FL which courts have sole jurisdiction on all such matters. (No reference required for this item).
28. Dispute Resolution - Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. Any situations when negotiations, litigation and/or mediation shall be attended by representatives of Consultant with full decision-making authority and by CITY'S staff person who would make the presentation of any settlement reached during negotiations to CITY for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under§

44.102, Florida Statutes. The litigation arising out of this Agreement shall be adjudicated in Lee County, Florida, if in state court and the US District Court, Middle District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, LEE COUNTY AND THE CONSULTANT EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAYE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

29. The Consultant agrees to comply with the following requirements:
Clean Air Act, 41 USC 7401, et seq.
Federal Water Pollution Control Act, 33 USC 1251, et seq., as amended.

30. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4002 and 24 CFR 570.605 Subpart K), the Consultant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained. If appropriate, a letter of map amendment (LOMA) may be obtained from FEMA, which would satisfy this requirement and/or reduce the cost of said flood insurance.

31. The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to the HUD Lead- Based Paint Poisoning Prevention Act, found at 24 CFR 570.608, Subpart K.

32. The Consultant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State or Local historic property list.

33. The Consultant must certify that it will provide drug-free workplaces, in accordance with the Drug-Free Workplace Act of 1988 (41 USC 701).

34. The Consultant certifies 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; and, that the Consultant shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction as outlined in 24 CFR 570.609, Subpart K.

35. The Consultant agrees to comply with the following 0MB Circulars whichever is applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. These requirements are enumerated in 2 CFR 200, et seq.
Single Audits shall be conducted annually, in accordance with 2 CFR 200.501, and shall be submitted to the CITY nine (9) months after the end of the Consultant's fiscal year. The Consultant shall comply with the requirements and standards of 2 CFR 200 Subpart F, Section 500. Consultants exempt from Single Audit requirements shall submit financial statements to the CITY one hundred eighty (180) days after the end of the Consultant's fiscal year. Per 2 CFR 200.344, if this Agreement is closed out prior to the receipt of an audit report, the CITY reserves the right to recover any disallowed costs identified in an audit after such closeout.

36. Any real property acquired by the Consultant for the purpose of carrying on the projects stated herein, and approved by the CITY in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24.10 I, shall be subject to the provisions of CDBG-DR including, but not limited to, the provisions on use and disposition of property. Any real property within Consultant control, which is acquired or improved, in whole or part, with CDBG-DR funds in excess of $25,000, must adhere to the CDBG-DR Regulations at 24 CFR 570.505.

37. As provided in Subsection 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Consultant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof.
This notice is required by§ 287.133 (3) (a), Florida Statutes.

38. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds, other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL,

"Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, contracts under grants, loans, and cooperative agreements) and that all Consultant's shall certify and disclose accordingly.

39. Travel reimbursement will be based on the U.S. General Services Administration (GSA) per diem rates in effect at the time of travel. Equal access in accordance with the individual's gender identity in community planning and development programs, per 24 CFR 5, I 06.
40. Housing Counseling, including homeownership counseling or rental housing counseling, as defined in §5.100, required under or provided in connection with any program administered by HUD shall be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 170, per 24 CFR 5.111.
41. HUD Final Rule-Implementation of the Violence Against Women Reauthorization Act of2013 which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements. Any rule or regulation determined to be applicable by HUD.
42. Florida Statutes 713 .20, Part I, Construction Liens
43. Florida Statutes 119,021 Records Retention
44. Florida Statutes, 119.071, Contracts and Public Records
45. Limited English Proficiency: The Consultant agrees to take reasonable steps to provide meaningful access to the program/project and activities funded under this Agreement for persons with limited English proficiency pursuant to information located at http://www.lep.gov.
46. Equal Treatment of Faith-Based Organizations: By regulation, DOJ/BJA prohibits all recipient organizations from using financial assistance from DOJ/BJA to fund explicitly religious activities. The Consultant agrees to avoid such prohibited conduct. Discrimination on the basis of religion in employment is generally prohibited by federal law, but the Religious Freedom Restoration Act is interpreted on a case-by-case basis to allow some faith-based organizations to receive DOJ/BJA funds while taking into account religion when hiring staff. Questions in this regard should be directed to the Office for Civil Rights.
47. Arrest and Conviction Records: Federal and state laws restrict use of arrest and conviction records in the employment context, except when specifically, authorized. The Consultant agrees to avoid the misuse of arrest or conviction records to screen applicants for employment or employees for retention or promotion that may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination unless use is otherwise specifically authorized by law.
48. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352): The Consultant will not use and has not used federal appropriated funds to pay at any tier, either directly or indirectly, any person or organization 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 obtaining any federal contract, grant, or any other award or subaward covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award or subaward. Such disclosures are forwarded from tier-to-tier up to the Consultant. The Consultant shall comply with the lobbying restrictions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and (ii) ensure that its officers, employees and its subcontractors hereunder comply with all applicable local, state, and federal laws and regulations governing advocacy of and appearances before any legislative body. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before local, state, or federal legislatures.
49. False Claim; Criminal, or Civil Violation: Consultant must promptly refer to CITY any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either (1) submitted a false claim for grant funds under the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving subaward agreement funds.
50. Political Activities Prohibited: None of the funds provided directly or indirectly under this Agreement shall be used for any political activities or to further the election or defeat of any candidates for public office; Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities or activities for or against the election of a candidate for an elected office.
51. Text Messaging: Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Federal Register 51225 (October I, 2009), DOJ/BJA encourages recipients and subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by DOJ/BJA and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
52. Trafficking in Persons: The Consultant agrees to, at any tier, comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of the Consultant and any employees of the Consultant.

53. Association of Community Organizations for Reform Now (ACORN): The Consultant understands and acknowledges that it cannot use any federal funds, either directly or indirectly, in support of any contract or subaward to either ACORN or its subsidiaries, without the express prior written approval of OJP.

54. If the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this funding agreement, the Consultant must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Busines Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by HUD.

CITY OF BONITA SPRINGS, FLORIDA
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this _____ day of _____, 2020, between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and BEI Engineering Group, Inc. dba Banks Engineering (hereinafter referred to as the "Consultant").

WITNESSETH

WHEREAS, the City desires to obtain the professional services of said Consultant to provide and perform professional services as further described hereinafter concerning the project to be referred to and identified as: Miscellaneous Surveying Services for the Community Development Block Grant-Disaster Recovery (CDBG-DR) Voluntary Home Buyout Program CN 20-07, and

WHEREAS, the Consultant hereby certifies that Consultant has been granted and possesses valid, current licenses to do business in the State of Florida and in the City of Bonita Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultants Competitive Negotiation Act, Florida Statutes §287.055.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a contract shall exist between both parties consisting of:

ARTICLE 1.00-SCOPE OF PROFESSIONAL SERVICES
Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in the Scope of Professional Services, which is attached hereto and made a part of this Agreement.

ARTICLE 2.00-DEFINITIONS
The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 CITY
The term "City" shall refer to the City of Bonita Springs, a municipality incorporated within the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the City's behalf relative to this Agreement.

2.02 CONSULTANT
The term "Consultant" shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all change orders thereto.

2.03 PROFESSIONAL SERVICES
The term "Professional Services" shall refer to all of the services, work materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the Consultant and its employees and any and all sub-consultants and subcontractors the Consultant may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT
The term "Sub-Consultant" shall refer to any individual or firm offering professional services which is engaged by the Consultant to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated, responsible and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any sub-consultant.

2.05 SUBCONTRACTOR
The term "Subcontractor" shall refer to any individual, company or firm providing other than professional services which is engaged by the Consultant to assist the Consultant in contractually obligated, responsible, and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any subcontractor.

2.06 PROJECT
The term "Project" shall refer to such facility, system, program or item as described in the summary statement set forth in the preamble of this Agreement.

2.07 BASIC SERVICES
The term "Basic Services" shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached Scope of Professional Services.

2.08 ADDITIONAL SERVICES
The term "Additional Services" shall refer to such professional services as the City may request and authorize, in writing, the Consultant to provide and perform relative to this Agreement which are not included in the basic services. Additional services shall be authorized by the execution of both parties to this Agreement by a change order agreement.

2.09 CHANGE ORDER
The term "Change Order" shall refer to a written document, change order agreement, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon scope of professional services and tasks, compensation and method of payment, time and schedule of performance, or project guidelines and criteria as such were set forth and agreed to in the initial agreement, supplemental task authorization(s), or previous change orders issued thereto. The change order document, which shall be executed on a City standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all change orders executed and issued under this Agreement shall be understood and agreed by both parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the change order including, but not limited to, any and all direct costs, indirect costs and associated costs which may result from or be caused by the change order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the Consultant's general administrative and overhead costs and profit.

In the event the City decides to delete all, or portions, of the scope of services, task(s), or requirements set forth in the initial agreement, supplemental task authorizations or previously authorized change orders, the City may do so by the unilateral issuance of a written change order to the Consultant. Such a unilaterally issued change order shall set forth, if appropriate, an agreement by both the City and the Consultant establishing changes in the amount of compensation to be paid the Consultant as a result of the deletion or decrease in the services required shall have no effect on, or otherwise prevent the City from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the Consultant.

2.10 SUPPLEMENTAL TASK AUTHORIZATION
The term "Supplemental Task Authorization" as used refers to a written document executed by both parties to an existing professional services agreement setting forth and authorizing a limited number of professional services, tasks, or work.

2.11 CITY MANAGER
The term "City Manager" shall refer to the City Manager or his designee requesting the service, employed by the City Council to serve and act on the City's behalf, as it relates to this project. The City Manager within the authority conferred by the City Council, acting as the City's designated representative shall issue written notification to the Consultant of any and all changes approved by the City in the Consultant's: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to basic services and additional services pursuant to this Agreement or change order(s) or supplemental task authorization(s) pertaining thereto. The City Manager shall be responsible for acting on the City's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, change order(s) or supplemental task authorization(s) issued thereunder.

2.12 PROJECT MANAGER
The term "Project Manager" shall refer to the person employed or retained by the City and designated, in writing, to serve and act on the City's behalf to provide direct contact and communication between the City and Consultant with respect to

providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and such written change order(s) and supplemental task authorization(s) as are authorized. The Project Manager is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; (3) the amount of compensation the City is obligated or committed to pay the Consultant. The Project Manager shall review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and change order(s), supplemental task authorization(s) thereto.

2.13 LUMP SUM FEE(S)
Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or sub-contractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set forth in subsequent work orders, supplemental agreements, and/or change orders agreed to in writing by both parties to this Agreement.

2.14 NOT-TO-EXCEED FEE(S)
When all, or any portion, of the Consultant's compensation to provide and perform the services and work necessary and required pursuant to the tasks set forth in the Scope of Professional Services, and any change orders, supplemental task authorizations, and work orders authorized thereto, is established to be made on a not-to-exceed (NTE) amount basis, it is mutually understood and agreed that such compensation for each completed task shall be made on the following basis:

For the actual hours necessary, required and expected by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in the Compensation and Method of Payment, which is attached hereto and made a part of this Agreement, to the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by sub-consultants and subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the City and the Consultant and as are set forth as a part of the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

With the understanding and agreement that the City shall pay the Consultant for all such costs and expenses within the established NTE amount for each task or sub-task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the City covering all such costs and expenses; and

With the understanding and agreement that the Consultant's invoices and all payments to be made for all NTE amounts shall be subject to the review, acceptance and approval of the City; and with the understanding and agreement that when the Consultant's compensation is established on a NTE basis for a specific task(s) or sub-task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and sub-consultant and subcontractor costs for any such specific task(s) or sub-task(s) shall not exceed the amount of the total NTE compensation established and agreed to for each specific task(s) or sub-task(s). In the event the amount of compensation for any task(s) or sub-task(s) to which the Consultant is entitled on the NTE basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the NTE amount established for the specific task or sub-task, it is understood and agreed that any unexpended amount under a specific task or sub-task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other task(s) or sub-task(s).

ARTICLE 3.00-OBLIGATIONS OF THE CONSULTANT
The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES
The Consultant agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida, Lee County and in the City of Bonita Springs, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement.

3.02 PERSONNEL

1) QUALIFIED PERSONNEL

The Consultant agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all basic services and additional services to be provided pursuant to this Agreement.

2) CONSULTANT'S PROJECT DIRECTOR

The Consultant agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising under this Agreement unless substitute arrangements have been furnished to the City in writing. The Consultant agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance of the City.

3) CONSULTANT'S STAFF

Consultant will specify the technical and support staff who will be assigned to this project. Consultant will notify City's Project Manager of any changes and/or substitution of staff working on the project.

4) REMOVAL OF PERSONNEL

The Consultant agrees, within thirty (30) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the City shall request, in writing, be removed, this request may be made by the City with or without cause.

5) IMMIGRATION LAW COMPLIANCE

Consistent with Bonita Springs Code §36.22, effective June 1, 2009, Contractors providing services to the City, as a condition of each contract, must use E-Verify to verify the employment of any person hired during the contract term by the contractor and assigned by the Contractor to perform work for the City. Before any contract with the City is signed, proof of enrollment with E-Verify must be provided. The Contractor acknowledges that he will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Contractor the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Contractor must also be responsible for entering into an agreement with each and every vendor and subcontractor that states that vendors and subcontractors (and their vendors) are independently responsible for their own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the City. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The City may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all basic services and additional services will be provided, performed and completed in a timely and diligent manner throughout.

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the Consultant and by any sub-consultant(s) and/or subcontractor(s) engaged by the Consultant as set forth in the Scope of Professional Services shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the City approves this Agreement, or which may

subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the Consultant to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services shall serve as a basis for the City to consider the development and issuance of a change order to provide for a change to, or additional services to, the services set forth in this Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1) RESPONSIBILITY TO CORRECT

The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any sub-consultant(s) or subcontractor(s) engaged by the Consultant.

2) CITY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, nor acceptance by the City of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the Consultant, or any sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the City's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the City's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY AND HOLD HARMLESS

To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expenses and in a manner acceptable to and approved by the City, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its sub-consultants and/or subcontractors. This Consultant's obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the City.

The City reserves the right, should the Consultant fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the City for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

1) In the event the services required pursuant to this Agreement include the Consultant preparing and submitting to the City cost estimates, the Consultant, by exercise of this experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under this Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and corrections of any and all such cost

estimates. For purposes of the liability provisions of this article only, the Consultant's estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the City's acceptance of the estimate(s).

2) The cost estimates of Consultants or sub-consultants engaged by Consultants, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions provided in Consultant to Repair Property Damage Caused by the Consultant.

3) COST ESTIMATES

a) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus forty percent (40%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the order of magnitude estimate shall be recoverable by the City.

b) BUDGET ESTIMATE

Budget in this case applies to the City's budget and not to the budget as a project-controlled document. A budget is prepared with the use of flow sheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty percent (20%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the budget estimate shall be recoverable by the City.

c) CONSTRUCTION COST ESTIMATE

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a construction cost estimate is vital to the City's interests because it may be used for such purposes as, but not limited to the following: budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction project.

In the event the City solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a construction cost estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the Consultant's construction cost estimate by more than the percent accuracy set forth hereinabove, the Consultant shall, upon notification by the City, assume responsibility for and proceed to provide and perform the following service without additional compensation.

The Consultant will, subject to the review and approval of the City, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the construction cost estimate prepared by the Consultant. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the City for the project and set forth in this Agreement or change order(s) or supplemental task authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawing prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the Consultant's construction cost estimate, the costs associated with the Consultant's preparation and development of the construction cost estimate shall be recoverable by the City by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the construction cost estimate prepared by the Consultant, the amount of the construction cost estimate submitted by the Consultant shall be adjusted from the date the construction cost estimate was received by the City until the date bids or price proposals are received by the City, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the City receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the Consultant may deem it appropriate to recommend the City reject any such bid(s) or priced proposal(s). If under such circumstances the City concurs with the Consultant's recommendation and rejects the bid(s) or priced proposal(s), the City will not hold the Consultant responsible to, nor will the City require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the City and made payable to the respective governmental body upon the Consultant furnishing the City satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY request the Consultant to provide and perform professional services for this project which are not set forth in the Scope of Professional Services, the Consultant agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

Additional services shall be administered and authorized as change orders or supplemental task authorizations under this Agreement. The Consultant shall not provide or perform, nor shall the City incur or accept any obligation to compensate the Consultant for any additional services unless and until a written change order or supplemental task authorization has been agreed to and executed by both parties.

Each such change order or supplemental task authorization shall set forth a comprehensive, detailed description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said additional services.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The City may request the Consultant to execute a Truth-in-Negotiations Certificate ("Certificate"). The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized. The compensation to be paid the Consultant as set forth in the Compensation and Method of Payment, change orders, and supplemental task authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized thereto as stated above.

ARTICLE 4.00-OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

The City agrees after the execution of this Agreement to promptly advise the Consultant, in writing, of the person designated to serve and act as the City's Project Manager. Such notification shall be provided to the Consultant by the Project Manager.

4.02 AVAILABILITY OF CITY INFORMATION

1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the Consultant regarding requirements the City has established or suggests relative to the project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in the Project Guidelines and Criteria, which is attached hereto and made a part of this Agreement.

2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the Consultant's request, the City agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the City to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the City such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The City agrees that the City Manager and the Project Manager shall be available within a reasonable period of time, with reasonable prior notice given by the Consultant, to meet and/or consult with the Consultant on matters pertaining to the services to be provided and performed by the Consultant. The City further agrees to respond within a reasonable period of time to written requests submitted by the Consultant.

4.04 ACCESS TO CITY PROPERTY

The City agrees, with reasonable prior written notice given by the Consultant, to provide the Consultant with access within a reasonable period of time to City property, facilities, buildings and structures to enable the Consultant to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with City operations, or the operations carried on by others under a lease, or other contractual arrangement with the City, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the Consultant's normal office and/or field workdays and/or work hours.

ARTICLE 5.00-COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC AND ADDITIONAL SERVICES

The City shall pay the Consultant for all requested and authorized basic services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the City in accordance with the provisions for compensation and payment of said basic services set forth and prescribed in the Compensation and Method of Payment or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written change order executed by both parties.

5.02 METHOD OF PAYMENT

1) MONTHLY STATEMENTS

The Consultant shall be entitled to submit no more than one (1) invoice statement to the City each calendar month covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or change order(s) and supplemental task authorization(s) thereunder.

2) PAYMENT FOR SERVICES PERFORMED

The City shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

a) The City shall pay Consultant on the basis of services completed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment, as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the City. No payments shall be made for Consultant's work-in-progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the City. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the City, the City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

b) The City shall pay the Consultant for services performed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment on the basis of an invoice statement covering Consultant's work-in-progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-progress percentages are subject to the review and approval of the City. The decision of the City shall be final as to the work-in-progress

percentages paid. Payment by the City for tasks on a work-in-progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the City of any such service or work-in-progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-progress payments have been made. All tasks to be paid for on a work-in-progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in the Compensation and Method of Payment with the notation (WIPP). Only tasks so identified will be paid on a work-in-progress percentage basis. The City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

3) PAYMENT SCHEDULE

The City shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the City object or take exception to the amount of any Consultant's invoice statement, the City shall notify the Consultant of such objection or exception within the thirty (30) calendar days payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar days' period, the City shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.03 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE CITY

In the event of termination of this Agreement at the convenience of the City, not at the fault of the Consultant, the City shall compensate the Consultant only for the services performed prior to the effective date of termination, reimbursable expenses then due and reasonable expenses incurred by the Consultant in affecting the termination of services and work, and incurred by the submittal to the City of project drawings, plans, data, and other project documents.

5.04 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the City suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the City shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.05 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; (3) and/or are modified by the subsequent issuance of supplemental task authorization(s) and/or change order(s), other than receiving the compensation set forth in Payment When Services are Terminated at the Convenience of the City and Payment When Services are Suspended, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00-TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the City may authorize specific tasks to be completed. Upon agreement on the scope and fee for this work and execution of supplemental task authorization, the City will issue the Consultant a written notice to proceed. Following the issuance of such notice to proceed the Consultant shall be authorized to commence work and the Consultant thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, which is attached hereto and made a part of this Agreement.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the City shall grant the extension if the City determines the delay(s)

encountered by the Consultant, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The Consultant shall be required as a condition of this Agreement to prepare and submit to the City, on a monthly basis, commencing with the issuance of the notice to proceed, a Consultant's work schedule. The work schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's work schedule of planned and actual work progress shall be updated and submitted by the Consultant to the City on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the City at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any change order(s) and supplemental task authorization(s) issued thereto.

ARTICLE 7.00-SECURING AGREEMENT

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

ARTICLE 8.00-CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines that there is a conflict of interest, Consultant or such sub-consultant shall decline the representation upon written notice by the City.

If the City determines that there is not such conflict of interest, then the City shall give its written consent to such representation. If Consultant or sub-consultant accepts such a representation without obtaining the City's prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such sub-consultant under this Agreement, then the Consultant or such sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such sub-consultants to comply with the provisions of this section.

Should the Consultant fail to advise or notify the City as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the City may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00-ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor Consultant, or consulting organization. Nor shall the Consultant subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the City. The Consultant shall have the right, subject to the City's prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The City shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in Consultant's Associated Sub-Consultants and Subcontractors, which is attached hereto and made a part of this Agreement.

ARTICLE 10.00-APPLICABLE LAW
Unless otherwise specified, this Agreement shall be governed by the laws, rules, regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States Government.

ARTICLE 11.00-COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES
The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

ARTICLE 12.00-WAIVER OF BREACH
Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00-INSURANCE
For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

The Vendor shall procure and maintain property insurance (Builder's Risk, Installation Floaters, etc.) upon the entire project, if required, to the full insurable value of the scope of work. The City and the Vendor waive against each other and the City's separate Vendors, Contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and City shall, where appropriate, require similar waivers of subrogation from the City's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. All deductibles for property insurance procured by the Vendor shall be the responsibility of the Vendor.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name the City of Bonita Springs, Florida, as an additional insured including completed operations (and products if applicable). The policy shall be endorsed to be primary to any similar coverage carried by the City.

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all contracts.

ARTICLE 14.00-DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00-REPRESENTATION OF THE CITY

The Consultant in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the City in this manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written change order(s) and supplemental task authorization(s) issued thereunder.

In the event the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the City's behalf, and shall not act on the City's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor; or (2) the time for completing the work as required and agreed to in the construction contract; or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The City will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00-OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the City of a written change order deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the City, shall be delivered by the Consultant to the City within seven (7) calendar days of the City making such a request. In the event the City gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the City of a written change order deleting all or part of the services or work required, the Consultant shall deliver to the City the requested documents as set forth hereinabove, with the mutual understanding and commitment by the City that compensation earned or owing to the commitment by the City that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the notice of termination or change order.

The Consultant, at its expense, may make and retain copies of all documents delivered to the City for reference and internal use. The Consultant shall not, and agrees not to, use any of these documents, data and information contained therein on any other project or for any other client without the prior expressed written permission of the City.

Any use by the City of said documents, data and information contained therein, obtained by the City under the provisions of this Agreement for therein, obtained by the City under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the City, and without liability to the Consultant. The City shall be liable and agrees to be liable for and shall indemnify, defend and hold the Consultant harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the City's use of such documents in a manner contrary to the provisions set forth hereinabove. The City hereby acknowledges receipt of $10.00 (ten and no hundred dollars) and other good and valuable consideration from the Consultant which has been paid as specific consideration for the indemnification provided herein.

ARTICLE 17.00-MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

17.01 COMPLIANCE WITH PUBLIC RECORDS LAW

The Consultant must comply with Florida public records laws, specifically to:

a) Keep and maintain public records required by the City to perform the service.

b) Upon request from the City's custodian of public records, provide the City 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 Florida Statutes §119 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 Consultant does not transfer the records to the City.

d) Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

e) The City will consider it a breach of contract should the Consultant fail to comply with any public records request.

f) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.

g) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESGIN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, debbie.filipek@cityofbonitasprings.org.**

h) If the Consultant is not providing the requested public records, the burden of proof is on the Consultant to show why they did not comply with the request.

ARTICLE 18.00-HEADINGS

The headings of the articles, sections, exhibits, attachments, phases or tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such articles, sections, exhibits, attachments, phases or tasks.

ARTICLE 19.00-ENTIRE AGREEMENT

This Agreement and attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 20.00-NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement to be given by the Consultant to the City shall be in writing and shall be given by the United States Postal Service Department first class mail service postage prepaid, addressed to the following City address of record and sent to the attention of the City's Project Manager unless waived by City:

Elly Soto McKuen, Senior Project Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Copy: City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

20.02 NOTICES BY CITY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the City to the Consultant shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following Consultant's address of record unless waived by Consultant:

Consultant Name: BEI Engineering Group, Inc. dba Banks Engineering

Consultant Address: 10511 Six Mile Cypress Parkway, Suite 101

Consultant Address: Fort Myers, FL 33966

Telephone Number: (239) 939-5490

Fax Number: (239) 939-2523

ATTENTION: Richard M. Ritz, R.L.S.
Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party per above contacts.

ARTICLE 21.00-TERM

This Agreement is effective as of the date first written above and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 22.00-TERMINATION

This Agreement may be terminated by the City at its convenience, or due to the fault of the Consultant, by the City giving thirty (30) calendar days written notice to the Consultant.

If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the City's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the City may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar days written notice, terminate this Agreement.

In addition to the City's contractual right to terminate this Agreement in its entirety as set forth above, the City may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services or the Project Guidelines and Criteria, or as such may be established by change order or supplemental task authorization. The City shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the City dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the City reserves the right to accept or not accept the termination request submitted by the Consultant, effective unless and until Consultant is notified, in writing, by the City of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the Consultant shall deliver to the City all papers, drawings, models, and other material in which the City has exclusive rights by virtue hereof or of any business done, or services or work performed by the Consultant on behalf of the City.

ARTICLE 23.00-AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendment, the requirements, provisions and/or terms of the amendment shall take precedence.

ARTICLE 24.00-MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed change order(s) or supplemental task authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written change order(s), and/or supplemental task authorizations, the latest executed change order(s), and/or supplemental task authorization(s) shall take precedence.

In the event the City issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the City's internal control purposes only, and any and all terms, provisions and conditions contained herein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 25.00-ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: _____
CITY CLERK

DATE: _____

CITY OF BONITA SPRINGS CITY COUNCIL

BY: _____
MAYOR

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

ATTEST:

_____
(Witness)

_____
(Witness)

CORPORATE SEAL

CONSULTANT

BY: _____
(Authorized Signature)

Director of Surveying, Vice President
(Title)

DATE: 1.26.2021

EXHIBIT A

Scope of Professional Services
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date:_____

Basic Services

Section 1 General Scope Statement

The Consultant shall provide and perform the following professional services, which shall constitute the general scope of the basic services under the covenants, terms, and provisions of this Professional Services Agreement.

Section 2 Tasks

Pursuant to the general scope of the basic services stated herein above, the Consultant shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in Compensation and Method of Payment.

The CONSULTANT shall perform engineering, land survey, and aerial photography services necessary for the subject project as outlines; reference all centerline survey control points; establish the benchline on National Geodetic Vertical Datum (1929) throughout the project and tie property lines to comply with Florida Department of Natural Resources Rule, Florida Administrative Code Chapter 16 Q-3 (Florida Statutes 177 - Part Two).

Survey work shall be performed under the responsible charge of a Professional Land Surveyor registered in the State of Florida and shall be accomplished in accordance with the Florida Department of Transportation Policy 760.000-760.012, and Florida Department of Transportation Location Manual. Work must comply with the minimum technical standards for Land Surveyors Rule 2IHH-6, Florida Statutes 472.027; measurements of regular roadway cross-sections may be recorded on electronic data collection equipment.

Surveys shall also be provided in an electronic format, compatible with the following City GIS standards:

- DXF or DWG Format
- Coordinate System:
  1. Horizontal: State Plane FLORIDA WEST, FIPS 0902, NAD83, US Feet
  2. Vertical: NAVD 1988, US Feet
- CAD Layer organization

Administration
City Limits

Transportation
Road Centerline (line)
Pavement Area (polygon)
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)
Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail
Fence
Bridge
Pavement Message (point)

Storm Water
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)

Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail

Landscaping
Irrigation
Median (to be determined)

- Location accuracy requirements: all features should be within + or – one meter from actual position.

Roadway Survey
Provide engineering and land surveys necessary to establish the roadway alignments and intersecting streets within the project limits and obtain topography, cross sections, underground utilities, right-of-way, land ties and required drainage information for existing and proposed drainage systems and in accordance with the master drainage plan/storm run-off treatment areas.

Underground Utilities
Field locate existing underground utilities, based upon information provided in Task 7.01, only as deemed necessary to identify conflicts or potential conflicts with existing utilities during roadway and drainage construction. Horizontal and vertical location of underground utilities will be obtained prior to completion of Task 6.02. This task includes coordination with various utility companies and assumes that the respective utility shall be responsible for "pot holing," said underground systems. The horizontal and vertical location of each utility will be documented, based on the "pot-holing" performed by the respective utility company or the consultant.

Jurisdictional Wetlands Survey
After jurisdictional wetland lines have been flagged and verified by the agencies, the jurisdictional line will be located by GPS to sub-meter accuracy.

Planimetric
The Consultant shall provide planimetric of the project area sufficient to define topographical (two dimensional) details along the proposed roadway for the width of 300 feet either side of the centerline.
The scale Aerial Photography will not be acceptable for plan portion for the plan & profile sheets.

This list of activities is not meant to be complete and absolute. The City reserves the right to add additional related activities as the City implements these programs and survey related projects.

EXHIBIT B

Compensation and Method of Payment
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

Section 1 Basic Services/Task(s)

The City shall compensate the Consultant for providing and performing the task(s) set forth and enumerated in the Scope of Professional Services, as follows:

NOTE: A lump sum (LS) or not-to-exceed (NTE) amount of compensation to be paid the Consultant should be established and set forth below for each task or sub-task described and authorized in the Scope of Professional Services. Tasks to be paid on a work-in-progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
TOTAL				

(Unless list is continued on next page.)

Consultant's Personnel Hourly Rate Schedule*

Date: _____

Should it be mutually agreed to base compensation for additional services on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained below.

CONSULTANT OR SUB-CONSULTANT NAME BEI Engineering Group, Inc. dba Banks Engineering

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct** Payroll Average Hourly Rate
Professional Land Surveyor I	$110
Professional Land Surveyor II	$125
Professional Land Surveyor III	$150
Principal Surveyor	$185
Survey Technician I	$ 55
Survey Technician II	$ 65
Survey Technician III	$ 75
Survey Technician IV	$ 85
4-Man Survey Crew	$160
3-Man Survey Crew	$125
2-Man Survey Crew	$100
1-Man Survey Crew	$ 80
Project Manager I	$ 85
Project Manager II	$100
Project Manager III	$125
Project Manager IV	$150
Administrative Assistant I	$ 40
Administrative Assistant II	$ 50
Administrative Assistant III	$ 60
Reimbursables:	
Mileage (Based on IRS published rates)	$0.575
Copies:	
Letter	$.15
Legal	$.25
Ledger	$.30
Blueprints/Digital Plan Copies	$1.25
Mylar Copies	$5.50

*NOTE: A separate personnel hourly rate schedule should also be attached for each sub-consultant listed in Consultant's Associated Sub-Consultant(s) and Subcontractor(s).

**NOTE: Direct Payroll Hourly Rate means the actual gross hourly wage paid.

EXHIBIT C

Time and Schedule of Performance
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

This Exhibit establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in the Scope of Professional Services. The Time and Schedule of Performance set forth hereinafter is established pursuant to Time and Schedule of Performance.

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing services and work on this project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
	N/A	

EXHIBIT E

Project Guidelines and Criteria
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

The City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

NONE

EXHIBIT F

Truth in Negotiation Certificate
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Truth-In-Negotiations Certificate.

2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.

3. The truth of statements made herein may be relied upon by the City and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the Consultant, doing business as:

COMPANY NAME: Banks Engineering

BY: _____

TITLE: Director of Surveying, Vice President

The foregoing instrument was signed and acknowledged before me this 26 day of JANUARY,

by Richard M. Ritz who is personally known OR has produced _____
(Print or Type Name) (Type of Identification & Number)

as identification.

_____
Notary Public Signature

GG180988 / 2-5-22
Notary Commission Number/Expiration

DAVID L. SHEPPARD
MY COMMISSION # GG 180988
EXPIRES: February 5, 2022
Bonded Thru Notary Public Underwriters

EXHIBIT G

Insurance and Bonding Requirements

All policies shall be Best's Rated "A-" or better or subject to approval

Insurance / Bond Type	Required Limits
☒ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements. ☒ **The policy shall be endorsed to provide a waiver of subrogation in favor of the City.** NOTE: Any "non-construction industry" company employing more than 3 employees (not including a sole proprietor owner) must have workers' compensation coverage. ALL "construction industry" (as defined by FL Rule # 69L-6.021) companies with ANY employees must have coverage or if no statutory employees, then up to three officers or a sole proprietor MUST have a current exemption certificate from the Division of Workers' Compensation on file.
☒ Employer's Liability	$1,000,000 single limit per occurrence (Workers' Compensation Part B)
☒ Commercial General Liability (Occurrence Form) patterned after the current ISO form	Bodily Injury and Property Damage ☒ $1,000,000 per occurrence, $1,000,000 aggregate (Per Project) for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
☒ Indemnification	To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.
☒ Automobile Liability	☒ $ 1,000,000 Each Occurrence; Bodily Injury & Property Damage Owned/Non-owned/Hired; Automobile Included
☒ Other insurance as noted:	☐ Watercraft $ _____ Per Occurrence ☐ United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work. **STATUTORY** ☐ Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. $ _____ Per Occurrence ☐ Property Insurance (Or Builder's Risk) **Full insurable value of the scope of the work** ☐ Pollution $ _____ Per Occurrence ☒ Professional Liability $1,000,000 per claim and in the aggregate

☐ Railroad Right of Way	☐ Umbrella Excess $ _____ Per Occurrence ☐ Railroad Protective Liability Insurance per occurrence limit of not less than **Two Million Dollars ($2,000,000)** and aggregate limits of **Six Million Dollars ($6,000,000)** to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your General Liability policy coverage to be $5,000,000. They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage. For additional information on their insurance requirements and other requirements such as payment for and scheduling Railroad Inspector / Flagman, please contact Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.
☐ Bid bond	Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
☐ Performance and Payment Bonds	If the box is checked for a project less than $200,000, a performance bond will be required. For projects in excess of $200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. **Per FS §255.05, the Contractor shall provide a certified copy of the recorded bond to the City.**

☒ Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

☒ The City of Bonita Springs must be named as "**ADDITIONAL INSURED, INCLUDING PRODUCTS AND COMPLETED OPERATIONS"** on the Insurance Certificate for Commercial General Liability.

☒ The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

☒ **Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to the City of Bonita Springs.

EXHIBIT H

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Vendor Covered Transactions

(1) The prospective vendor certifies, by submission of this Annual Agreement, that neither it nor its principles are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the vendor is unable to certify to the above statement, the prospective vendor shall attach an explanation to this form.

VENDOR

Banks Engineering
Company Name

N/A
DUNS Number

Signature

1·26·2021
Date

Richard M. Ritz, Director of Surveying, Vice President
Print Name and Title

10511 Six Mile Cypress Pkwy, Suite 101
Street Address

Fort Myers, FL 33966
City, State, Zip

For City of Bonita Springs use only

To access the debarment search: https://www.sam.gov/SAM/ > Search Records tab > Enter DUNS number > Click Search

Company: [ ] is debarred [ ] is not debarred

Verified by: _____ Date: _____
Name

EXHIBIT I

Scrutinized Companies Statement

SWORN STATEMENT UNDER SECTION 287.135(5), FLORIDA STATUTES: THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number **CN 20-07**, for **Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program.**

2. This sworn statement is submitted by Banks Engineering whose business
[Name of entity submitting sworn statement]

address is 10511 Six Mile Cypress Pkwy, Suite 101, Fort Myers, FL 33966 and (if

applicable) its Federal Employer Identification Number (FEIN) is 20-3507657 (If the entity has no

FEIN, include the Social Security Number of the individual signing this sworn statement: _____.

3. My name is Richard M. Ritz and my relationship to the above is
[Please print name of individual signing]

Director of Surveying, Vice President.

4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.

6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.

8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. **[Please indicate which statements apply].**

X Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.

[ ] Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.

[ ] Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

[ ] Business Operations in Cuba or Syria (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
[ ] The entity submitting this sworn statement does have business operations in Cuba or Syria.

The City will follow Florida Statute §287.135. If the City determines this Vendor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel after the contract is executed, the contract may be terminated by the City by written notification. If the City determines this Vendor is found to have submitted a false certification, placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations with Cuba or Syria, the City shall notify the Vendor of its determination by written notification.

By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.

Richard M. Ritz

AFFIANT

Richard M. Ritz

Typed Name of AFFIANT

Director of Surveying, Vice President

Title

STATE OF Florida COUNTY OF Lee

The foregoing instrument was executed before me this 26 day of JANUARY, 2021,

by RICHARD M. RITZ as VICE PRESIDENT of

BANKS ENGINEERING, who personally swore or affirmed that he/she is authorized to execute this document and thereby bind the Corporation, and who is personally known to me OR has

produced _____ as identification.

NOTARY PUBLIC, State of FLORIDA

(stamp)

DAVID L. SHEPPARD
MY COMMISSION # GG 180988
EXPIRES: February 5, 2022
Bonded Thru Notary Public Underwriters

THIS SPACE INTENTIONALLY LEFT BLANK

For City of Bonita Springs use only

To access the lists: http://www.sbafla.com/fsb/ > Funds We Manage tab > FRS Pension Plan - Global Governance Mandates > Global Governance Mandate Quarterly Reports > most current quarter

Scrutinized Companies that Boycott Israel List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in Sudan List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:
[ ] entity is **NOT** on list [ ] entity is on list

Business Operations in Cuba or Syria:
[ ] entity is **NOT** on list [ ] entity is on list

Verified by:_____ Date:_____
Print Name

EXHIBIT J

GENERAL PROVISIONS
State and Federal Regulations

1. 24 CFR 570 as amended- All the regulations regarding the CDBG program
2. 24 CFR 58 - The regulations prescribing the Environmental Review procedure.
3. Section I 04(b) and Section I 09 of Title I of the Housing and Community Development Act of 1974 as amended
4. The Fair Housing Act (42 U.S.C. 3601-20) Reasonable Accommodations Under the Fair Housing Act.
5. Executive Order 11063 - Equal Opportunity in Housing
6. Executive Order 11259 - Leadership & Coordination of Fair Housing in Federal Programs
7. 24 CFR Part I 07 - Non- Discrimination and Equal Opportunity in Housing under E.O.
8. Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, as amended
9. 24 CFR 570.60 I Subpart K - The regulations issued pursuant to Executive Order 11063 which prohibits discrimination and promotes equal opportunity in housing.
10. Executive Order 11246 ("Equal Employment Opportunity"), as amended by Executive Orders 11375 and 12086 - which establishes hiring goals for minorities and women on projects assisted with federal funds and as supplemented in Department of Labor regulations. EO I l246.
11. Executive Orders 11375 and 12086.
12. Title VII of the 1968 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972, 42 USC§ 2000e, et. seq. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that it is an Equal Opportunity or Affirmative Action employer.
13. 24 CFR 135 - Regulations outlining requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the CITY, the Consultant and any of the Subcontractor's. Failure to fulfill these requirements shall subject the CITY, the Consultant and any of the Consultant's Subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided, The Consultant certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
    The Consultant further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:
    "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."
    The Consultant further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low- income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs,
    The Consultant certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.
14. Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
15. Contract Work Hours and Safety Standards Act, 40 USC 327-332.
16. Section 504 of the Rehabilitation Act of 1973, 29 USC 776(b) (5), 24 CFR 570.614 Subpart K. Section 504: https://www.epa.gov/ocr
17. The Americans with Disabilities Act of 1990: https://www.hud.gov/hudprograms/eohudap

18. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
19. 29 CFR Parts 3 and 5 - Regulations that prescribe the payment of prevailing wages and the use of apprentices and trainees on federally assisted projects. HUD Form 40 IO must be included in all construction contracts funded by CDBG-DR:
    Davis-Bacon Act: 42 USC 276a to 40 USC 276a:
    29 CFR Part 3 - Contractors and Subcontractors on public building or Public Work Financed, in whole or in part, by Loans or Grants from the United States
    29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provision Applicable Subject to the Contract Work Hours and Safety Standards Act)
    Executive Order 11914 - Prohibits discrimination with respect to the handicapped, in federally assisted projects.
    As a supplement to the Davis-Bacon Act requirements, the Consultant agrees to comply with the "Copeland Anti-Kickback Act," which prohibits the Consultant, its contractors, or subcontractors from inducing an employee to relinquish any part of his/her compensation, under the federally-funded contract.
20. Executive Order 11625 and U.S. Department of Housing and Urban Development Circular Letter 79-45 - which prescribes goal percentages for participation of minority businesses in Community Development Block Grant Contracts.
21. E.O. 11625 Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise.
22. The Consultant agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
23. 2 CFR 200 et seq - Uniform Administrative Requirements, Cost Principles, and Audit requirements for Grants and Agreements.
24. Immigration Reform and Control Act of 1986
25. Prohibition of Gifts to CITY Employees - No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service, or other item of value to any CITY employee,
26. Order of Precedence - In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Agreement shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Agreement. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Agreement, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.
27. Venue-Any suit of action brought by either party to this Agreement against the other party, relating to or arising out of this Agreement, must be brought in the appropriate federal or state courts, in Lee County, FL which courts have sole jurisdiction on all such matters. (No reference required for this item).
28. Dispute Resolution - Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. Any situations when negotiations, litigation and/or mediation shall be attended by representatives of Consultant with full decision-making authority and by CITY'S staff person who would make the presentation of any settlement reached during negotiations to CITY for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under§ 44.102, Florida Statutes. The litigation arising out of this Agreement shall be adjudicated in Lee County, Florida, if in state court and the US District Court, Middle District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, LEE COUNTY AND THE CONSULTANT EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAYE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.
29. The Consultant agrees to comply with the following requirements:
    Clean Air Act, 41 USC 7401, et seq.
    Federal Water Pollution Control Act, 33 USC 1251, et seq., as amended.
30. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4002 and 24 CFR 570.605 Subpart K), the Consultant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained. If appropriate, a letter of map amendment (LOMA) may be obtained from FEMA, which would satisfy this requirement and/or reduce the cost of said flood insurance.

31. The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to the HUD Lead- Based Paint Poisoning Prevention Act, found at 24 CFR 570.608, Subpart K.

32. The Consultant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State or Local historic property list.

33. The Consultant must certify that it will provide drug-free workplaces, in accordance with the Drug-Free Workplace Act of 1988 (41 USC 701).

34. The Consultant certifies 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; and, that the Consultant shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction as outlined in 24 CFR 570.609, Subpart K.

35. The Consultant agrees to comply with the following 0MB Circulars whichever is applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. These requirements are enumerated in 2 CFR 200, et seq.
Single Audits shall be conducted annually, in accordance with 2 CFR 200.501, and shall be submitted to the CITY nine (9) months after the end of the Consultant's fiscal year. The Consultant shall comply with the requirements and standards of 2 CFR 200 Subpart F, Section 500. Consultants exempt from Single Audit requirements shall submit financial statements to the CITY one hundred eighty (180) days after the end of the Consultant's fiscal year. Per 2 CFR 200.344, if this Agreement is closed out prior to the receipt of an audit report, the CITY reserves the right to recover any disallowed costs identified in an audit after such closeout.

36. Any real property acquired by the Consultant for the purpose of carrying on the projects stated herein, and approved by the CITY in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24.10 I, shall be subject to the provisions of CDBG-DR including, but not limited to, the provisions on use and disposition of property. Any real property within Consultant control, which is acquired or improved, in whole or part, with CDBG-DR funds in excess of $25,000, must adhere to the CDBG-DR Regulations at 24 CFR 570.505.

37. As provided in Subsection 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Consultant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof.
This notice is required by§ 287.133 (3) (a), Florida Statutes.

38. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds, other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, contracts under grants, loans, and cooperative agreements) and that all Consultant's shall certify and disclose accordingly.

39. Travel reimbursement will be based on the U.S. General Services Administration (GSA) per diem rates in effect at the time of travel. Equal access in accordance with the individual's gender identity in community planning and development programs, per 24 CFR 5, I 06.

40. Housing Counseling, including homeownership counseling or rental housing counseling, as defined in §5.100, required under or provided in connection with any program administered by HUD shall be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 170, per 24 CFR 5.111.

41. HUD Final Rule-Implementation of the Violence Against Women Reauthorization Act of2013 which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements.
Any rule or regulation determined to be applicable by HUD.

42. Florida Statutes 713 .20, Part I, Construction Liens

43. Florida Statutes 119,021 Records Retention

44. Florida Statutes, 119.071, Contracts and Public Records
45. Limited English Proficiency: The Consultant agrees to take reasonable steps to provide meaningful access to the program/project and activities funded under this Agreement for persons with limited English proficiency pursuant to information located at http://www.lep.gov.
46. Equal Treatment of Faith-Based Organizations: By regulation, DOJ/BJA prohibits all recipient organizations from using financial assistance from DOJ/BJA to fund explicitly religious activities. The Consultant agrees to avoid such prohibited conduct. Discrimination on the basis of religion in employment is generally prohibited by federal law, but the Religious Freedom Restoration Act is interpreted on a case-by-case basis to allow some faith-based organizations to receive DOJ/BJA funds while taking into account religion when hiring staff. Questions in this regard should be directed to the Office for Civil Rights.
47. Arrest and Conviction Records: Federal and state laws restrict use of arrest and conviction records in the employment context, except when specifically, authorized. The Consultant agrees to avoid the misuse of arrest or conviction records to screen applicants for employment or employees for retention or promotion that may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination unless use is otherwise specifically authorized by law.
48. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352): The Consultant will not use and has not used federal appropriated funds to pay at any tier, either directly or indirectly, any person or organization 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 obtaining any federal contract, grant, or any other award or subaward covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award or subaward. Such disclosures are forwarded from tier-to-tier up to the Consultant. The Consultant shall comply with the lobbying restrictions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and (ii) ensure that its officers, employees and its subcontractors hereunder comply with all applicable local, state, and federal laws and regulations governing advocacy of and appearances before any legislative body. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before local, state, or federal legislatures.
49. False Claim; Criminal, or Civil Violation: Consultant must promptly refer to CITY any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either (1) submitted a false claim for grant funds under the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving subaward agreement funds.
50. Political Activities Prohibited: None of the funds provided directly or indirectly under this Agreement shall be used for any political activities or to further the election or defeat of any candidates for public office; Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities or activities for or against the election of a candidate for an elected office.
51. Text Messaging: Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Federal Register 51225 (October I, 2009), DOJ/BJA encourages recipients and subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by DOJ/BJA and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
52. Trafficking in Persons: The Consultant agrees to, at any tier, comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of the Consultant and any employees of the Consultant.
53. Association of Community Organizations for Reform Now (ACORN): The Consultant understands and acknowledges that it cannot use any federal funds, either directly or indirectly, in support of any contract or subaward to either ACORN or its subsidiaries, without the express prior written approval of OJP.
54. If the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this funding agreement, the Consultant must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Busines Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by HUD.

CITY OF BONITA SPRINGS, FLORIDA
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this _____ day of _____, 2020, between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and Hole Montes, Inc. (hereinafter referred to as the "Consultant").

WITNESSETH

WHEREAS, the City desires to obtain the professional services of said Consultant to provide and perform professional services as further described hereinafter concerning the project to be referred to and identified as: Miscellaneous Surveying Services for the Community Development Block Grant-Disaster Recovery (CDBG-DR) Voluntary Home Buyout Program CN 20-07, and

WHEREAS, the Consultant hereby certifies that Consultant has been granted and possesses valid, current licenses to do business in the State of Florida and in the City of Bonita Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultants Competitive Negotiation Act, Florida Statutes §287.055.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a contract shall exist between both parties consisting of:

ARTICLE 1.00-SCOPE OF PROFESSIONAL SERVICES
Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in the Scope of Professional Services, which is attached hereto and made a part of this Agreement.

ARTICLE 2.00-DEFINITIONS
The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 CITY
The term "City" shall refer to the City of Bonita Springs, a municipality incorporated within the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the City's behalf relative to this Agreement.

2.02 CONSULTANT
The term "Consultant" shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all change orders thereto.

2.03 PROFESSIONAL SERVICES
The term "Professional Services" shall refer to all of the services, work materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the Consultant and its employees and any and all sub-consultants and subcontractors the Consultant may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT
The term "Sub-Consultant" shall refer to any individual or firm offering professional services which is engaged by the Consultant to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated, responsible and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any sub-consultant.

2.05 SUBCONTRACTOR

The term "Subcontractor" shall refer to any individual, company or firm providing other than professional services which is engaged by the Consultant to assist the Consultant in contractually obligated, responsible, and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any subcontractor.

2.06 PROJECT
The term "Project" shall refer to such facility, system, program or item as described in the summary statement set forth in the preamble of this Agreement.

2.07 BASIC SERVICES
The term "Basic Services" shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached Scope of Professional Services.

2.08 ADDITIONAL SERVICES
The term "Additional Services" shall refer to such professional services as the City may request and authorize, in writing, the Consultant to provide and perform relative to this Agreement which are not included in the basic services. Additional services shall be authorized by the execution of both parties to this Agreement by a change order agreement.

2.09 CHANGE ORDER
The term "Change Order" shall refer to a written document, change order agreement, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon scope of professional services and tasks, compensation and method of payment, time and schedule of performance, or project guidelines and criteria as such were set forth and agreed to in the initial agreement, supplemental task authorization(s), or previous change orders issued thereto. The change order document, which shall be executed on a City standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all change orders executed and issued under this Agreement shall be understood and agreed by both parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the change order including, but not limited to, any and all direct costs, indirect costs and associated costs which may result from or be caused by the change order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the Consultant's general administrative and overhead costs and profit.

In the event the City decides to delete all, or portions, of the scope of services, task(s), or requirements set forth in the initial agreement, supplemental task authorizations or previously authorized change orders, the City may do so by the unilateral issuance of a written change order to the Consultant. Such a unilaterally issued change order shall set forth, if appropriate, an agreement by both the City and the Consultant establishing changes in the amount of compensation to be paid the Consultant as a result of the deletion or decrease in the services required shall have no effect on, or otherwise prevent the City from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the Consultant.

2.10 SUPPLEMENTAL TASK AUTHORIZATION
The term "Supplemental Task Authorization" as used refers to a written document executed by both parties to an existing professional services agreement setting forth and authorizing a limited number of professional services, tasks, or work.

2.11 CITY MANAGER
The term "City Manager" shall refer to the City Manager or his designee requesting the service, employed by the City Council to serve and act on the City's behalf, as it relates to this project. The City Manager within the authority conferred by the City Council, acting as the City's designated representative shall issue written notification to the Consultant of any and all changes approved by the City in the Consultant's: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to basic services and additional services pursuant to this Agreement or change order(s) or supplemental task authorization(s) pertaining thereto. The City Manager shall be responsible for acting on the City's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, change order(s) or supplemental task authorization(s) issued thereunder.

2.12 PROJECT MANAGER
The term "Project Manager" shall refer to the person employed or retained by the City and designated, in writing, to serve and act on the City's behalf to provide direct contact and communication between the City and Consultant with respect to providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services,

work and materials to be provided and performed by the Consultant pursuant to this Agreement and such written change order(s) and supplemental task authorization(s) as are authorized. The Project Manager is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; (3) the amount of compensation the City is obligated or committed to pay the Consultant. The Project Manager shall review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and change order(s), supplemental task authorization(s) thereto.

2.13 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or sub-contractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set forth in subsequent work orders, supplemental agreements, and/or change orders agreed to in writing by both parties to this Agreement.

2.14 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the Consultant's compensation to provide and perform the services and work necessary and required pursuant to the tasks set forth in the Scope of Professional Services, and any change orders, supplemental task authorizations, and work orders authorized thereto, is established to be made on a not-to-exceed (NTE) amount basis, it is mutually understood and agreed that such compensation for each completed task shall be made on the following basis:

For the actual hours necessary, required and expected by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in the Compensation and Method of Payment, which is attached hereto and made a part of this Agreement, to the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by sub-consultants and subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the City and the Consultant and as are set forth as a part of the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

With the understanding and agreement that the City shall pay the Consultant for all such costs and expenses within the established NTE amount for each task or sub-task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the City covering all such costs and expenses; and

With the understanding and agreement that the Consultant's invoices and all payments to be made for all NTE amounts shall be subject to the review, acceptance and approval of the City; and with the understanding and agreement that when the Consultant's compensation is established on a NTE basis for a specific task(s) or sub-task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and sub-consultant and subcontractor costs for any such specific task(s) or sub-task(s) shall not exceed the amount of the total NTE compensation established and agreed to for each specific task(s) or sub-task(s). In the event the amount of compensation for any task(s) or sub-task(s) to which the Consultant is entitled on the NTE basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the NTE amount established for the specific task or sub-task, it is understood and agreed that any unexpended amount under a specific task or sub-task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other task(s) or sub-task(s).

ARTICLE 3.00-OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES

The Consultant agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida, Lee County and in the City of Bonita Springs, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement.

3.02 PERSONNEL

1) QUALIFIED PERSONNEL

The Consultant agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all basic services and additional services to be provided pursuant to this Agreement.

2) CONSULTANT'S PROJECT DIRECTOR

The Consultant agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising under this Agreement unless substitute arrangements have been furnished to the City in writing. The Consultant agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance of the City.

3) CONSULTANT'S STAFF

Consultant will specify the technical and support staff who will be assigned to this project. Consultant will notify City's Project Manager of any changes and/or substitution of staff working on the project.

4) REMOVAL OF PERSONNEL

The Consultant agrees, within thirty (30) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the City shall request, in writing, be removed, this request may be made by the City with or without cause.

5) IMMIGRATION LAW COMPLIANCE

Consistent with Bonita Springs Code §36.22, effective June 1, 2009, Contractors providing services to the City, as a condition of each contract, must use E-Verify to verify the employment of any person hired during the contract term by the contractor and assigned by the Contractor to perform work for the City. Before any contract with the City is signed, proof of enrollment with E-Verify must be provided. The Contractor acknowledges that he will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Contractor the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Contractor must also be responsible for entering into an agreement with each and every vendor and subcontractor that states that vendors and subcontractors (and their vendors) are independently responsible for their own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the City. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The City may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all basic services and additional services will be provided, performed and completed in a timely and diligent manner throughout.

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the Consultant and by any sub-consultant(s) and/or subcontractor(s) engaged by the Consultant as set forth in the Scope of Professional Services shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the City approves this Agreement, or which may subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes,

policies, standards or other guidelines which requires the Consultant to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services shall serve as a basis for the City to consider the development and issuance of a change order to provide for a change to, or additional services to, the services set forth in this Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1) RESPONSIBILITY TO CORRECT

The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any sub-consultant(s) or subcontractor(s) engaged by the Consultant.

2) CITY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, nor acceptance by the City of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the Consultant, or any sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the City's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the City's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY AND HOLD HARMLESS

To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expenses and in a manner acceptable to and approved by the City, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its sub-consultants and/or subcontractors. This Consultant's obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the City.

The City reserves the right, should the Consultant fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the City for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

1) In the event the services required pursuant to this Agreement include the Consultant preparing and submitting to the City cost estimates, the Consultant, by exercise of this experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under this Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and corrections of any and all such cost estimates. For purposes of the liability provisions of this article only, the Consultant's estimate(s) shall be

considered valid and effective for a period of six (6) months from the date of the City's acceptance of the estimate(s).

2) The cost estimates of Consultants or sub-consultants engaged by Consultants, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions provided in Consultant to Repair Property Damage Caused by the Consultant.

3) COST ESTIMATES

a) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus forty percent (40%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the order of magnitude estimate shall be recoverable by the City.

b) BUDGET ESTIMATE

Budget in this case applies to the City's budget and not to the budget as a project-controlled document. A budget is prepared with the use of flow sheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty percent (20%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the budget estimate shall be recoverable by the City.

c) CONSTRUCTION COST ESTIMATE

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a construction cost estimate is vital to the City's interests because it may be used for such purposes as, but not limited to the following: budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction project.

In the event the City solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a construction cost estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the Consultant's construction cost estimate by more than the percent accuracy set forth hereinabove, the Consultant shall, upon notification by the City, assume responsibility for and proceed to provide and perform the following service without additional compensation.

The Consultant will, subject to the review and approval of the City, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the construction cost estimate prepared by the Consultant. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the City for the project and set forth in this Agreement or change order(s) or supplemental task authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawing prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the Consultant's construction cost estimate, the costs associated with the Consultant's preparation and development of the construction cost estimate shall be recoverable by the City by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the construction cost estimate prepared by the Consultant, the amount of the construction cost estimate submitted by the Consultant shall be adjusted from the date the construction cost estimate was received by the City until the date bids or price proposals are received by the City, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the City receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the Consultant may deem it appropriate to recommend the City reject any such bid(s) or priced proposal(s). If under such circumstances the City concurs with the Consultant's recommendation and rejects the bid(s) or priced proposal(s), the City will not hold the Consultant responsible to, nor will the City require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the City and made payable to the respective governmental body upon the Consultant furnishing the City satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY request the Consultant to provide and perform professional services for this project which are not set forth in the Scope of Professional Services, the Consultant agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

Additional services shall be administered and authorized as change orders or supplemental task authorizations under this Agreement. The Consultant shall not provide or perform, nor shall the City incur or accept any obligation to compensate the Consultant for any additional services unless and until a written change order or supplemental task authorization has been agreed to and executed by both parties.

Each such change order or supplemental task authorization shall set forth a comprehensive, detailed description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said additional services.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The City may request the Consultant to execute a Truth-in-Negotiations Certificate ("Certificate"). The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized. The compensation to be paid the Consultant as set forth in the Compensation and Method of Payment, change orders, and supplemental task authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized thereto as stated above.

ARTICLE 4.00-OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

The City agrees after the execution of this Agreement to promptly advise the Consultant, in writing, of the person designated to serve and act as the City's Project Manager. Such notification shall be provided to the Consultant by the Project Manager.

4.02 AVAILABILITY OF CITY INFORMATION

1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the Consultant regarding requirements the City has established or suggests relative to the project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in the Project Guidelines and Criteria, which is attached hereto and made a part of this Agreement.

2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the Consultant's request, the City agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the City to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the City such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The City agrees that the City Manager and the Project Manager shall be available within a reasonable period of time, with reasonable prior notice given by the Consultant, to meet and/or consult with the Consultant on matters pertaining to the services to be provided and performed by the Consultant. The City further agrees to respond within a reasonable period of time to written requests submitted by the Consultant.

4.04 ACCESS TO CITY PROPERTY

The City agrees, with reasonable prior written notice given by the Consultant, to provide the Consultant with access within a reasonable period of time to City property, facilities, buildings and structures to enable the Consultant to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with City operations, or the operations carried on by others under a lease, or other contractual arrangement with the City, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the Consultant's normal office and/or field workdays and/or work hours.

ARTICLE 5.00-COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC AND ADDITIONAL SERVICES

The City shall pay the Consultant for all requested and authorized basic services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the City in accordance with the provisions for compensation and payment of said basic services set forth and prescribed in the Compensation and Method of Payment or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written change order executed by both parties.

5.02 METHOD OF PAYMENT

1) MONTHLY STATEMENTS

The Consultant shall be entitled to submit no more than one (1) invoice statement to the City each calendar month covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or change order(s) and supplemental task authorization(s) thereunder.

2) PAYMENT FOR SERVICES PERFORMED

The City shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

a) The City shall pay Consultant on the basis of services completed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment, as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the City. No payments shall be made for Consultant's work-in-progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the City. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the City, the City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

b) The City shall pay the Consultant for services performed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment on the basis of an invoice statement covering Consultant's work-in-progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-progress percentages are subject to the review and approval of the City. The decision of the City shall be final as to the work-in-progress

percentages paid. Payment by the City for tasks on a work-in-progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the City of any such service or work-in-progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-progress payments have been made. All tasks to be paid for on a work-in-progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in the Compensation and Method of Payment with the notation (WIPP). Only tasks so identified will be paid on a work-in-progress percentage basis. The City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

3) PAYMENT SCHEDULE

The City shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the City object or take exception to the amount of any Consultant's invoice statement, the City shall notify the Consultant of such objection or exception within the thirty (30) calendar days payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar days' period, the City shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.03 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE CITY

In the event of termination of this Agreement at the convenience of the City, not at the fault of the Consultant, the City shall compensate the Consultant only for the services performed prior to the effective date of termination, reimbursable expenses then due and reasonable expenses incurred by the Consultant in affecting the termination of services and work, and incurred by the submittal to the City of project drawings, plans, data, and other project documents.

5.04 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the City suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the City shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.05 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; (3) and/or are modified by the subsequent issuance of supplemental task authorization(s) and/or change order(s), other than receiving the compensation set forth in Payment When Services are Terminated at the Convenience of the City and Payment When Services are Suspended, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00-TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the City may authorize specific tasks to be completed. Upon agreement on the scope and fee for this work and execution of supplemental task authorization, the City will issue the Consultant a written notice to proceed. Following the issuance of such notice to proceed the Consultant shall be authorized to commence work and the Consultant thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, which is attached hereto and made a part of this Agreement.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the City shall grant the extension if the City determines the delay(s)

encountered by the Consultant, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The Consultant shall be required as a condition of this Agreement to prepare and submit to the City, on a monthly basis, commencing with the issuance of the notice to proceed, a Consultant's work schedule. The work schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's work schedule of planned and actual work progress shall be updated and submitted by the Consultant to the City on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the City at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any change order(s) and supplemental task authorization(s) issued thereto.

ARTICLE 7.00-SECURING AGREEMENT

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

ARTICLE 8.00-CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines that there is a conflict of interest, Consultant or such sub-consultant shall decline the representation upon written notice by the City.

If the City determines that there is not such conflict of interest, then the City shall give its written consent to such representation. If Consultant or sub-consultant accepts such a representation without obtaining the City's prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such sub-consultant under this Agreement, then the Consultant or such sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such sub-consultants to comply with the provisions of this section.

Should the Consultant fail to advise or notify the City as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the City may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00-ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor Consultant, or consulting organization. Nor shall the Consultant subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the City. The Consultant shall have the right, subject to the City's prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The City shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in Consultant's Associated Sub-Consultants and Subcontractors, which is attached hereto and made a part of this Agreement.

ARTICLE 10.00-APPLICABLE LAW
Unless otherwise specified, this Agreement shall be governed by the laws, rules, regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States Government.

ARTICLE 11.00-COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES
The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

ARTICLE 12.00-WAIVER OF BREACH
Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00-INSURANCE
For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

The Vendor shall procure and maintain property insurance (Builder's Risk, Installation Floaters, etc.) upon the entire project, if required, to the full insurable value of the scope of work. The City and the Vendor waive against each other and the City's separate Vendors, Contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and City shall, where appropriate, require similar waivers of subrogation from the City's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. All deductibles for property insurance procured by the Vendor shall be the responsibility of the Vendor.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name the City of Bonita Springs, Florida, as an additional insured including completed operations (and products if applicable). The policy shall be endorsed to be primary to any similar coverage carried by the City.

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all contracts.

ARTICLE 14.00-DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00-REPRESENTATION OF THE CITY

The Consultant in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the City in this manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written change order(s) and supplemental task authorization(s) issued thereunder.

In the event the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the City's behalf, and shall not act on the City's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor; or (2) the time for completing the work as required and agreed to in the construction contract; or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The City will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00-OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the City of a written change order deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the City, shall be delivered by the Consultant to the City within seven (7) calendar days of the City making such a request. In the event the City gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the City of a written change order deleting all or part of the services or work required, the Consultant shall deliver to the City the requested documents as set forth hereinabove, with the mutual understanding and commitment by the City that compensation earned or owing to the commitment by the City that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the notice of termination or change order.

The Consultant, at its expense, may make and retain copies of all documents delivered to the City for reference and internal use. The Consultant shall not, and agrees not to, use any of these documents, data and information contained therein on any other project or for any other client without the prior expressed written permission of the City.

Any use by the City of said documents, data and information contained therein, obtained by the City under the provisions of this Agreement for therein, obtained by the City under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the City, and without liability to the Consultant. The City shall be liable and agrees to be liable for and shall indemnify, defend and hold the Consultant harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the City's use of such documents in a manner contrary to the provisions set forth hereinabove. The City hereby acknowledges receipt of $10.00 (ten and no hundred dollars) and other good and valuable consideration from the Consultant which has been paid as specific consideration for the indemnification provided herein.

ARTICLE 17.00-MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

17.01 COMPLIANCE WITH PUBLIC RECORDS LAW

The Consultant must comply with Florida public records laws, specifically to:

a) Keep and maintain public records required by the City to perform the service.

b) Upon request from the City's custodian of public records, provide the City 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 Florida Statutes §119 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 Consultant does not transfer the records to the City.

d) Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

e) The City will consider it a breach of contract should the Consultant fail to comply with any public records request.

f) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.

g) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESGIN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, debbie.filipek@cityofbonitasprings.org.**

h) If the Consultant is not providing the requested public records, the burden of proof is on the Consultant to show why they did not comply with the request.

ARTICLE 18.00-HEADINGS

The headings of the articles, sections, exhibits, attachments, phases or tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such articles, sections, exhibits, attachments, phases or tasks.

ARTICLE 19.00-ENTIRE AGREEMENT

This Agreement and attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 20.00-NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement to be given by the Consultant to the City shall be in writing and shall be given by the United States Postal Service Department first class mail service postage prepaid, addressed to the following City address of record and sent to the attention of the City's Project Manager unless waived by City:

Elly Soto McKuen, Senior Project Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Copy: City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

20.02 NOTICES BY CITY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the City to the Consultant shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following Consultant's address of record unless waived by Consultant:

Consultant Name: Hole Montes, Inc.

Consultant Address: 950 Encore Way

Consultant Address: Naples, FL 34110

Telephone Number: (239) 254-2000

Fax Number: (239) 254-2075

ATTENTION: Thomas M. Murphy, P.S.M.
Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party per above contacts.

ARTICLE 21.00-TERM

This Agreement is effective as of the date first written above and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 22.00-TERMINATION

This Agreement may be terminated by the City at its convenience, or due to the fault of the Consultant, by the City giving thirty (30) calendar days written notice to the Consultant.

If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the City's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the City may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar days written notice, terminate this Agreement.

In addition to the City's contractual right to terminate this Agreement in its entirety as set forth above, the City may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services or the Project Guidelines and Criteria, or as such may be established by change order or supplemental task authorization. The City shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the City dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the City reserves the right to accept or not accept the termination request submitted by the Consultant, effective unless and until Consultant is notified, in writing, by the City of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the Consultant shall deliver to the City all papers, drawings, models, and other material in which the City has exclusive rights by virtue hereof or of any business done, or services or work performed by the Consultant on behalf of the City.

ARTICLE 23.00-AMENDMENTS
The covenants, terms and provisions set forth and contained in all of the articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendment, the requirements, provisions and/or terms of the amendment shall take precedence.

ARTICLE 24.00-MODIFICATIONS
Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed change order(s) or supplemental task authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written change order(s), and/or supplemental task authorizations, the latest executed change order(s), and/or supplemental task authorization(s) shall take precedence.

In the event the City issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the City's internal control purposes only, and any and all terms, provisions and conditions contained herein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 25.00-ACCEPTANCE
Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: _____
CITY CLERK

DATE: _____

CITY OF BONITA SPRINGS CITY COUNCIL

BY: _____
MAYOR

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

ATTEST:

June I Sapp
(Witness)

Ben Nowell
(Witness)

CORPORATE SEAL

CONSULTANT

BY: Thomas M. Murphy
(Authorized Signature)

VP
(Title)

DATE: 01/19/2021

EXHIBIT A

Scope of Professional Services
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date:_____

Basic Services

Section 1 General Scope Statement

The Consultant shall provide and perform the following professional services, which shall constitute the general scope of the basic services under the covenants, terms, and provisions of this Professional Services Agreement.

Section 2 Tasks

Pursuant to the general scope of the basic services stated herein above, the Consultant shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in Compensation and Method of Payment.

The CONSULTANT shall perform engineering, land survey, and aerial photography services necessary for the subject project as outlines; reference all centerline survey control points; establish the benchline on National Geodetic Vertical Datum (1929) throughout the project and tie property lines to comply with Florida Department of Natural Resources Rule, Florida Administrative Code Chapter 16 Q-3 (Florida Statutes 177 - Part Two).

Survey work shall be performed under the responsible charge of a Professional Land Surveyor registered in the State of Florida and shall be accomplished in accordance with the Florida Department of Transportation Policy 760.000-760.012, and Florida Department of Transportation Location Manual. Work must comply with the minimum technical standards for Land Surveyors Rule 2IHH-6, Florida Statutes 472.027; measurements of regular roadway cross-sections may be recorded on electronic data collection equipment.

Surveys shall also be provided in an electronic format, compatible with the following City GIS standards:

- DXF or DWG Format
- Coordinate System:
  1. Horizontal: State Plane FLORIDA WEST, FIPS 0902, NAD83, US Feet
  2. Vertical: NAVD 1988, US Feet
- CAD Layer organization

Administration
City Limits

Transportation
Road Centerline (line)
Pavement Area (polygon)
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)
Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail
Fence
Bridge
Pavement Message (point)

Storm Water
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)

Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail

Landscaping
Irrigation
Median (to be determined)

- Location accuracy requirements: all features should be within + or – one meter from actual position.

Roadway Survey
Provide engineering and land surveys necessary to establish the roadway alignments and intersecting streets within the project limits and obtain topography, cross sections, underground utilities, right-of-way, land ties and required drainage information for existing and proposed drainage systems and in accordance with the master drainage plan/storm run-off treatment areas.

Underground Utilities
Field locate existing underground utilities, based upon information provided in Task 7.01, only as deemed necessary to identify conflicts or potential conflicts with existing utilities during roadway and drainage construction. Horizontal and vertical location of underground utilities will be obtained prior to completion of Task 6.02. This task includes coordination with various utility companies and assumes that the respective utility shall be responsible for "pot holing," said underground systems. The horizontal and vertical location of each utility will be documented, based on the "pot-holing" performed by the respective utility company or the consultant.

Jurisdictional Wetlands Survey
After jurisdictional wetland lines have been flagged and verified by the agencies, the jurisdictional line will be located by GPS to sub-meter accuracy.

Planimetric
The Consultant shall provide planimetric of the project area sufficient to define topographical (two dimensional) details along the proposed roadway for the width of 300 feet either side of the centerline.
The scale Aerial Photography will not be acceptable for plan portion for the plan & profile sheets.

This list of activities is not meant to be complete and absolute. The City reserves the right to add additional related activities as the City implements these programs and survey related projects.

EXHIBIT B

Compensation and Method of Payment
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

Section 1 Basic Services/Task(s)

The City shall compensate the Consultant for providing and performing the task(s) set forth and enumerated in the Scope of Professional Services, as follows:

NOTE: A lump sum (LS) or not-to-exceed (NTE) amount of compensation to be paid the Consultant should be established and set forth below for each task or sub-task described and authorized in the Scope of Professional Services. Tasks to be paid on a work-in-progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
TOTAL				

(Unless list is continued on next page.)

Consultant's Personnel Hourly Rate Schedule*

Date: _____

Should it be mutually agreed to base compensation for additional services on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained below.

CONSULTANT OR SUB-CONSULTANT NAME Hole Montes, Inc.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct** Payroll Average Hourly Rate
Senior Principal Engineer IX	$210
Principal Engineer VIII	$195
Engineer VI I	$185
Engineer VI	$160
Engineer V	$145
Engineer IV	$130
Engineer III	$120
Engineer II	$105
Engineer I	$ 95
Project Manager	$130
Permitting Coordinator	$100
Senior Designer	$120
Designer	$110
Senior Contract Administrator	$115
Contract Administrator	$100
Senior Construction Field Representative	$100
Construction Field Representative	$ 90
Principal Planner	$190
Planning Director	$160
Planner III	$120
Planner II	$100
Principal Surveyor	$170
Senior Surveyor	$135
Surveyor	$120
2-Person Survey Crew	$135
3-Person Survey Crew	$170
4-Person Survey Crew	$190
GPS Operator	$100
Technician IV	$ 75
Technician III	$ 65

*NOTE: A separate personnel hourly rate schedule should also be attached for each sub-consultant listed in Consultant's Associated Sub-Consultant(s) and Subcontractor(s).

**NOTE: Direct Payroll Hourly Rate means the actual gross hourly wage paid.

EXHIBIT C

Time and Schedule of Performance
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

This Exhibit establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in the Scope of Professional Services. The Time and Schedule of Performance set forth hereinafter is established pursuant to Time and Schedule of Performance.

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing services and work on this project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
	N/A	

EXHIBIT E

Project Guidelines and Criteria
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

The City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

NONE

EXHIBIT F

Truth in Negotiation Certificate
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Truth-In-Negotiations Certificate.

2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.

3. The truth of statements made herein may be relied upon by the City and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the Consultant, doing business as:

COMPANY NAME: Hole Montes Inc.

BY: Thomas M. Murphy

TITLE: VP

The foregoing instrument was signed and acknowledged before me this 26th day of January 2021

by THOMAS M MURPHY who is personally known OR has produced _____
(Print or Type Name) (Type of Identification & Number)

as identification.

Paulette Debus Charbonneau
Notary Public Signature

PAULETTE DEBUS CHARBONNEAU
Notary Public - State of Florida
Commission # HH 051444
My Comm. Expires Dec 7, 2024
Bonded through National Notary Assn.

Notary Commission Number/Expiration

EXHIBIT G

Insurance and Bonding Requirements

All policies shall be Best's Rated "A-" or better or subject to approval

Insurance / Bond Type	Required Limits
☒ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements. ☒ **The policy shall be endorsed to provide a waiver of subrogation in favor of the City.** NOTE: Any "non-construction industry" company employing more than 3 employees (not including a sole proprietor owner) must have workers' compensation coverage. ALL "construction industry" (as defined by FL Rule # 69L-6.021) companies with ANY employees must have coverage or if no statutory employees, then up to three officers or a sole proprietor MUST have a current exemption certificate from the Division of Workers' Compensation on file.
☒ Employer's Liability	$1,000,000 single limit per occurrence (Workers' Compensation Part B)
☒ Commercial General Liability (Occurrence Form) patterned after the current ISO form	Bodily Injury and Property Damage ☒ $1,000,000 per occurrence, $1,000,000 aggregate (Per Project) for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
☒ Indemnification	To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.
☒ Automobile Liability	☒ $ 1,000,000 Each Occurrence; Bodily Injury & Property Damage Owned/Non-owned/Hired; Automobile Included
☒ Other insurance as noted:	☐ Watercraft $ _____ Per Occurrence ☐ United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work. **STATUTORY** ☐ Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. $ _____ Per Occurrence ☐ Property Insurance (Or Builder's Risk) **Full insurable value of the scope of the work** ☐ Pollution $ _____ Per Occurrence ☒ Professional Liability $1,000,000 per claim and in the aggregate

☐ Railroad Right of Way	☐ Umbrella Excess $ _____ Per Occurrence ☐ Railroad Protective Liability Insurance per occurrence limit of not less than **Two Million Dollars ($2,000,000)** and aggregate limits of **Six Million Dollars ($6,000,000)** to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your General Liability policy coverage to be $5,000,000. They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage. For additional information on their insurance requirements and other requirements such as payment for and scheduling Railroad Inspector / Flagman, please contact Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.
☐ Bid bond	Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
☐ Performance and Payment Bonds	If the box is checked for a project less than $200,000, a performance bond will be required. For projects in excess of $200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. **Per FS §255.05, the Contractor shall provide a certified copy of the recorded bond to the City.**

☒ Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

☒ The City of Bonita Springs must be named as **"ADDITIONAL INSURED, INCLUDING PRODUCTS AND COMPLETED OPERATIONS"** on the Insurance Certificate for Commercial General Liability.

☒ The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

☒ **Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to the City of Bonita Springs.

EXHIBIT H

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Vendor Covered Transactions

(1) The prospective vendor certifies, by submission of this Annual Agreement, that neither it nor its principles are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the vendor is unable to certify to the above statement, the prospective vendor shall attach an explanation to this form.

VENDOR

Holc Montes Inc
Company Name

073863144
DUNS Number

Thomas M. Murphy
Signature

01/19/2021
Date

Thomas M. Murphy VP
Print Name and Title

950 Encore Way
Street Address

Naples FL 34110
City, State, Zip

For City of Bonita Springs use only

To access the debarment search: https://www.sam.gov/SAM/ > Search Records tab > Enter DUNS number > Click Search

Company: [ ] is debarred [ ] is not debarred

Verified by: _____ Date: _____
Name

EXHIBIT I

Scrutinized Companies Statement

SWORN STATEMENT UNDER SECTION 287.135(5), FLORIDA STATUTES: THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number **CN 20-07**, for **Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program.**

2. This sworn statement is submitted by Holt Montes Inc. whose business
[Name of entity submitting sworn statement]
address is 950 Encore Way Naples FL 34110 and (if applicable) its Federal Employer Identification Number (FEIN) is 59-1518838 (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____.

3. My name is Thomas M Murphy and my relationship to the above is
[Please print name of individual signing]
Owner.

4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.

6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.

8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. **[Please indicate which statements apply].**

X Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.

[ ] Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.

[ ] Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

[ ] Business Operations in Cuba or Syria (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
[ ] The entity submitting this sworn statement does have business operations in Cuba or Syria.

The City will follow Florida Statute §287.135. If the City determines this Vendor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel after the contract is executed, the contract may be terminated by the City by written notification. If the City determines this Vendor is found to have submitted a false certification, placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations with Cuba or Syria, the City shall notify the Vendor of its determination by written notification.

By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.

Thomas M. Murphy
AFFIANT

Thomas M. Murphy
Typed Name of AFFIANT

VP Owner
Title

STATE OF FLORIDA COUNTY OF COLLIER

The foregoing instrument was executed before me this 20th day of January, 2021, by THOMAS M MURPHY as VICE PRESIDENT of HOLE MONTES INC, who personally swore or affirmed that he/she is authorized to execute this document and thereby bind the Corporation, and who is personally known to me OR has produced _____ as identification.

Paulette Debus Charbonneau
NOTARY PUBLIC, State of FLORIDA

(stamp)

PAULETTE DEBUS CHARBONNEAU
Notary Public - State of Florida
Commission # HH 051444
My Comm. Expires Dec 7, 2024
Bonded through National Notary Assn.

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For City of Bonita Springs use only

To access the lists: http://www.sbafla.com/fsb/ > Funds We Manage tab > FRS Pension Plan - Global Governance Mandates > Global Governance Mandate Quarterly Reports > most current quarter

Scrutinized Companies that Boycott Israel List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in Sudan List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:
[ ] entity is **NOT** on list [ ] entity is on list

Business Operations in Cuba or Syria:
[ ] entity is **NOT** on list [ ] entity is on list

Verified by:_____ Date:_____
Print Name

EXHIBIT J

GENERAL PROVISIONS
State and Federal Regulations

1. 24 CFR 570 as amended- All the regulations regarding the CDBG program
2. 24 CFR 58 - The regulations prescribing the Environmental Review procedure.
3. Section I 04(b) and Section I 09 of Title I of the Housing and Community Development Act of 1974 as amended
4. The Fair Housing Act (42 U.S.C. 3601-20) Reasonable Accommodations Under the Fair Housing Act.
5. Executive Order 11063 - Equal Opportunity in Housing
6. Executive Order 11259 - Leadership & Coordination of Fair Housing in Federal Programs
7. 24 CFR Part I 07 - Non- Discrimination and Equal Opportunity in Housing under E.O.
8. Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, as amended
9. 24 CFR 570.60 I Subpart K - The regulations issued pursuant to Executive Order 11063 which prohibits discrimination and promotes equal opportunity in housing.
10. Executive Order 11246 ("Equal Employment Opportunity"), as amended by Executive Orders 11375 and 12086 - which establishes hiring goals for minorities and women on projects assisted with federal funds and as supplemented in Department of Labor regulations. EO I l246.
11. Executive Orders 11375 and 12086.
12. Title VII of the 1968 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972, 42 USC§ 2000e, et. seq. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that it is an Equal Opportunity or Affirmative Action employer.
13. 24 CFR 135 - Regulations outlining requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the CITY, the Consultant and any of the Subcontractor's. Failure to fulfill these requirements shall subject the CITY, the Consultant and any of the Consultant's Subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided, The Consultant certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
    The Consultant further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:
    "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."
    The Consultant further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low- income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs,
    The Consultant certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.
14. Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
15. Contract Work Hours and Safety Standards Act, 40 USC 327-332.
16. Section 504 of the Rehabilitation Act of 1973, 29 USC 776(b) (5), 24 CFR 570.614 Subpart K. Section 504: https://www.epa.gov/ocr
17. The Americans with Disabilities Act of 1990: https://www.hud.gov/hudprograms/eohudap

18. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
19. 29 CFR Parts 3 and 5 - Regulations that prescribe the payment of prevailing wages and the use of apprentices and trainees on federally assisted projects. HUD Form 40 IO must be included in all construction contracts funded by CDBG-DR:
Davis-Bacon Act: 42 USC 276a to 40 USC 276a:
29 CFR Part 3 - Contractors and Subcontractors on public building or Public Work Financed, in whole or in part, by Loans or Grants from the United States
29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provision Applicable Subject to the Contract Work Hours and Safety Standards Act)
Executive Order 11914 - Prohibits discrimination with respect to the handicapped, in federally assisted projects.
As a supplement to the Davis-Bacon Act requirements, the Consultant agrees to comply with the "Copeland Anti-Kickback Act," which prohibits the Consultant, its contractors, or subcontractors from inducing an employee to relinquish any part of his/her compensation, under the federally-funded contract.
20. Executive Order 11625 and U.S. Department of Housing and Urban Development Circular Letter 79-45 - which prescribes goal percentages for participation of minority businesses in Community Development Block Grant Contracts.
21. E.O. 11625 Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise.
22. The Consultant agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
23. 2 CFR 200 et seq - Uniform Administrative Requirements, Cost Principles, and Audit requirements for Grants and Agreements.
24. Immigration Reform and Control Act of 1986
25. Prohibition of Gifts to CITY Employees - No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service, or other item of value to any CITY employee,
26. Order of Precedence - In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Agreement shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Agreement. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Agreement, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.
27. Venue-Any suit of action brought by either party to this Agreement against the other party, relating to or arising out of this Agreement, must be brought in the appropriate federal or state courts, in Lee County, FL which courts have sole jurisdiction on all such matters. (No reference required for this item).
28. Dispute Resolution - Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. Any situations when negotiations, litigation and/or mediation shall be attended by representatives of Consultant with full decision-making authority and by CITY'S staff person who would make the presentation of any settlement reached during negotiations to CITY for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under§ 44.102, Florida Statutes. The litigation arising out of this Agreement shall be adjudicated in Lee County, Florida, if in state court and the US District Court, Middle District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, LEE COUNTY AND THE CONSULTANT EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAYE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.
29. The Consultant agrees to comply with the following requirements:
Clean Air Act, 41 USC 7401, et seq.
Federal Water Pollution Control Act, 33 USC 1251, et seq., as amended.
30. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4002 and 24 CFR 570.605 Subpart K), the Consultant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained. If appropriate, a letter of map amendment (LOMA) may be obtained from FEMA, which would satisfy this requirement and/or reduce the cost of said flood insurance.

31. The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to the HUD Lead- Based Paint Poisoning Prevention Act, found at 24 CFR 570.608, Subpart K.

32. The Consultant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State or Local historic property list.

33. The Consultant must certify that it will provide drug-free workplaces, in accordance with the Drug-Free Workplace Act of 1988 (41 USC 701).

34. The Consultant certifies 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; and, that the Consultant shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction as outlined in 24 CFR 570.609, Subpart K.

35. The Consultant agrees to comply with the following 0MB Circulars whichever is applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. These requirements are enumerated in 2 CFR 200, et seq.
Single Audits shall be conducted annually, in accordance with 2 CFR 200.501, and shall be submitted to the CITY nine (9) months after the end of the Consultant's fiscal year. The Consultant shall comply with the requirements and standards of 2 CFR 200 Subpart F, Section 500. Consultants exempt from Single Audit requirements shall submit financial statements to the CITY one hundred eighty (180) days after the end of the Consultant's fiscal year. Per 2 CFR 200.344, if this Agreement is closed out prior to the receipt of an audit report, the CITY reserves the right to recover any disallowed costs identified in an audit after such closeout.

36. Any real property acquired by the Consultant for the purpose of carrying on the projects stated herein, and approved by the CITY in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24.10 I, shall be subject to the provisions of CDBG-DR including, but not limited to, the provisions on use and disposition of property. Any real property within Consultant control, which is acquired or improved, in whole or part, with CDBG-DR funds in excess of $25,000, must adhere to the CDBG-DR Regulations at 24 CFR 570.505.

37. As provided in Subsection 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Consultant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof.
This notice is required by§ 287.133 (3) (a), Florida Statutes.

38. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds, other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, contracts under grants, loans, and cooperative agreements) and that all Consultant's shall certify and disclose accordingly.

39. Travel reimbursement will be based on the U.S. General Services Administration (GSA) per diem rates in effect at the time of travel. Equal access in accordance with the individual's gender identity in community planning and development programs, per 24 CFR 5, I 06.

40. Housing Counseling, including homeownership counseling or rental housing counseling, as defined in §5.100, required under or provided in connection with any program administered by HUD shall be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 170, per 24 CFR 5.111.

41. HUD Final Rule-Implementation of the Violence Against Women Reauthorization Act of2013 which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements.
Any rule or regulation determined to be applicable by HUD.

42. Florida Statutes 713 .20, Part I, Construction Liens

43. Florida Statutes 119,021 Records Retention

44. Florida Statutes, 119.071, Contracts and Public Records
45. Limited English Proficiency: The Consultant agrees to take reasonable steps to provide meaningful access to the program/project and activities funded under this Agreement for persons with limited English proficiency pursuant to information located at http://www.lep.gov.
46. Equal Treatment of Faith-Based Organizations: By regulation, DOJ/BJA prohibits all recipient organizations from using financial assistance from DOJ/BJA to fund explicitly religious activities. The Consultant agrees to avoid such prohibited conduct. Discrimination on the basis of religion in employment is generally prohibited by federal law, but the Religious Freedom Restoration Act is interpreted on a case-by-case basis to allow some faith-based organizations to receive DOJ/BJA funds while taking into account religion when hiring staff. Questions in this regard should be directed to the Office for Civil Rights.
47. Arrest and Conviction Records: Federal and state laws restrict use of arrest and conviction records in the employment context, except when specifically, authorized. The Consultant agrees to avoid the misuse of arrest or conviction records to screen applicants for employment or employees for retention or promotion that may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination unless use is otherwise specifically authorized by law.
48. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352): The Consultant will not use and has not used federal appropriated funds to pay at any tier, either directly or indirectly, any person or organization 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 obtaining any federal contract, grant, or any other award or subaward covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award or subaward. Such disclosures are forwarded from tier-to-tier up to the Consultant. The Consultant shall comply with the lobbying restrictions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and (ii) ensure that its officers, employees and its subcontractors hereunder comply with all applicable local, state, and federal laws and regulations governing advocacy of and appearances before any legislative body. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before local, state, or federal legislatures.
49. False Claim; Criminal, or Civil Violation: Consultant must promptly refer to CITY any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either (1) submitted a false claim for grant funds under the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving subaward agreement funds.
50. Political Activities Prohibited: None of the funds provided directly or indirectly under this Agreement shall be used for any political activities or to further the election or defeat of any candidates for public office; Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities or activities for or against the election of a candidate for an elected office.
51. Text Messaging: Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Federal Register 51225 (October I, 2009), DOJ/BJA encourages recipients and subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by DOJ/BJA and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
52. Trafficking in Persons: The Consultant agrees to, at any tier, comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of the Consultant and any employees of the Consultant.
53. Association of Community Organizations for Reform Now (ACORN): The Consultant understands and acknowledges that it cannot use any federal funds, either directly or indirectly, in support of any contract or subaward to either ACORN or its subsidiaries, without the express prior written approval of OJP.
54. If the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this funding agreement, the Consultant must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Busines Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by HUD.

CITY OF BONITA SPRINGS, FLORIDA
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this _____ day of _____, 2020, between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and Q. Grady Minor & Associates, P.A., Inc. (hereinafter referred to as the "Consultant").

WITNESSETH

WHEREAS, the City desires to obtain the professional services of said Consultant to provide and perform professional services as further described hereinafter concerning the project to be referred to and identified as: Miscellaneous Surveying Services for the Community Development Block Grant-Disaster Recovery (CDBG-DR) Voluntary Home Buyout Program CN 20-07, and

WHEREAS, the Consultant hereby certifies that Consultant has been granted and possesses valid, current licenses to do business in the State of Florida and in the City of Bonita Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultants Competitive Negotiation Act, Florida Statutes §287.055.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a contract shall exist between both parties consisting of:

ARTICLE 1.00-SCOPE OF PROFESSIONAL SERVICES
Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in the Scope of Professional Services, which is attached hereto and made a part of this Agreement.

ARTICLE 2.00-DEFINITIONS
The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 CITY
The term "City" shall refer to the City of Bonita Springs, a municipality incorporated within the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the City's behalf relative to this Agreement.

2.02 CONSULTANT
The term "Consultant" shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all change orders thereto.

2.03 PROFESSIONAL SERVICES
The term "Professional Services" shall refer to all of the services, work materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the Consultant and its employees and any and all sub-consultants and subcontractors the Consultant may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT
The term "Sub-Consultant" shall refer to any individual or firm offering professional services which is engaged by the Consultant to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated, responsible and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any sub-consultant.

2.05 SUBCONTRACTOR
The term "Subcontractor" shall refer to any individual, company or firm providing other than professional services which is engaged by the Consultant to assist the Consultant in contractually obligated, responsible, and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any subcontractor.

2.06 PROJECT
The term "Project" shall refer to such facility, system, program or item as described in the summary statement set forth in the preamble of this Agreement.

2.07 BASIC SERVICES
The term "Basic Services" shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached Scope of Professional Services.

2.08 ADDITIONAL SERVICES
The term "Additional Services" shall refer to such professional services as the City may request and authorize, in writing, the Consultant to provide and perform relative to this Agreement which are not included in the basic services. Additional services shall be authorized by the execution of both parties to this Agreement by a change order agreement.

2.09 CHANGE ORDER
The term "Change Order" shall refer to a written document, change order agreement, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon scope of professional services and tasks, compensation and method of payment, time and schedule of performance, or project guidelines and criteria as such were set forth and agreed to in the initial agreement, supplemental task authorization(s), or previous change orders issued thereto. The change order document, which shall be executed on a City standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all change orders executed and issued under this Agreement shall be understood and agreed by both parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the change order including, but not limited to, any and all direct costs, indirect costs and associated costs which may result from or be caused by the change order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the Consultant's general administrative and overhead costs and profit.

In the event the City decides to delete all, or portions, of the scope of services, task(s), or requirements set forth in the initial agreement, supplemental task authorizations or previously authorized change orders, the City may do so by the unilateral issuance of a written change order to the Consultant. Such a unilaterally issued change order shall set forth, if appropriate, an agreement by both the City and the Consultant establishing changes in the amount of compensation to be paid the Consultant as a result of the deletion or decrease in the services required shall have no effect on, or otherwise prevent the City from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the Consultant.

2.10 SUPPLEMENTAL TASK AUTHORIZATION
The term "Supplemental Task Authorization" as used refers to a written document executed by both parties to an existing professional services agreement setting forth and authorizing a limited number of professional services, tasks, or work.

2.11 CITY MANAGER
The term "City Manager" shall refer to the City Manager or his designee requesting the service, employed by the City Council to serve and act on the City's behalf, as it relates to this project. The City Manager within the authority conferred by the City Council, acting as the City's designated representative shall issue written notification to the Consultant of any and all changes approved by the City in the Consultant's: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to basic services and additional services pursuant to this Agreement or change order(s) or supplemental task authorization(s) pertaining thereto. The City Manager shall be responsible for acting on the City's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, change order(s) or supplemental task authorization(s) issued thereunder.

2.12 PROJECT MANAGER
The term "Project Manager" shall refer to the person employed or retained by the City and designated, in writing, to serve and act on the City's behalf to provide direct contact and communication between the City and Consultant with respect to

providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and such written change order(s) and supplemental task authorization(s) as are authorized. The Project Manager is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; (3) the amount of compensation the City is obligated or committed to pay the Consultant. The Project Manager shall review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and change order(s), supplemental task authorization(s) thereto.

2.13 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or sub-contractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set forth in subsequent work orders, supplemental agreements, and/or change orders agreed to in writing by both parties to this Agreement.

2.14 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the Consultant's compensation to provide and perform the services and work necessary and required pursuant to the tasks set forth in the Scope of Professional Services, and any change orders, supplemental task authorizations, and work orders authorized thereto, is established to be made on a not-to-exceed (NTE) amount basis, it is mutually understood and agreed that such compensation for each completed task shall be made on the following basis:

For the actual hours necessary, required and expected by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in the Compensation and Method of Payment, which is attached hereto and made a part of this Agreement, to the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by sub-consultants and subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the City and the Consultant and as are set forth as a part of the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

With the understanding and agreement that the City shall pay the Consultant for all such costs and expenses within the established NTE amount for each task or sub-task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the City covering all such costs and expenses; and

With the understanding and agreement that the Consultant's invoices and all payments to be made for all NTE amounts shall be subject to the review, acceptance and approval of the City; and with the understanding and agreement that when the Consultant's compensation is established on a NTE basis for a specific task(s) or sub-task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and sub-consultant and subcontractor costs for any such specific task(s) or sub-task(s) shall not exceed the amount of the total NTE compensation established and agreed to for each specific task(s) or sub-task(s). In the event the amount of compensation for any task(s) or sub-task(s) to which the Consultant is entitled on the NTE basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the NTE amount established for the specific task or sub-task, it is understood and agreed that any unexpended amount under a specific task or sub-task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other task(s) or sub-task(s).

ARTICLE 3.00-OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES

The Consultant agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida, Lee County and in the City of Bonita Springs, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement.

3.02 PERSONNEL

1) QUALIFIED PERSONNEL

The Consultant agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all basic services and additional services to be provided pursuant to this Agreement.

2) CONSULTANT'S PROJECT DIRECTOR

The Consultant agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising under this Agreement unless substitute arrangements have been furnished to the City in writing. The Consultant agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance of the City.

3) CONSULTANT'S STAFF

Consultant will specify the technical and support staff who will be assigned to this project. Consultant will notify City's Project Manager of any changes and/or substitution of staff working on the project.

4) REMOVAL OF PERSONNEL

The Consultant agrees, within thirty (30) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the City shall request, in writing, be removed, this request may be made by the City with or without cause.

5) IMMIGRATION LAW COMPLIANCE

Consistent with Bonita Springs Code §36.22, effective June 1, 2009, Contractors providing services to the City, as a condition of each contract, must use E-Verify to verify the employment of any person hired during the contract term by the contractor and assigned by the Contractor to perform work for the City. Before any contract with the City is signed, proof of enrollment with E-Verify must be provided. The Contractor acknowledges that he will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Contractor the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Contractor must also be responsible for entering into an agreement with each and every vendor and subcontractor that states that vendors and subcontractors (and their vendors) are independently responsible for their own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the City. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The City may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all basic services and additional services will be provided, performed and completed in a timely and diligent manner throughout.

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the Consultant and by any sub-consultant(s) and/or subcontractor(s) engaged by the Consultant as set forth in the Scope of Professional Services shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the City approves this Agreement, or which may

subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the Consultant to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services shall serve as a basis for the City to consider the development and issuance of a change order to provide for a change to, or additional services to, the services set forth in this Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1) RESPONSIBILITY TO CORRECT

The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any sub-consultant(s) or subcontractor(s) engaged by the Consultant.

2) CITY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, nor acceptance by the City of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the Consultant, or any sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the City's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the City's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY AND HOLD HARMLESS

To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expenses and in a manner acceptable to and approved by the City, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its sub-consultants and/or subcontractors. This Consultant's obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the City.

The City reserves the right, should the Consultant fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the City for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

1) In the event the services required pursuant to this Agreement include the Consultant preparing and submitting to the City cost estimates, the Consultant, by exercise of this experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under this Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and corrections of any and all such cost

estimates. For purposes of the liability provisions of this article only, the Consultant's estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the City's acceptance of the estimate(s).

2) The cost estimates of Consultants or sub-consultants engaged by Consultants, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions provided in Consultant to Repair Property Damage Caused by the Consultant.

3) COST ESTIMATES

a) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus forty percent (40%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the order of magnitude estimate shall be recoverable by the City.

b) BUDGET ESTIMATE

Budget in this case applies to the City's budget and not to the budget as a project-controlled document. A budget is prepared with the use of flow sheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty percent (20%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the budget estimate shall be recoverable by the City.

c) CONSTRUCTION COST ESTIMATE

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a construction cost estimate is vital to the City's interests because it may be used for such purposes as, but not limited to the following: budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction project.

In the event the City solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a construction cost estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the Consultant's construction cost estimate by more than the percent accuracy set forth hereinabove, the Consultant shall, upon notification by the City, assume responsibility for and proceed to provide and perform the following service without additional compensation.

The Consultant will, subject to the review and approval of the City, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the construction cost estimate prepared by the Consultant. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the City for the project and set forth in this Agreement or change order(s) or supplemental task authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawing prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the Consultant's construction cost estimate, the costs associated with the Consultant's preparation and development of the construction cost estimate shall be recoverable by the City by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the construction cost estimate prepared by the Consultant, the amount of the construction cost estimate submitted by the Consultant shall be adjusted from the date the construction cost estimate was received by the City until the date bids or price proposals are received by the City, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the City receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the Consultant may deem it appropriate to recommend the City reject any such bid(s) or priced proposal(s). If under such circumstances the City concurs with the Consultant's recommendation and rejects the bid(s) or priced proposal(s), the City will not hold the Consultant responsible to, nor will the City require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the City and made payable to the respective governmental body upon the Consultant furnishing the City satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY request the Consultant to provide and perform professional services for this project which are not set forth in the Scope of Professional Services, the Consultant agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

Additional services shall be administered and authorized as change orders or supplemental task authorizations under this Agreement. The Consultant shall not provide or perform, nor shall the City incur or accept any obligation to compensate the Consultant for any additional services unless and until a written change order or supplemental task authorization has been agreed to and executed by both parties.

Each such change order or supplemental task authorization shall set forth a comprehensive, detailed description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said additional services.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The City may request the Consultant to execute a Truth-in-Negotiations Certificate ("Certificate"). The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized. The compensation to be paid the Consultant as set forth in the Compensation and Method of Payment, change orders, and supplemental task authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized thereto as stated above.

ARTICLE 4.00-OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

The City agrees after the execution of this Agreement to promptly advise the Consultant, in writing, of the person designated to serve and act as the City's Project Manager. Such notification shall be provided to the Consultant by the Project Manager.

4.02 AVAILABILITY OF CITY INFORMATION

1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the Consultant regarding requirements the City has established or suggests relative to the project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in the Project Guidelines and Criteria, which is attached hereto and made a part of this Agreement.

2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the Consultant's request, the City agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the City to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the City such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The City agrees that the City Manager and the Project Manager shall be available within a reasonable period of time, with reasonable prior notice given by the Consultant, to meet and/or consult with the Consultant on matters pertaining to the services to be provided and performed by the Consultant. The City further agrees to respond within a reasonable period of time to written requests submitted by the Consultant.

4.04 ACCESS TO CITY PROPERTY

The City agrees, with reasonable prior written notice given by the Consultant, to provide the Consultant with access within a reasonable period of time to City property, facilities, buildings and structures to enable the Consultant to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with City operations, or the operations carried on by others under a lease, or other contractual arrangement with the City, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the Consultant's normal office and/or field workdays and/or work hours.

ARTICLE 5.00-COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC AND ADDITIONAL SERVICES

The City shall pay the Consultant for all requested and authorized basic services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the City in accordance with the provisions for compensation and payment of said basic services set forth and prescribed in the Compensation and Method of Payment or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written change order executed by both parties.

5.02 METHOD OF PAYMENT

1) MONTHLY STATEMENTS

The Consultant shall be entitled to submit no more than one (1) invoice statement to the City each calendar month covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or change order(s) and supplemental task authorization(s) thereunder.

2) PAYMENT FOR SERVICES PERFORMED

The City shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

a) The City shall pay Consultant on the basis of services completed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment, as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the City. No payments shall be made for Consultant's work-in-progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the City. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the City, the City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

b) The City shall pay the Consultant for services performed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment on the basis of an invoice statement covering Consultant's work-in-progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-progress percentages are subject to the review and approval of the City. The decision of the City shall be final as to the work-in-progress

percentages paid. Payment by the City for tasks on a work-in-progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the City of any such service or work-in-progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-progress payments have been made. All tasks to be paid for on a work-in-progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in the Compensation and Method of Payment with the notation (WIPP). Only tasks so identified will be paid on a work-in-progress percentage basis. The City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

3) PAYMENT SCHEDULE

The City shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the City object or take exception to the amount of any Consultant's invoice statement, the City shall notify the Consultant of such objection or exception within the thirty (30) calendar days payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar days' period, the City shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.03 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE CITY

In the event of termination of this Agreement at the convenience of the City, not at the fault of the Consultant, the City shall compensate the Consultant only for the services performed prior to the effective date of termination, reimbursable expenses then due and reasonable expenses incurred by the Consultant in affecting the termination of services and work, and incurred by the submittal to the City of project drawings, plans, data, and other project documents.

5.04 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the City suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the City shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.05 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; (3) and/or are modified by the subsequent issuance of supplemental task authorization(s) and/or change order(s), other than receiving the compensation set forth in Payment When Services are Terminated at the Convenience of the City and Payment When Services are Suspended, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00-TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the City may authorize specific tasks to be completed. Upon agreement on the scope and fee for this work and execution of supplemental task authorization, the City will issue the Consultant a written notice to proceed. Following the issuance of such notice to proceed the Consultant shall be authorized to commence work and the Consultant thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, which is attached hereto and made a part of this Agreement.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the City shall grant the extension if the City determines the delay(s)

encountered by the Consultant, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The Consultant shall be required as a condition of this Agreement to prepare and submit to the City, on a monthly basis, commencing with the issuance of the notice to proceed, a Consultant's work schedule. The work schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's work schedule of planned and actual work progress shall be updated and submitted by the Consultant to the City on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the City at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any change order(s) and supplemental task authorization(s) issued thereto.

ARTICLE 7.00-SECURING AGREEMENT

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

ARTICLE 8.00-CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines that there is a conflict of interest, Consultant or such sub-consultant shall decline the representation upon written notice by the City.

If the City determines that there is not such conflict of interest, then the City shall give its written consent to such representation. If Consultant or sub-consultant accepts such a representation without obtaining the City's prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such sub-consultant under this Agreement, then the Consultant or such sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such sub-consultants to comply with the provisions of this section.

Should the Consultant fail to advise or notify the City as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the City may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00-ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor Consultant, or consulting organization. Nor shall the Consultant subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the City. The Consultant shall have the right, subject to the City's prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The City shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in Consultant's Associated Sub-Consultants and Subcontractors, which is attached hereto and made a part of this Agreement.

ARTICLE 10.00-APPLICABLE LAW

Unless otherwise specified, this Agreement shall be governed by the laws, rules, regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States Government.

ARTICLE 11.00-COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES

The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

ARTICLE 12.00-WAIVER OF BREACH

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00-INSURANCE

For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

The Vendor shall procure and maintain property insurance (Builder's Risk, Installation Floaters, etc.) upon the entire project, if required, to the full insurable value of the scope of work. The City and the Vendor waive against each other and the City's separate Vendors, Contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and City shall, where appropriate, require similar waivers of subrogation from the City's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. All deductibles for property insurance procured by the Vendor shall be the responsibility of the Vendor.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name the City of Bonita Springs, Florida, as an additional insured including completed operations (and products if applicable). The policy shall be endorsed to be primary to any similar coverage carried by the City.

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all contracts.

ARTICLE 14.00-DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00-REPRESENTATION OF THE CITY

The Consultant in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the City in this manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written change order(s) and supplemental task authorization(s) issued thereunder.

In the event the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the City's behalf, and shall not act on the City's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor; or (2) the time for completing the work as required and agreed to in the construction contract; or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The City will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00-OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the City of a written change order deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the City, shall be delivered by the Consultant to the City within seven (7) calendar days of the City making such a request. In the event the City gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the City of a written change order deleting all or part of the services or work required, the Consultant shall deliver to the City the requested documents as set forth hereinabove, with the mutual understanding and commitment by the City that compensation earned or owing to the commitment by the City that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the notice of termination or change order.

The Consultant, at its expense, may make and retain copies of all documents delivered to the City for reference and internal use. The Consultant shall not, and agrees not to, use any of these documents, data and information contained therein on any other project or for any other client without the prior expressed written permission of the City.

Any use by the City of said documents, data and information contained therein, obtained by the City under the provisions of this Agreement for therein, obtained by the City under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the City, and without liability to the Consultant. The City shall be liable and agrees to be liable for and shall indemnify, defend and hold the Consultant harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the City's use of such documents in a manner contrary to the provisions set forth hereinabove. The City hereby acknowledges receipt of $10.00 (ten and no hundred dollars) and other good and valuable consideration from the Consultant which has been paid as specific consideration for the indemnification provided herein.

ARTICLE 17.00-MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

17.01 COMPLIANCE WITH PUBLIC RECORDS LAW

The Consultant must comply with Florida public records laws, specifically to:

a) Keep and maintain public records required by the City to perform the service.

b) Upon request from the City's custodian of public records, provide the City 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 Florida Statutes §119 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 Consultant does not transfer the records to the City.

d) Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

e) The City will consider it a breach of contract should the Consultant fail to comply with any public records request.

f) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.

g) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESGIN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, debbie.filipek@cityofbonitasprings.org.**

h) If the Consultant is not providing the requested public records, the burden of proof is on the Consultant to show why they did not comply with the request.

ARTICLE 18.00-HEADINGS

The headings of the articles, sections, exhibits, attachments, phases or tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such articles, sections, exhibits, attachments, phases or tasks.

ARTICLE 19.00-ENTIRE AGREEMENT

This Agreement and attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 20.00-NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement to be given by the Consultant to the City shall be in writing and shall be given by the United States Postal Service Department first class mail service postage prepaid, addressed to the following City address of record and sent to the attention of the City's Project Manager unless waived by City:

Elly Soto McKuen, Senior Project Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Copy: City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

20.02 NOTICES BY CITY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the City to the Consultant shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following Consultant's address of record unless waived by Consultant:

Consultant Name: Q. Grady Minor & Associates, P.A.

Consultant Address: 3800 Via Del Rey

Consultant Address: Bonita Springs, FL 34134

Telephone Number: (239) 947-1144

Fax Number: (239) 947-0375

ATTENTION: Mark W. Minor, P.E., President
Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party per above contacts.

ARTICLE 21.00-TERM

This Agreement is effective as of the date first written above and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 22.00-TERMINATION

This Agreement may be terminated by the City at its convenience, or due to the fault of the Consultant, by the City giving thirty (30) calendar days written notice to the Consultant.

If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the City's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the City may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar days written notice, terminate this Agreement.

In addition to the City's contractual right to terminate this Agreement in its entirety as set forth above, the City may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services or the Project Guidelines and Criteria, or as such may be established by change order or supplemental task authorization. The City shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the City dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the City reserves the right to accept or not accept the termination request submitted by the Consultant, effective unless and until Consultant is notified, in writing, by the City of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the Consultant shall deliver to the City all papers, drawings, models, and other material in which the City has exclusive rights by virtue hereof or of any business done, or services or work performed by the Consultant on behalf of the City.

ARTICLE 23.00-AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendment, the requirements, provisions and/or terms of the amendment shall take precedence.

ARTICLE 24.00-MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed change order(s) or supplemental task authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written change order(s), and/or supplemental task authorizations, the latest executed change order(s), and/or supplemental task authorization(s) shall take precedence.

In the event the City issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the City's internal control purposes only, and any and all terms, provisions and conditions contained herein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 25.00-ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: _____
CITY CLERK

DATE: _____

ATTEST:

_____
(Witness)

_____
(Witness)

CORPORATE SEAL

CITY OF BONITA SPRINGS CITY COUNCIL

BY: _____
MAYOR

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

CONSULTANT

BY: _____
(Authorized Signature)

Mark W. Minor, P.E. / President
(Title)

DATE: January 05, 2021

EXHIBIT A

Scope of Professional Services
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date:_____

Basic Services

Section 1 General Scope Statement

The Consultant shall provide and perform the following professional services, which shall constitute the general scope of the basic services under the covenants, terms, and provisions of this Professional Services Agreement.

Section 2 Tasks

Pursuant to the general scope of the basic services stated herein above, the Consultant shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in Compensation and Method of Payment.

The CONSULTANT shall perform engineering, land survey, and aerial photography services necessary for the subject project as outlines; reference all centerline survey control points; establish the benchline on National Geodetic Vertical Datum (1929) throughout the project and tie property lines to comply with Florida Department of Natural Resources Rule, Florida Administrative Code Chapter 16 Q-3 (Florida Statutes 177 - Part Two).

Survey work shall be performed under the responsible charge of a Professional Land Surveyor registered in the State of Florida and shall be accomplished in accordance with the Florida Department of Transportation Policy 760.000-760.012, and Florida Department of Transportation Location Manual. Work must comply with the minimum technical standards for Land Surveyors Rule 2lHH-6, Florida Statutes 472.027; measurements of regular roadway cross-sections may be recorded on electronic data collection equipment.

Surveys shall also be provided in an electronic format, compatible with the following City GIS standards:

- DXF or DWG Format
- Coordinate System:
  1. Horizontal: State Plane FLORIDA WEST, FIPS 0902, NAD83, US Feet
  2. Vertical: NAVD 1988, US Feet
- CAD Layer organization

Administration
City Limits

Transportation
Road Centerline (line)
Pavement Area (polygon)
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)
Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail
Fence
Bridge
Pavement Message (point)

Storm Water
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)

Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail

Landscaping
Irrigation
Median (to be determined)

- Location accuracy requirements: all features should be within + or – one meter from actual position.

Roadway Survey
Provide engineering and land surveys necessary to establish the roadway alignments and intersecting streets within the project limits and obtain topography, cross sections, underground utilities, right-of-way, land ties and required drainage information for existing and proposed drainage systems and in accordance with the master drainage plan/storm run-off treatment areas.

Underground Utilities
Field locate existing underground utilities, based upon information provided in Task 7.01, only as deemed necessary to identify conflicts or potential conflicts with existing utilities during roadway and drainage construction. Horizontal and vertical location of underground utilities will be obtained prior to completion of Task 6.02. This task includes coordination with various utility companies and assumes that the respective utility shall be responsible for "pot holing," said underground systems. The horizontal and vertical location of each utility will be documented, based on the "pot-holing" performed by the respective utility company or the consultant.

Jurisdictional Wetlands Survey
After jurisdictional wetland lines have been flagged and verified by the agencies, the jurisdictional line will be located by GPS to sub-meter accuracy.

Planimetric
The Consultant shall provide planimetric of the project area sufficient to define topographical (two dimensional) details along the proposed roadway for the width of 300 feet either side of the centerline.
The scale Aerial Photography will not be acceptable for plan portion for the plan & profile sheets.

This list of activities is not meant to be complete and absolute. The City reserves the right to add additional related activities as the City implements these programs and survey related projects.

EXHIBIT B

Compensation and Method of Payment
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

Section 1 Basic Services/Task(s)

The City shall compensate the Consultant for providing and performing the task(s) set forth and enumerated in the Scope of Professional Services, as follows:

NOTE: A lump sum (LS) or not-to-exceed (NTE) amount of compensation to be paid the Consultant should be established and set forth below for each task or sub-task described and authorized in the Scope of Professional Services. Tasks to be paid on a work-in-progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
TOTAL				

(Unless list is continued on next page.)

Date: _____

Should it be mutually agreed to base compensation for additional services on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained below.

CONSULTANT OR SUB-CONSULTANT NAME Q. Grady Minor & Associates, P.A.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct** Payroll Average Hourly Rate
Principal Surveyor	$160
Registered Surveyor	$140
Senior Surveying Technician	$120
Survey Field Crew – 2 man & Robotic	$155
Survey Field Crew – 3 man	$175
Senior GIS Technician	$135
Survey Technician I	$105
Survey Technician II	$ 95
Administrative Assistant	$ 70
Blacklines	$2/EA
Lath	$55/Bundle
Stakes	$28/Bundle
Incidental Expenses	Actual Cost+10%

*NOTE: A separate personnel hourly rate schedule should also be attached for each sub-consultant listed in Consultant's Associated Sub-Consultant(s) and Subcontractor(s).

**NOTE: Direct Payroll Hourly Rate means the actual gross hourly wage paid.

EXHIBIT C

Time and Schedule of Performance
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

This Exhibit establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in the Scope of Professional Services. The Time and Schedule of Performance set forth hereinafter is established pursuant to Time and Schedule of Performance.

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing services and work on this project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
	N/A	

EXHIBIT E

Project Guidelines and Criteria
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

The City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

NONE

EXHIBIT F

Truth in Negotiation Certificate
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Truth-In-Negotiations Certificate.

2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.

3. The truth of statements made herein may be relied upon by the City and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the Consultant, doing business as:

COMPANY NAME: Q. Grady Minor & Associates, P.A.

BY: Mark W. Minor, P.E.

TITLE: President

The foregoing instrument was signed and acknowledged before me this 05 day of January, 2021

by Mark W. Minor, P.E. who is personally known ~~OR has produced~~
(Print or Type Name) (Type of Identification & Number)

~~as identification~~

Notary Public Signature

CARIN J. DWYER
MY COMMISSION # GG 982367
EXPIRES: May 14, 2024
Bonded Thru Notary Public Underwriters

Notary Commission Number/Expiration

EXHIBIT G

Insurance and Bonding Requirements

All policies shall be Best's Rated "A-" or better or subject to approval

Insurance / Bond Type	Required Limits
☒ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements. ☒ **The policy shall be endorsed to provide a waiver of subrogation in favor of the City.** NOTE: Any "non-construction industry" company employing more than 3 employees (not including a sole proprietor owner) must have workers' compensation coverage. ALL "construction industry" (as defined by FL Rule # 69L-6.021) companies with ANY employees must have coverage or if no statutory employees, then up to three officers or a sole proprietor MUST have a current exemption certificate from the Division of Workers' Compensation on file.
☒ Employer's Liability	$1,000,000 single limit per occurrence (Workers' Compensation Part B)
☒ Commercial General Liability (Occurrence Form) patterned after the current ISO form	Bodily Injury and Property Damage ☒ $1,000,000 per occurrence, $1,000,000 aggregate (Per Project) for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
☒ Indemnification	To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.
☒ Automobile Liability	☒ $ 1,000,000 Each Occurrence; Bodily Injury & Property Damage Owned/Non-owned/Hired; Automobile Included
☒ Other insurance as noted:	☐ Watercraft $ _____ Per Occurrence ☐ United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work. **STATUTORY** ☐ Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. $ _____ Per Occurrence ☐ Property Insurance (Or Builder's Risk) **Full insurable value of the scope of the work** ☐ Pollution $ _____ Per Occurrence ☒ Professional Liability $1,000,000 per claim and in the aggregate

☐ Railroad Right of Way	☐ Umbrella Excess $ _____ Per Occurrence ☐ Railroad Protective Liability Insurance per occurrence limit of not less than **Two Million Dollars ($2,000,000)** and aggregate limits of **Six Million Dollars ($6,000,000)** to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your General Liability policy coverage to be $5,000,000. They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage. For additional information on their insurance requirements and other requirements such as payment for and scheduling Railroad Inspector / Flagman, please contact Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.
☐ Bid bond	Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
☐ Performance and Payment Bonds	If the box is checked for a project less than $200,000, a performance bond will be required. For projects in excess of $200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. **Per FS §255.05, the Contractor shall provide a certified copy of the recorded bond to the City.**

☒ Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

☒ The City of Bonita Springs must be named as "**ADDITIONAL INSURED, INCLUDING PRODUCTS AND COMPLETED OPERATIONS**" on the Insurance Certificate for Commercial General Liability.

☒ The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

☒ **Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to the City of Bonita Springs.

EXHIBIT H

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Vendor Covered Transactions

(1) The prospective vendor certifies, by submission of this Annual Agreement, that neither it nor its principles are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the vendor is unable to certify to the above statement, the prospective vendor shall attach an explanation to this form.

VENDOR

Q. Grady Minor & Associates, P.A.
Company Name

173898057
DUNS Number

Signature

01/05/2021
Date

Mark W. Minor, P.E. / President
Print Name and Title

3800 Via Del Rey
Street Address

Bonita Springs, FL 34134
City, State, Zip

For City of Bonita Springs use only

To access the debarment search: https://www.sam.gov/SAM/ > Search Records tab > Enter DUNS number > Click Search

Company: [ ] is debarred [ ] is not debarred

Verified by: _____ Date: _____
Name

EXHIBIT I

Scrutinized Companies Statement

SWORN STATEMENT UNDER SECTION 287.135(5), FLORIDA STATUTES: THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number **CN 20-07**, for **Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program.**

2. This sworn statement is submitted by Q. Grady Minor & Associates, P.A. whose business
[Name of entity submitting sworn statement]

address is 3800 Via Del Rey, Bonita Springs, FL 34134 and (if

applicable) its Federal Employer Identification Number (FEIN) is 59-2583954 (If the entity has no

FEIN, include the Social Security Number of the individual signing this sworn statement:_____.

3. My name is Mark W. Minor, P.E. and my relationship to the above is
[Please print name of individual signing]

President.

4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.

6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.

8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. **[Please indicate which statements apply].**

X Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.

[ ] Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.

[ ] Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

[ ] Business Operations in Cuba or Syria (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
[ ] The entity submitting this sworn statement does have business operations in Cuba or Syria.

The City will follow Florida Statute §287.135. If the City determines this Vendor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel after the contract is executed, the contract may be terminated by the City by written notification. If the City determines this Vendor is found to have submitted a false certification, placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations with Cuba or Syria, the City shall notify the Vendor of its determination by written notification.

By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.

_____ Mark W. Minor, P.E.
AFFIANT Typed Name of AFFIANT

President
Title

STATE OF Florida COUNTY OF Lee

The foregoing instrument was executed before me this 05 day of January, 20 21,

by Mark W. Minor, P.E. as President of

Q. Grady Minor & Associates, P.A., who personally swore or affirmed that he/she is authorized to execute this document and thereby bind the Corporation, and who is personally known to me ~~OR has~~

~~produced xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx as identification.~~

NOTARY PUBLIC, State of FLORIDA

(stamp)

CARIN J. DWYER
MY COMMISSION # GG 982367
EXPIRES: May 14, 2024
Bonded Thru Notary Public Underwriters

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For City of Bonita Springs use only

To access the lists: http://www.sbafla.com/fsb/ > Funds We Manage tab > FRS Pension Plan - Global Governance Mandates > Global Governance Mandate Quarterly Reports > most current quarter

Scrutinized Companies that Boycott Israel List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in Sudan List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:
[ ] entity is **NOT** on list [ ] entity is on list

Business Operations in Cuba or Syria:
[ ] entity is **NOT** on list [ ] entity is on list

Verified by:_____ Date:_____
Print Name

EXHIBIT J
GENERAL PROVISIONS
State and Federal Regulations

1. 24 CFR 570 as amended- All the regulations regarding the CDBG program
2. 24 CFR 58 - The regulations prescribing the Environmental Review procedure.
3. Section I 04(b) and Section I 09 of Title I of the Housing and Community Development Act of 1974 as amended
4. The Fair Housing Act (42 U.S.C. 3601-20) Reasonable Accommodations Under the Fair Housing Act.
5. Executive Order 11063 - Equal Opportunity in Housing
6. Executive Order 11259 - Leadership & Coordination of Fair Housing in Federal Programs
7. 24 CFR Part I 07 - Non- Discrimination and Equal Opportunity in Housing under E.O.
8. Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, as amended
9. 24 CFR 570.60 I Subpart K - The regulations issued pursuant to Executive Order 11063 which prohibits discrimination and promotes equal opportunity in housing.
10. Executive Order 11246 ("Equal Employment Opportunity"), as amended by Executive Orders 11375 and 12086 - which establishes hiring goals for minorities and women on projects assisted with federal funds and as supplemented in Department of Labor regulations. EO I I246.
11. Executive Orders 11375 and 12086.
12. Title VII of the 1968 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972, 42 USC§ 2000e, et. seq. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that it is an Equal Opportunity or Affirmative Action employer.
13. 24 CFR 135 - Regulations outlining requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the CITY, the Consultant and any of the Subcontractor's. Failure to fulfill these requirements shall subject the CITY, the Consultant and any of the Consultant's Subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided, The Consultant certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
    The Consultant further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:
    "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."
    The Consultant further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low- income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs,
    The Consultant certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.
14. Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
15. Contract Work Hours and Safety Standards Act, 40 USC 327-332.
16. Section 504 of the Rehabilitation Act of 1973, 29 USC 776(b) (5), 24 CFR 570.614 Subpart K. Section 504: https://www.epa.gov/ocr
17. The Americans with Disabilities Act of 1990: https://www.hud.gov/hudprograms/eohudap
18. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

19. 29 CFR Parts 3 and 5 - Regulations that prescribe the payment of prevailing wages and the use of apprentices and trainees on federally assisted projects. HUD Form 40 IO must be included in all construction contracts funded by CDBG-DR:
Davis-Bacon Act: 42 USC 276a to 40 USC 276a:
29 CFR Part 3 - Contractors and Subcontractors on public building or Public Work Financed, in whole or in part, by Loans or Grants from the United States
29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provision Applicable Subject to the Contract Work Hours and Safety Standards Act)
Executive Order 11914 - Prohibits discrimination with respect to the handicapped, in federally assisted projects.
As a supplement to the Davis-Bacon Act requirements, the Consultant agrees to comply with the "Copeland Anti-Kickback Act," which prohibits the Consultant, its contractors, or subcontractors from inducing an employee to relinquish any part of his/her compensation, under the federally-funded contract.
20. Executive Order 11625 and U.S. Department of Housing and Urban Development Circular Letter 79-45 - which prescribes goal percentages for participation of minority businesses in Community Development Block Grant Contracts.
21. E.O. 11625 Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise.
22. The Consultant agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
23. 2 CFR 200 et seq - Uniform Administrative Requirements, Cost Principles, and Audit requirements for Grants and Agreements.
24. Immigration Reform and Control Act of 1986
25. Prohibition of Gifts to CITY Employees - No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service, or other item of value to any CITY employee,
26. Order of Precedence - In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Agreement shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Agreement. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Agreement, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.
27. Venue-Any suit of action brought by either party to this Agreement against the other party, relating to or arising out of this Agreement, must be brought in the appropriate federal or state courts, in Lee County, FL which courts have sole jurisdiction on all such matters. (No reference required for this item).
28. Dispute Resolution - Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. Any situations when negotiations, litigation and/or mediation shall be attended by representatives of Consultant with full decision-making authority and by CITY'S staff person who would make the presentation of any settlement reached during negotiations to CITY for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under§ 44.102, Florida Statutes. The litigation arising out of this Agreement shall be adjudicated in Lee County, Florida, if in state court and the US District Court, Middle District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, LEE COUNTY AND THE CONSULTANT EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAYE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.
29. The Consultant agrees to comply with the following requirements:
Clean Air Act, 41 USC 7401, et seq.
Federal Water Pollution Control Act, 33 USC 1251, et seq., as amended.
30. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4002 and 24 CFR 570.605 Subpart K), the Consultant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained. If appropriate, a letter of map amendment (LOMA) may be obtained from FEMA, which would satisfy this requirement and/or reduce the cost of said flood insurance.

31. The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to the HUD Lead- Based Paint Poisoning Prevention Act, found at 24 CFR 570.608, Subpart K.

32. The Consultant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State or Local historic property list.

33. The Consultant must certify that it will provide drug-free workplaces, in accordance with the Drug-Free Workplace Act of 1988 (41 USC 701).

34. The Consultant certifies 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; and, that the Consultant shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction as outlined in 24 CFR 570.609, Subpart K.

35. The Consultant agrees to comply with the following 0MB Circulars whichever is applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. These requirements are enumerated in 2 CFR 200, et seq.
Single Audits shall be conducted annually, in accordance with 2 CFR 200.501, and shall be submitted to the CITY nine (9) months after the end of the Consultant's fiscal year. The Consultant shall comply with the requirements and standards of 2 CFR 200 Subpart F, Section 500. Consultants exempt from Single Audit requirements shall submit financial statements to the CITY one hundred eighty (180) days after the end of the Consultant's fiscal year. Per 2 CFR 200.344, if this Agreement is closed out prior to the receipt of an audit report, the CITY reserves the right to recover any disallowed costs identified in an audit after such closeout.

36. Any real property acquired by the Consultant for the purpose of carrying on the projects stated herein, and approved by the CITY in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24.10 I, shall be subject to the provisions of CDBG-DR including, but not limited to, the provisions on use and disposition of property. Any real property within Consultant control, which is acquired or improved, in whole or part, with CDBG-DR funds in excess of $25,000, must adhere to the CDBG-DR Regulations at 24 CFR 570.505.

37. As provided in Subsection 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Consultant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof.
This notice is required by§ 287.133 (3) (a), Florida Statutes.

38. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds, other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, contracts under grants, loans, and cooperative agreements) and that all Consultant's shall certify and disclose accordingly.

39. Travel reimbursement will be based on the U.S. General Services Administration (GSA) per diem rates in effect at the time of travel. Equal access in accordance with the individual's gender identity in community planning and development programs, per 24 CFR 5, I 06.

40. Housing Counseling, including homeownership counseling or rental housing counseling, as defined in §5.100, required under or provided in connection with any program administered by HUD shall be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 170, per 24 CFR 5.111.

41. HUD Final Rule-Implementation of the Violence Against Women Reauthorization Act of2013 which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements. Any rule or regulation determined to be applicable by HUD.

42. Florida Statutes 713 .20, Part I, Construction Liens

43. Florida Statutes 119,021 Records Retention

44. Florida Statutes, 119.071, Contracts and Public Records

45. Limited English Proficiency: The Consultant agrees to take reasonable steps to provide meaningful access to the program/project and activities funded under this Agreement for persons with limited English proficiency pursuant to information located at http://www.lep.gov.

46. Equal Treatment of Faith-Based Organizations: By regulation, DOJ/BJA prohibits all recipient organizations from using financial assistance from DOJ/BJA to fund explicitly religious activities. The Consultant agrees to avoid such prohibited conduct. Discrimination on the basis of religion in employment is generally prohibited by federal law, but the Religious Freedom Restoration Act is interpreted on a case-by-case basis to allow some faith-based organizations to receive DOJ/BJA funds while taking into account religion when hiring staff. Questions in this regard should be directed to the Office for Civil Rights.

47. Arrest and Conviction Records: Federal and state laws restrict use of arrest and conviction records in the employment context, except when specifically, authorized. The Consultant agrees to avoid the misuse of arrest or conviction records to screen applicants for employment or employees for retention or promotion that may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination unless use is otherwise specifically authorized by law.

48. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352): The Consultant will not use and has not used federal appropriated funds to pay at any tier, either directly or indirectly, any person or organization 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 obtaining any federal contract, grant, or any other award or subaward covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award or subaward. Such disclosures are forwarded from tier-to-tier up to the Consultant. The Consultant shall comply with the lobbying restrictions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and (ii) ensure that its officers, employees and its subcontractors hereunder comply with all applicable local, state, and federal laws and regulations governing advocacy of and appearances before any legislative body. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before local, state, or federal legislatures.

49. False Claim; Criminal, or Civil Violation: Consultant must promptly refer to CITY any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either (1) submitted a false claim for grant funds under the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving subaward agreement funds.

50. Political Activities Prohibited: None of the funds provided directly or indirectly under this Agreement shall be used for any political activities or to further the election or defeat of any candidates for public office; Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities or activities for or against the election of a candidate for an elected office.

51. Text Messaging: Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Federal Register 51225 (October I, 2009), DOJ/BJA encourages recipients and subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by DOJ/BJA and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

52. Trafficking in Persons: The Consultant agrees to, at any tier, comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of the Consultant and any employees of the Consultant.

53. Association of Community Organizations for Reform Now (ACORN): The Consultant understands and acknowledges that it cannot use any federal funds, either directly or indirectly, in support of any contract or subaward to either ACORN or its subsidiaries, without the express prior written approval of OJP.

54. If the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this funding agreement, the Consultant must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Busines Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by HUD.

CITY OF BONITA SPRINGS, FLORIDA
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this 27 day of January, 2020, 2021 between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and RWA, Inc. (hereinafter referred to as the "Consultant").

WITNESSETH

WHEREAS, the City desires to obtain the professional services of said Consultant to provide and perform professional services as further described hereinafter concerning the project to be referred to and identified as: Miscellaneous Surveying Services for the Community Development Block Grant-Disaster Recovery (CDBG-DR) Voluntary Home Buyout Program CN 20-07, and

WHEREAS, the Consultant hereby certifies that Consultant has been granted and possesses valid, current licenses to do business in the State of Florida and in the City of Bonita Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultants Competitive Negotiation Act, Florida Statutes §287.055.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a contract shall exist between both parties consisting of:

ARTICLE 1.00-SCOPE OF PROFESSIONAL SERVICES
Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in the Scope of Professional Services, which is attached hereto and made a part of this Agreement.

ARTICLE 2.00-DEFINITIONS
The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 CITY
The term "City" shall refer to the City of Bonita Springs, a municipality incorporated within the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the City's behalf relative to this Agreement.

2.02 CONSULTANT
The term "Consultant" shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all change orders thereto.

2.03 PROFESSIONAL SERVICES
The term "Professional Services" shall refer to all of the services, work materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the Consultant and its employees and any and all sub-consultants and subcontractors the Consultant may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT
The term "Sub-Consultant" shall refer to any individual or firm offering professional services which is engaged by the Consultant to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated, responsible and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any sub-consultant.

2.05 SUBCONTRACTOR
The term "Subcontractor" shall refer to any individual, company or firm providing other than professional services which is engaged by the Consultant to assist the Consultant in contractually obligated, responsible, and liable to provide and perform under this Agreement. The City shall not be a party to, responsible or liable for, or assume any obligation whatever for any agreement entered into between the Consultant and any subcontractor.

2.06 PROJECT
The term "Project" shall refer to such facility, system, program or item as described in the summary statement set forth in the preamble of this Agreement.

2.07 BASIC SERVICES
The term "Basic Services" shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached Scope of Professional Services.

2.08 ADDITIONAL SERVICES
The term "Additional Services" shall refer to such professional services as the City may request and authorize, in writing, the Consultant to provide and perform relative to this Agreement which are not included in the basic services. Additional services shall be authorized by the execution of both parties to this Agreement by a change order agreement.

2.09 CHANGE ORDER
The term "Change Order" shall refer to a written document, change order agreement, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon scope of professional services and tasks, compensation and method of payment, time and schedule of performance, or project guidelines and criteria as such were set forth and agreed to in the initial agreement, supplemental task authorization(s), or previous change orders issued thereto. The change order document, which shall be executed on a City standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all change orders executed and issued under this Agreement shall be understood and agreed by both parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the change order including, but not limited to, any and all direct costs, indirect costs and associated costs which may result from or be caused by the change order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the Consultant's general administrative and overhead costs and profit.

In the event the City decides to delete all, or portions, of the scope of services, task(s), or requirements set forth in the initial agreement, supplemental task authorizations or previously authorized change orders, the City may do so by the unilateral issuance of a written change order to the Consultant. Such a unilaterally issued change order shall set forth, if appropriate, an agreement by both the City and the Consultant establishing changes in the amount of compensation to be paid the Consultant as a result of the deletion or decrease in the services required shall have no effect on, or otherwise prevent the City from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the Consultant.

2.10 SUPPLEMENTAL TASK AUTHORIZATION
The term "Supplemental Task Authorization" as used refers to a written document executed by both parties to an existing professional services agreement setting forth and authorizing a limited number of professional services, tasks, or work.

2.11 CITY MANAGER
The term "City Manager" shall refer to the City Manager or his designee requesting the service, employed by the City Council to serve and act on the City's behalf, as it relates to this project. The City Manager within the authority conferred by the City Council, acting as the City's designated representative shall issue written notification to the Consultant of any and all changes approved by the City in the Consultant's: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to basic services and additional services pursuant to this Agreement or change order(s) or supplemental task authorization(s) pertaining thereto. The City Manager shall be responsible for acting on the City's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, change order(s) or supplemental task authorization(s) issued thereunder.

2.12 PROJECT MANAGER
The term "Project Manager" shall refer to the person employed or retained by the City and designated, in writing, to serve and act on the City's behalf to provide direct contact and communication between the City and Consultant with respect to

providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and such written change order(s) and supplemental task authorization(s) as are authorized. The Project Manager is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; (3) the amount of compensation the City is obligated or committed to pay the Consultant. The Project Manager shall review and make appropriate recommendations on all requests submitted by the Consultant for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and change order(s), supplemental task authorization(s) thereto.

2.13 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or sub-contractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set forth in subsequent work orders, supplemental agreements, and/or change orders agreed to in writing by both parties to this Agreement.

2.14 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the Consultant's compensation to provide and perform the services and work necessary and required pursuant to the tasks set forth in the Scope of Professional Services, and any change orders, supplemental task authorizations, and work orders authorized thereto, is established to be made on a not-to-exceed (NTE) amount basis, it is mutually understood and agreed that such compensation for each completed task shall be made on the following basis:

For the actual hours necessary, required and expected by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in the Compensation and Method of Payment, which is attached hereto and made a part of this Agreement, to the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by sub-consultants and subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the City and the Consultant and as are set forth as a part of the above referenced Agreement and any change orders or supplemental task authorizations authorized thereto; and

With the understanding and agreement that the City shall pay the Consultant for all such costs and expenses within the established NTE amount for each task or sub-task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the City covering all such costs and expenses; and

With the understanding and agreement that the Consultant's invoices and all payments to be made for all NTE amounts shall be subject to the review, acceptance and approval of the City; and with the understanding and agreement that when the Consultant's compensation is established on a NTE basis for a specific task(s) or sub-task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and sub-consultant and subcontractor costs for any such specific task(s) or sub-task(s) shall not exceed the amount of the total NTE compensation established and agreed to for each specific task(s) or sub-task(s). In the event the amount of compensation for any task(s) or sub-task(s) to which the Consultant is entitled on the NTE basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the NTE amount established for the specific task or sub-task, it is understood and agreed that any unexpended amount under a specific task or sub-task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other task(s) or sub-task(s).

ARTICLE 3.00-OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES

The Consultant agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida, Lee County and in the City of Bonita Springs, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement.

3.02 PERSONNEL

1) QUALIFIED PERSONNEL

The Consultant agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all basic services and additional services to be provided pursuant to this Agreement.

2) CONSULTANT'S PROJECT DIRECTOR

The Consultant agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising under this Agreement unless substitute arrangements have been furnished to the City in writing. The Consultant agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance of the City.

3) CONSULTANT'S STAFF

Consultant will specify the technical and support staff who will be assigned to this project. Consultant will notify City's Project Manager of any changes and/or substitution of staff working on the project.

4) REMOVAL OF PERSONNEL

The Consultant agrees, within thirty (30) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the City shall request, in writing, be removed, this request may be made by the City with or without cause.

5) IMMIGRATION LAW COMPLIANCE

Consistent with Bonita Springs Code §36.22, effective June 1, 2009, Contractors providing services to the City, as a condition of each contract, must use E-Verify to verify the employment of any person hired during the contract term by the contractor and assigned by the Contractor to perform work for the City. Before any contract with the City is signed, proof of enrollment with E-Verify must be provided. The Contractor acknowledges that he will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Contractor the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Contractor must also be responsible for entering into an agreement with each and every vendor and subcontractor that states that vendors and subcontractors (and their vendors) are independently responsible for their own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the City. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The City may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all basic services and additional services will be provided, performed and completed in a timely and diligent manner throughout.

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the Consultant and by any sub-consultant(s) and/or subcontractor(s) engaged by the Consultant as set forth in the Scope of Professional Services shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the City approves this Agreement, or which may

subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the Consultant to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services shall serve as a basis for the City to consider the development and issuance of a change order to provide for a change to, or additional services to, the services set forth in this Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1) RESPONSIBILITY TO CORRECT

The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any sub-consultant(s) or subcontractor(s) engaged by the Consultant.

2) CITY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, nor acceptance by the City of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the Consultant, or any sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the City's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the City's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY AND HOLD HARMLESS

To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expenses and in a manner acceptable to and approved by the City, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its sub-consultants and/or subcontractors. This Consultant's obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the City.

The City reserves the right, should the Consultant fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the City for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

1) In the event the services required pursuant to this Agreement include the Consultant preparing and submitting to the City cost estimates, the Consultant, by exercise of this experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under this Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and corrections of any and all such cost

estimates. For purposes of the liability provisions of this article only, the Consultant's estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the City's acceptance of the estimate(s).

2) The cost estimates of Consultants or sub-consultants engaged by Consultants, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions provided in Consultant to Repair Property Damage Caused by the Consultant.

3) COST ESTIMATES

a) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus forty percent (40%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the order of magnitude estimate shall be recoverable by the City.

b) BUDGET ESTIMATE

Budget in this case applies to the City's budget and not to the budget as a project-controlled document. A budget is prepared with the use of flow sheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty percent (20%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the budget estimate shall be recoverable by the City.

c) CONSTRUCTION COST ESTIMATE

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a construction cost estimate is vital to the City's interests because it may be used for such purposes as, but not limited to the following: budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction project.

In the event the City solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a construction cost estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the Consultant's construction cost estimate by more than the percent accuracy set forth hereinabove, the Consultant shall, upon notification by the City, assume responsibility for and proceed to provide and perform the following service without additional compensation.

The Consultant will, subject to the review and approval of the City, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the construction cost estimate prepared by the Consultant. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the City for the project and set forth in this Agreement or change order(s) or supplemental task authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawing prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the Consultant's construction cost estimate, the costs associated with the Consultant's preparation and development of the construction cost estimate shall be recoverable by the City by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the construction cost estimate prepared by the Consultant, the amount of the construction cost estimate submitted by the Consultant shall be adjusted from the date the construction cost estimate was received by the City until the date bids or price proposals are received by the City, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the City receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the Consultant may deem it appropriate to recommend the City reject any such bid(s) or priced proposal(s). If under such circumstances the City concurs with the Consultant's recommendation and rejects the bid(s) or priced proposal(s), the City will not hold the Consultant responsible to, nor will the City require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the City and made payable to the respective governmental body upon the Consultant furnishing the City satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY request the Consultant to provide and perform professional services for this project which are not set forth in the Scope of Professional Services, the Consultant agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

Additional services shall be administered and authorized as change orders or supplemental task authorizations under this Agreement. The Consultant shall not provide or perform, nor shall the City incur or accept any obligation to compensate the Consultant for any additional services unless and until a written change order or supplemental task authorization has been agreed to and executed by both parties.

Each such change order or supplemental task authorization shall set forth a comprehensive, detailed description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said additional services.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The City may request the Consultant to execute a Truth-in-Negotiations Certificate ("Certificate"). The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized. The compensation to be paid the Consultant as set forth in the Compensation and Method of Payment, change orders, and supplemental task authorizations authorized thereto shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in the Scope of Professional Services, change orders and supplemental task authorizations authorized thereto as stated above.

ARTICLE 4.00-OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

The City agrees after the execution of this Agreement to promptly advise the Consultant, in writing, of the person designated to serve and act as the City's Project Manager. Such notification shall be provided to the Consultant by the Project Manager.

4.02 AVAILABILITY OF CITY INFORMATION

1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the Consultant regarding requirements the City has established or suggests relative to the project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in the Project Guidelines and Criteria, which is attached hereto and made a part of this Agreement.

2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the Consultant's request, the City agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the City to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the City such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The City agrees that the City Manager and the Project Manager shall be available within a reasonable period of time, with reasonable prior notice given by the Consultant, to meet and/or consult with the Consultant on matters pertaining to the services to be provided and performed by the Consultant. The City further agrees to respond within a reasonable period of time to written requests submitted by the Consultant.

4.04 ACCESS TO CITY PROPERTY

The City agrees, with reasonable prior written notice given by the Consultant, to provide the Consultant with access within a reasonable period of time to City property, facilities, buildings and structures to enable the Consultant to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with City operations, or the operations carried on by others under a lease, or other contractual arrangement with the City, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the Consultant's normal office and/or field workdays and/or work hours.

ARTICLE 5.00-COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC AND ADDITIONAL SERVICES

The City shall pay the Consultant for all requested and authorized basic services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the City in accordance with the provisions for compensation and payment of said basic services set forth and prescribed in the Compensation and Method of Payment or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written change order executed by both parties.

5.02 METHOD OF PAYMENT

1) MONTHLY STATEMENTS

The Consultant shall be entitled to submit no more than one (1) invoice statement to the City each calendar month covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or change order(s) and supplemental task authorization(s) thereunder.

2) PAYMENT FOR SERVICES PERFORMED

The City shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

a) The City shall pay Consultant on the basis of services completed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment, as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the City. No payments shall be made for Consultant's work-in-progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the City. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the City, the City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

b) The City shall pay the Consultant for services performed for tasks set forth in the Scope of Professional Services and the Compensation and Method of Payment on the basis of an invoice statement covering Consultant's work-in-progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-progress percentages are subject to the review and approval of the City. The decision of the City shall be final as to the work-in-progress

percentages paid. Payment by the City for tasks on a work-in-progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the City of any such service or work-in-progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-progress payments have been made. All tasks to be paid for on a work-in-progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in the Compensation and Method of Payment with the notation (WIPP). Only tasks so identified will be paid on a work-in-progress percentage basis. The City reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

3) PAYMENT SCHEDULE

The City shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the City object or take exception to the amount of any Consultant's invoice statement, the City shall notify the Consultant of such objection or exception within the thirty (30) calendar days payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar days' period, the City shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.03 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE CITY

In the event of termination of this Agreement at the convenience of the City, not at the fault of the Consultant, the City shall compensate the Consultant only for the services performed prior to the effective date of termination, reimbursable expenses then due and reasonable expenses incurred by the Consultant in affecting the termination of services and work, and incurred by the submittal to the City of project drawings, plans, data, and other project documents.

5.04 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the City suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the City shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.05 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; (3) and/or are modified by the subsequent issuance of supplemental task authorization(s) and/or change order(s), other than receiving the compensation set forth in Payment When Services are Terminated at the Convenience of the City and Payment When Services are Suspended, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00-TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the City may authorize specific tasks to be completed. Upon agreement on the scope and fee for this work and execution of supplemental task authorization, the City will issue the Consultant a written notice to proceed. Following the issuance of such notice to proceed the Consultant shall be authorized to commence work and the Consultant thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, which is attached hereto and made a part of this Agreement.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the City shall grant the extension if the City determines the delay(s)

encountered by the Consultant, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The Consultant shall be required as a condition of this Agreement to prepare and submit to the City, on a monthly basis, commencing with the issuance of the notice to proceed, a Consultant's work schedule. The work schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in the Schedule of Performance, pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's work schedule of planned and actual work progress shall be updated and submitted by the Consultant to the City on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the City at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any change order(s) and supplemental task authorization(s) issued thereto.

ARTICLE 7.00-SECURING AGREEMENT

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

ARTICLE 8.00-CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines that there is a conflict of interest, Consultant or such sub-consultant shall decline the representation upon written notice by the City.

If the City determines that there is not such conflict of interest, then the City shall give its written consent to such representation. If Consultant or sub-consultant accepts such a representation without obtaining the City's prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such sub-consultant under this Agreement, then the Consultant or such sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such sub-consultants to comply with the provisions of this section.

Should the Consultant fail to advise or notify the City as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the City may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00-ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor Consultant, or consulting organization. Nor shall the Consultant subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the City. The Consultant shall have the right, subject to the City's prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The City shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in Consultant's Associated Sub-Consultants and Subcontractors, which is attached hereto and made a part of this Agreement.

ARTICLE 10.00-APPLICABLE LAW
Unless otherwise specified, this Agreement shall be governed by the laws, rules, regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States Government.

ARTICLE 11.00-COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES
The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

ARTICLE 12.00-WAIVER OF BREACH
Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00-INSURANCE
For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

The Vendor shall procure and maintain property insurance (Builder's Risk, Installation Floaters, etc.) upon the entire project, if required, to the full insurable value of the scope of work. The City and the Vendor waive against each other and the City's separate Vendors, Contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and City shall, where appropriate, require similar waivers of subrogation from the City's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. All deductibles for property insurance procured by the Vendor shall be the responsibility of the Vendor.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name the City of Bonita Springs, Florida, as an additional insured including completed operations (and products if applicable). The policy shall be endorsed to be primary to any similar coverage carried by the City.

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all contracts.

ARTICLE 14.00-DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00-REPRESENTATION OF THE CITY

The Consultant in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the City in this manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written change order(s) and supplemental task authorization(s) issued thereunder.

In the event the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the City's behalf, and shall not act on the City's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor; or (2) the time for completing the work as required and agreed to in the construction contract; or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The City will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00-OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the City of a written change order deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the City, shall be delivered by the Consultant to the City within seven (7) calendar days of the City making such a request. In the event the City gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the City of a written change order deleting all or part of the services or work required, the Consultant shall deliver to the City the requested documents as set forth hereinabove, with the mutual understanding and commitment by the City that compensation earned or owing to the commitment by the City that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the notice of termination or change order.

The Consultant, at its expense, may make and retain copies of all documents delivered to the City for reference and internal use. The Consultant shall not, and agrees not to, use any of these documents, data and information contained therein on any other project or for any other client without the prior expressed written permission of the City.

Any use by the City of said documents, data and information contained therein, obtained by the City under the provisions of this Agreement for therein, obtained by the City under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the City, and without liability to the Consultant. The City shall be liable and agrees to be liable for and shall indemnify, defend and hold the Consultant harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the City's use of such documents in a manner contrary to the provisions set forth hereinabove. The City hereby acknowledges receipt of $10.00 (ten and no hundred dollars) and other good and valuable consideration from the Consultant which has been paid as specific consideration for the indemnification provided herein.

ARTICLE 17.00-MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

17.01 COMPLIANCE WITH PUBLIC RECORDS LAW

The Consultant must comply with Florida public records laws, specifically to:

a) Keep and maintain public records required by the City to perform the service.

b) Upon request from the City's custodian of public records, provide the City 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 Florida Statutes §119 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 Consultant does not transfer the records to the City.

d) Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

e) The City will consider it a breach of contract should the Consultant fail to comply with any public records request.

f) A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.

g) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESGIN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, debbie.filipek@cityofbonitasprings.org.**

h) If the Consultant is not providing the requested public records, the burden of proof is on the Consultant to show why they did not comply with the request.

ARTICLE 18.00-HEADINGS

The headings of the articles, sections, exhibits, attachments, phases or tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such articles, sections, exhibits, attachments, phases or tasks.

ARTICLE 19.00-ENTIRE AGREEMENT

This Agreement and attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

ARTICLE 20.00-NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement to be given by the Consultant to the City shall be in writing and shall be given by the United States Postal Service Department first class mail service postage prepaid, addressed to the following City address of record and sent to the attention of the City's Project Manager unless waived by City:

Elly Soto McKuen, Senior Project Manager
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Copy: City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

20.02 NOTICES BY CITY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the City to the Consultant shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following Consultant's address of record unless waived by Consultant:

Consultant Name: RWA, Inc.

Consultant Address: 6610 Willow Park Drive, Suite 200

Consultant Address: Naples, FL 34109

Telephone Number: (239) 597-0575

Fax Number: (239) 597-0578

ATTENTION: Michael A. Ward, P.L.S., Vice President
Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party per above contacts.

ARTICLE 21.00-TERM

This Agreement is effective as of the date first written above and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 22.00-TERMINATION

This Agreement may be terminated by the City at its convenience, or due to the fault of the Consultant, by the City giving thirty (30) calendar days written notice to the Consultant.

If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the City's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the City may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar days written notice, terminate this Agreement.

In addition to the City's contractual right to terminate this Agreement in its entirety as set forth above, the City may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services or the Project Guidelines and Criteria, or as such may be established by change order or supplemental task authorization. The City shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the City dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the City reserves the right to accept or not accept the termination request submitted by the Consultant, effective unless and until Consultant is notified, in writing, by the City of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the Consultant shall deliver to the City all papers, drawings, models, and other material in which the City has exclusive rights by virtue hereof or of any business done, or services or work performed by the Consultant on behalf of the City.

ARTICLE 23.00-AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendment, the requirements, provisions and/or terms of the amendment shall take precedence.

ARTICLE 24.00-MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed change order(s) or supplemental task authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written change order(s), and/or supplemental task authorizations, the latest executed change order(s), and/or supplemental task authorization(s) shall take precedence.

In the event the City issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the City's internal control purposes only, and any and all terms, provisions and conditions contained herein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 25.00-ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: _____
CITY CLERK

DATE: _____

CITY OF BONITA SPRINGS CITY COUNCIL

BY: _____
MAYOR

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

ATTEST:

_____
(Witness)

_____
(Witness)

CONSULTANT

BY: _____
(Authorized Signature)

Director of Survey, VP
(Title)

DATE: 1/27/2021

CORPORATE SEAL



EXHIBIT A

Scope of Professional Services
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date:_____

Basic Services

Section 1 General Scope Statement

The Consultant shall provide and perform the following professional services, which shall constitute the general scope of the basic services under the covenants, terms, and provisions of this Professional Services Agreement.

Section 2 Tasks

Pursuant to the general scope of the basic services stated herein above, the Consultant shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in Compensation and Method of Payment.

The CONSULTANT shall perform engineering, land survey, and aerial photography services necessary for the subject project as outlines; reference all centerline survey control points; establish the benchline on National Geodetic Vertical Datum (1929) throughout the project and tie property lines to comply with Florida Department of Natural Resources Rule, Florida Administrative Code Chapter 16 Q-3 (Florida Statutes 177 - Part Two).

Survey work shall be performed under the responsible charge of a Professional Land Surveyor registered in the State of Florida and shall be accomplished in accordance with the Florida Department of Transportation Policy 760.000-760.012, and Florida Department of Transportation Location Manual. Work must comply with the minimum technical standards for Land Surveyors Rule 2IHH-6, Florida Statutes 472.027; measurements of regular roadway cross-sections may be recorded on electronic data collection equipment.

Surveys shall also be provided in an electronic format, compatible with the following City GIS standards:

- DXF or DWG Format
- Coordinate System:
  1. Horizontal: State Plane FLORIDA WEST, FIPS 0902, NAD83, US Feet
  2. Vertical: NAVD 1988, US Feet
- CAD Layer organization

Administration
City Limits

Transportation
Road Centerline (line)
Pavement Area (polygon)
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)
Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail
Fence
Bridge
Pavement Message (point)

Storm Water
Pavement Area (polygon)
ROW (right-of-way – polygon)
Sign Post (point)
Light Pole (point)

Road Stripe (line)
Sidewalk (line)
Curb (line)
Median (area)
Guard Rail

Landscaping
Irrigation
Median (to be determined)

- Location accuracy requirements: all features should be within + or – one meter from actual position.

Roadway Survey
Provide engineering and land surveys necessary to establish the roadway alignments and intersecting streets within the project limits and obtain topography, cross sections, underground utilities, right-of-way, land ties and required drainage information for existing and proposed drainage systems and in accordance with the master drainage plan/storm run-off treatment areas.

Underground Utilities
Field locate existing underground utilities, based upon information provided in Task 7.01, only as deemed necessary to identify conflicts or potential conflicts with existing utilities during roadway and drainage construction. Horizontal and vertical location of underground utilities will be obtained prior to completion of Task 6.02. This task includes coordination with various utility companies and assumes that the respective utility shall be responsible for "pot holing," said underground systems. The horizontal and vertical location of each utility will be documented, based on the "pot-holing" performed by the respective utility company or the consultant.

Jurisdictional Wetlands Survey
After jurisdictional wetland lines have been flagged and verified by the agencies, the jurisdictional line will be located by GPS to sub-meter accuracy.

Planimetric
The Consultant shall provide planimetric of the project area sufficient to define topographical (two dimensional) details along the proposed roadway for the width of 300 feet either side of the centerline.
The scale Aerial Photography will not be acceptable for plan portion for the plan & profile sheets.

This list of activities is not meant to be complete and absolute. The City reserves the right to add additional related activities as the City implements these programs and survey related projects.

EXHIBIT B

Compensation and Method of Payment
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

Section 1 Basic Services/Task(s)

The City shall compensate the Consultant for providing and performing the task(s) set forth and enumerated in the Scope of Professional Services, as follows:

NOTE: A lump sum (LS) or not-to-exceed (NTE) amount of compensation to be paid the Consultant should be established and set forth below for each task or sub-task described and authorized in the Scope of Professional Services. Tasks to be paid on a work-in-progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (WIPP)
TOTAL				

(Unless list is continued on next page.)

Compensation and Method of Payment – Page 2
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07
Consultant's Personnel Hourly Rate Schedule*

Date: _____

Should it be mutually agreed to base compensation for additional services on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained below.

CONSULTANT OR SUB-CONSULTANT NAME: RWA, Inc.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct** Payroll Average Hourly Rate
Party Chief	$110
Senior Party Chief	$125
Field Crew – GPS	$135
Field Crew – Robot	$135
CADD Technician	$ 85
Senior CADD Technician	$ 95
Staff Surveyor	$100
Project Surveyor	$125
Project Manager	$155
Senior Project Manager	$170
Principal	$205
Administrative/Clerical	$ 60

*NOTE: A separate personnel hourly rate schedule should also be attached for each sub-consultant listed in Consultant's Associated Sub-Consultant(s) and Subcontractor(s).

**NOTE: Direct Payroll Hourly Rate means the actual gross hourly wage paid.

EXHIBIT C

Time and Schedule of Performance
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

This Exhibit establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in the Scope of Professional Services. The Time and Schedule of Performance set forth hereinafter is established pursuant to Time and Schedule of Performance.

Phase and/or Task Reference As Enumerated in Scope of Professional Services	Name or Title of Phase and Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days for Completion From Date of Notice to Proceed

EXHIBIT D

Consultant's Associated Sub-Consultant(s) and Subcontractor(s)
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

Consultant has identified the following sub-consultant(s) and/or subcontractor(s) which may be engaged to assist the Consultant in providing and performing services and work on this project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage (Yes or No)
	Earth View, LLC 3494 Shearwater Street Naples, FL 34117	Yes
	J H McCarrier Land Surveying, Inc. 2460 Sunrise Boulevard Fort Myers, FL 33907	Yes

EXHIBIT E

Project Guidelines and Criteria
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: _____

The City has established the following guidelines, criteria, goals, objectives, constraints, schedule, budget and/or requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

NONE

EXHIBIT F

Truth in Negotiation Certificate
Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Date: 1/27/2024

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the City Council of the City of Bonita Springs for the project known as the Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program CN 20-07

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Truth-In-Negotiations Certificate.

2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.

3. The truth of statements made herein may be relied upon by the City and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the Consultant, doing business as:

COMPANY NAME: RWA, Inc

BY: MICHAEL A. WARD

TITLE: Director of Surv, VP

The foregoing instrument was signed and acknowledged before me this 27 day of January,

by MICHAEL WARD who is personally known OR has produced _____
(Print or Type Name) (Type of Identification & Number)

as identification.

Notary Public Signature

NOAH MEDEIROS
Notary Commission Number/Expiration

Notary Public State of Florida
Noah Medeiros
My Commission GG 921539
Expires 10/11/2023

EXHIBIT G

Insurance and Bonding Requirements

All policies shall be Best's Rated "A-" or better or subject to approval

Insurance / Bond Type	Required Limits
☒ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements. ☒ **The policy shall be endorsed to provide a waiver of subrogation in favor of the City.** NOTE: Any "non-construction industry" company employing more than 3 employees (not including a sole proprietor owner) must have workers' compensation coverage. ALL "construction industry" (as defined by FL Rule # 69L-6.021) companies with ANY employees must have coverage or if no statutory employees, then up to three officers or a sole proprietor MUST have a current exemption certificate from the Division of Workers' Compensation on file.
☒ Employer's Liability	$1,000,000 single limit per occurrence (Workers' Compensation Part B)
☒ Commercial General Liability (Occurrence Form) patterned after the current ISO form	Bodily Injury and Property Damage ☒ $1,000,000 per occurrence, $1,000,000 aggregate (Per Project) for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
☒ Indemnification	To the fullest extent permitted by Florida law and to the limit by Florida Statutes § 725.08, the Contractor/Vendor/ Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.
☒ Automobile Liability	☒ $ 1,000,000 Each Occurrence; Bodily Injury & Property Damage Owned/Non-owned/Hired; Automobile Included
☒ Other insurance as noted:	☐ Watercraft $ _____ Per Occurrence ☐ United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work. **STATUTORY** ☐ Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. $ _____ Per Occurrence ☐ Property Insurance (Or Builder's Risk) **Full insurable value of the scope of the work** ☐ Pollution $ _____ Per Occurrence ☒ Professional Liability $1,000,000 per claim and in the aggregate

☐ Railroad Right of Way	☐ Umbrella Excess $ _____ Per Occurrence ☐ Railroad Protective Liability Insurance per occurrence limit of not less than **Two Million Dollars ($2,000,000)** and aggregate limits of **Six Million Dollars ($6,000,000)** to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your General Liability policy coverage to be $5,000,000. They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage. For additional information on their insurance requirements and other requirements such as payment for and scheduling Railroad Inspector / Flagman, please contact Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.
☐ Bid bond	Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
☐ Performance and Payment Bonds	If the box is checked for a project less than $200,000, a performance bond will be required. For projects in excess of $200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. **Per FS §255.05, the Contractor shall provide a certified copy of the recorded bond to the City.**

☒ Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

☒ The City of Bonita Springs must be named as **"ADDITIONAL INSURED, INCLUDING PRODUCTS AND COMPLETED OPERATIONS"** on the Insurance Certificate for Commercial General Liability.

☒ The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

☒ **Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to the City of Bonita Springs.

EXHIBIT H

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Vendor Covered Transactions

(1) The prospective vendor certifies, by submission of this Annual Agreement, that neither it nor its principles are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the vendor is unable to certify to the above statement, the prospective vendor shall attach an explanation to this form.

VENDOR

RWA, INC
Company Name

00-227-3105
DUNS Number

Signature

1/27/2021
Date

Michael A. WARD VP
Print Name and Title

6610 Willow Park Drive, Suite 200
Street Address

Naples, FL. 34109
City, State, Zip

For City of Bonita Springs use only

To access the debarment search: https://www.sam.gov/SAM/ > Search Records tab > Enter DUNS number > Click Search

Company: [ ] is debarred [ ] is not debarred

Verified by: _____ Date: _____
Name

EXHIBIT I

Scrutinized Companies Statement

SWORN STATEMENT UNDER SECTION 287.135(5), FLORIDA STATUTES: THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number **CN 20-07**, for **Miscellaneous Surveying Services for the CDBG-DR Voluntary Home Buyout Program.**

2. This sworn statement is submitted by RWA, INC. whose business
[Name of entity submitting sworn statement]
address is 6610 Willow Park Dr. Suite 201 Naples, FL. 34109 and (if applicable) its Federal Employer Identification Number (FEIN) is 65-0721059 (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: 220 94 6728

3. My name is MICHAEL A. LAPIS and my relationship to the above is
[Please print name of individual signing]
Director of Survey, VP.

4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.

6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.

8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. **[Please indicate which statements apply].**

X Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.

[ ] Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.

[ ] Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
[ ] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

[ ] Business Operations in Cuba or Syria (bid, proposal or contract renewal for $1 Million or more)
[X] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
[ ] The entity submitting this sworn statement does have business operations in Cuba or Syria.

The City will follow Florida Statute §287.135. If the City determines this Vendor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel after the contract is executed, the contract may be terminated by the City by written notification. If the City determines this Vendor is found to have submitted a false certification, placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations with Cuba or Syria, the City shall notify the Vendor of its determination by written notification.

By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.

AFFIANT

MICHAEL A. WARD
Typed Name of AFFIANT

Director of Survey VP
Title

STATE OF FL. COUNTY OF Collier

The foregoing instrument was executed before me this 27 day of January, 2021,

by MICHAEL WARD as VP of

RWA, INC., who personally swore or affirmed that he/she is authorized to execute this document and thereby bind the Corporation, and who is personally known to me OR has

produced _____ as identification.

NOTARY PUBLIC, State of FL

(stamp)

Notary Public State of Florida
Noah Medeiros
My Commission GG 921539
Expires 10/11/2023

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For City of Bonita Springs use only

To access the lists: http://www.sbafla.com/fsb/ > Funds We Manage tab > FRS Pension Plan - Global Governance Mandates > Global Governance Mandate Quarterly Reports > most current quarter

Scrutinized Companies that Boycott Israel List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in Sudan List:
[ ] entity is **NOT** on list [ ] entity is on list

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:
[ ] entity is **NOT** on list [ ] entity is on list

Business Operations in Cuba or Syria:
[ ] entity is **NOT** on list [ ] entity is on list

Verified by:_____ Date:_____
Print Name

EXHIBIT J

GENERAL PROVISIONS
State and Federal Regulations

1. 24 CFR 570 as amended- All the regulations regarding the CDBG program

2. 24 CFR 58 - The regulations prescribing the Environmental Review procedure.

3. Section I 04(b) and Section I 09 of Title I of the Housing and Community Development Act of 1974 as amended

4. The Fair Housing Act (42 U.S.C. 3601-20) Reasonable Accommodations Under the Fair Housing Act.

5. Executive Order 11063 - Equal Opportunity in Housing

6. Executive Order 11259 - Leadership & Coordination of Fair Housing in Federal Programs

7. 24 CFR Part I 07 - Non- Discrimination and Equal Opportunity in Housing under E.O.

8. Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, as amended

9. 24 CFR 570.60 I Subpart K - The regulations issued pursuant to Executive Order 11063 which prohibits discrimination and promotes equal opportunity in housing.

10. Executive Order 11246 ("Equal Employment Opportunity"), as amended by Executive Orders 11375 and 12086 - which establishes hiring goals for minorities and women on projects assisted with federal funds and as supplemented in Department of Labor regulations. EO I l246.

11. Executive Orders 11375 and 12086.

12. Title VII of the 1968 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972, 42 USC§ 2000e, et. seq. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that it is an Equal Opportunity or Affirmative Action employer.

13. 24 CFR 135 - Regulations outlining requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the CITY, the Consultant and any of the Subcontractor's. Failure to fulfill these requirements shall subject the CITY, the Consultant and any of the Consultant's Subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided, The Consultant certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
The Consultant further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:
"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."
The Consultant further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area

in which the CDBG-DR funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low- income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-DR funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs,

The Consultant certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

14. Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
15. Contract Work Hours and Safety Standards Act, 40 USC 327-332.
16. Section 504 of the Rehabilitation Act of 1973, 29 USC 776(b) (5), 24 CFR 570.614 Subpart K. Section 504: https://www.epa.gov/ocr
17. The Americans with Disabilities Act of 1990: https://www.hud.gov/hudprograms/eohudap
18. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
19. 29 CFR Parts 3 and 5 - Regulations that prescribe the payment of prevailing wages and the use of apprentices and trainees on federally assisted projects. HUD Form 40 IO must be included in all construction contracts funded by CDBG-DR:

    Davis-Bacon Act: 42 USC 276a to 40 USC 276a:

    29 CFR Part 3 - Contractors and Subcontractors on public building or Public Work Financed, in whole or in part, by Loans or Grants from the United States

    29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provision Applicable Subject to the Contract Work Hours and Safety Standards Act)

    Executive Order 11914 - Prohibits discrimination with respect to the handicapped, in federally assisted projects.

    As a supplement to the Davis-Bacon Act requirements, the Consultant agrees to comply with the "Copeland Anti-Kickback Act," which prohibits the Consultant, its contractors, or subcontractors from inducing an employee to relinquish any part of his/her compensation, under the federally-funded contract.
20. Executive Order 11625 and U.S. Department of Housing and Urban Development Circular Letter 79-45 - which prescribes goal percentages for participation of minority businesses in Community Development Block Grant Contracts.
21. E.O. 11625 Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise.
22. The Consultant agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
23. 2 CFR 200 et seq - Uniform Administrative Requirements, Cost Principles, and Audit requirements for Grants and Agreements.
24. Immigration Reform and Control Act of 1986
25. Prohibition of Gifts to CITY Employees - No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service, or other item of value to any CITY employee,
26. Order of Precedence - In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Agreement shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Agreement. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Agreement, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.
27. Venue-Any suit of action brought by either party to this Agreement against the other party, relating to or arising out of this Agreement, must be brought in the appropriate federal or state courts, in Lee County, FL which courts have sole jurisdiction on all such matters. (No reference required for this item).
28. Dispute Resolution - Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. Any situations when negotiations, litigation and/or mediation shall be attended by representatives of Consultant with full decision-making authority and by CITY'S staff person who would make the presentation of any settlement reached during negotiations to CITY for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under§

44.102, Florida Statutes. The litigation arising out of this Agreement shall be adjudicated in Lee County, Florida, if in state court and the US District Court, Middle District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, LEE COUNTY AND THE CONSULTANT EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAYE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

29. The Consultant agrees to comply with the following requirements:
Clean Air Act, 41 USC 7401, et seq.
Federal Water Pollution Control Act, 33 USC 1251, et seq., as amended.

30. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4002 and 24 CFR 570.605 Subpart K), the Consultant shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained. If appropriate, a letter of map amendment (LOMA) may be obtained from FEMA, which would satisfy this requirement and/or reduce the cost of said flood insurance.

31. The Consultant agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to the HUD Lead- Based Paint Poisoning Prevention Act, found at 24 CFR 570.608, Subpart K.

32. The Consultant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State or Local historic property list.

33. The Consultant must certify that it will provide drug-free workplaces, in accordance with the Drug-Free Workplace Act of 1988 (41 USC 701).

34. The Consultant certifies 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; and, that the Consultant shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction as outlined in 24 CFR 570.609, Subpart K.

35. The Consultant agrees to comply with the following 0MB Circulars whichever is applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. These requirements are enumerated in 2 CFR 200, et seq.
Single Audits shall be conducted annually, in accordance with 2 CFR 200.501, and shall be submitted to the CITY nine (9) months after the end of the Consultant's fiscal year. The Consultant shall comply with the requirements and standards of 2 CFR 200 Subpart F, Section 500. Consultants exempt from Single Audit requirements shall submit financial statements to the CITY one hundred eighty (180) days after the end of the Consultant's fiscal year. Per 2 CFR 200.344, if this Agreement is closed out prior to the receipt of an audit report, the CITY reserves the right to recover any disallowed costs identified in an audit after such closeout.

36. Any real property acquired by the Consultant for the purpose of carrying on the projects stated herein, and approved by the CITY in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24.10 I, shall be subject to the provisions of CDBG-DR including, but not limited to, the provisions on use and disposition of property. Any real property within Consultant control, which is acquired or improved, in whole or part, with CDBG-DR funds in excess of $25,000, must adhere to the CDBG-DR Regulations at 24 CFR 570.505.

37. As provided in Subsection 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Consultant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof.
This notice is required by§ 287.133 (3) (a), Florida Statutes.

38. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds, other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL,

"Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, contracts under grants, loans, and cooperative agreements) and that all Consultant's shall certify and disclose accordingly.

39. Travel reimbursement will be based on the U.S. General Services Administration (GSA) per diem rates in effect at the time of travel. Equal access in accordance with the individual's gender identity in community planning and development programs, per 24 CFR 5, I 06.
40. Housing Counseling, including homeownership counseling or rental housing counseling, as defined in §5.100, required under or provided in connection with any program administered by HUD shall be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 170, per 24 CFR 5.111.
41. HUD Final Rule-Implementation of the Violence Against Women Reauthorization Act of2013 which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements. Any rule or regulation determined to be applicable by HUD.
42. Florida Statutes 713 .20, Part I, Construction Liens
43. Florida Statutes 119,021 Records Retention
44. Florida Statutes, 119.071, Contracts and Public Records
45. Limited English Proficiency: The Consultant agrees to take reasonable steps to provide meaningful access to the program/project and activities funded under this Agreement for persons with limited English proficiency pursuant to information located at http://www.lep.gov.
46. Equal Treatment of Faith-Based Organizations: By regulation, DOJ/BJA prohibits all recipient organizations from using financial assistance from DOJ/BJA to fund explicitly religious activities. The Consultant agrees to avoid such prohibited conduct. Discrimination on the basis of religion in employment is generally prohibited by federal law, but the Religious Freedom Restoration Act is interpreted on a case-by-case basis to allow some faith-based organizations to receive DOJ/BJA funds while taking into account religion when hiring staff. Questions in this regard should be directed to the Office for Civil Rights.
47. Arrest and Conviction Records: Federal and state laws restrict use of arrest and conviction records in the employment context, except when specifically, authorized. The Consultant agrees to avoid the misuse of arrest or conviction records to screen applicants for employment or employees for retention or promotion that may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination unless use is otherwise specifically authorized by law.
48. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352): The Consultant will not use and has not used federal appropriated funds to pay at any tier, either directly or indirectly, any person or organization 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 obtaining any federal contract, grant, or any other award or subaward covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award or subaward. Such disclosures are forwarded from tier-to-tier up to the Consultant. The Consultant shall comply with the lobbying restrictions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and (ii) ensure that its officers, employees and its subcontractors hereunder comply with all applicable local, state, and federal laws and regulations governing advocacy of and appearances before any legislative body. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before local, state, or federal legislatures.
49. False Claim; Criminal, or Civil Violation: Consultant must promptly refer to CITY any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either (1) submitted a false claim for grant funds under the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving subaward agreement funds.
50. Political Activities Prohibited: None of the funds provided directly or indirectly under this Agreement shall be used for any political activities or to further the election or defeat of any candidates for public office; Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities or activities for or against the election of a candidate for an elected office.
51. Text Messaging: Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Federal Register 51225 (October I, 2009), DOJ/BJA encourages recipients and subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by DOJ/BJA and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
52. Trafficking in Persons: The Consultant agrees to, at any tier, comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of the Consultant and any employees of the Consultant.

53. Association of Community Organizations for Reform Now (ACORN): The Consultant understands and acknowledges that it cannot use any federal funds, either directly or indirectly, in support of any contract or subaward to either ACORN or its subsidiaries, without the express prior written approval of OJP.

54. If the Consultant wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this funding agreement, the Consultant must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Busines Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by HUD.

BONITA SPRINGS CITY COUNCIL	GREEN SHEET:	21-02-029

AGENDA ITEM SUMMARY

REQUESTED MOTION: Approve Contract Amendment #1 with Florida Department of Emergency Management for the Logan Boulevard Regional Floodway Drainage Improvement Project # 4337-265-R

MEETING DATE: 2/3/2021

AGENDA:		REQUIREMENT/PURPOSE: (Specify)		REQUESTOR OF INFORMATION:
☐	PRESENTATIONS	☐	STATUTE	Matt Feeney Assistant City Manager Elly Soto McKuen Senior Project Manager
☒	CONSENT	☐	ORDINANCE	
☐	PUBLIC HEARING	☐	ADMIN. CODE	
☐	MAYOR AND COUNCIL MEMBER ITEMS	☒	OTHER	
☐	MAYOR AND COUNCIL MEMBER'S REPORTS			
☐	CITY ATTORNEY ITEMS			
☐	CITY MANAGER ITEMS			

BACKGROUND:
City Council approved an agreement with Florida Department of Emergency Management (DEM) for Hazard Mitigation Grant Funds (HMGP) on December 18, 2019 and received a fully executed agreement from DEM on January 13, 2020. Staff began the Request for Qualification (RFQ) process in mid-March to acquire an engineering firm to complete stormwater modeling, design plans and benefit cost analysis. Staff continues to work to develop construction plans.

The DEM agreement allows for changes to the contract through the amendment process. Amendment #1 extends the contract deadline from December 31, 2020 to September 30, 2021.

Attachment: DEM Modification #1 for Agreement H0338 (Logan Boulevard Regional Floodway Drainage Improvement Project #4337-265-R)

IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ **YES** ☐ **NO**

IF YES, WHICH STRATEGIC OBJECTIVE? 1) Stormwater Management, 3) Strengthen City Finances, 4) Environmental Protection, 5) Community Aesthetics

STAFF RECOMMENDATIONS: Approve Contract Amendment #1 with Florida Department of Emergency Management for the Logan Boulevard Regional Floodway Drainage Improvement Project # 4337-265-R

REVIEWED BY:

City Manager: **Arleen Hunter**
City Attorney: **Derek Rooney**
City Clerk: **Debra Filipek**
Department Director: **Matt Feeney**

COUNCIL ACTION:

☐ **APPROVED**
☐ **DENIED**
☐ **DEFERRED**
☐ **OTHER**

SUB-RECIPIENT AGREEMENT CHECKLIST

DIVISION OF EMERGENCY MANAGEMENT
MITIGATION BUREAU

REQUEST FOR REVIEW AND APPROVAL	
SUB-RECIPIENT:	City of Bonita Springs
PROJECT #:	4337-265-R - Modification 1
PROJECT TITLE:	City of Bonita Springs, Logan Boulevard Regional Floodway, Drainage, Phase 1
CONTRACT #:	H0338
MODIFICATION #:	1

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)	
	Matt Feeney, Public Works Director, City of Bonita Springs

Enclosed is your copy of the proposed contract/modification between **the City of Bonita Springs** and the Florida Division of Emergency Management (FDEM).

	COMPLETE
☐	This form is required to be included with all Reviews, Approvals, and Submittal
☐	Signed electronic copy
☐	Reviewed and Approved
☐	Signed and Dated by Official Representative
☐	**Copy of the organization's resolution or charter** that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, or Chief
☐	Attachment I - Federal Funding Accountability and Transparency Act (FFATA) completed, signed, and dated ☒ N/A for Modifications or State Funded Agreements
☐	Electronic Submittal to the Grant Specialist Tracy O'Dell on

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 692-9458 or email me at Shelia.Chester@em.myflorida.com.

Contract Number: H0338

Project Number: 4337-265-R

MODIFICATION TO SUBGRANT AGREEMENT BETWEEN THE DIVISION OF EMERGENCY MANAGEMENT AND CITY OF BONITA SPRINGS

This Modification Number One made and entered into by and between the State of Florida, Division of Emergency Management ("the Division"), and the City of Bonita Springs ("the Sub-Recipient") to modify Contract Number H0338, dated, January 13, 2020 ("the Agreement").

WHEREAS, the Division and the Sub-Recipient have entered into the Agreement, pursuant to which the Division has provided a subgrant to the Sub-Recipient under the Hazard Mitigation Grant Program of $163,125.00, in Federal Funds; and

WHEREAS, the Division and the Sub-Recipient desire to modify the Agreement; and

WHEREAS, the Agreement expired on December 31, 2020; and

WHEREAS, the Division and the Sub-Recipient desire to reinstate and extend the terms of the Agreement.

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

1. The Agreement is hereby reinstated and extended as though it had never expired.

2. Paragraph 8 of the Agreement is hereby amended to read as follows:

   (8) PERIOD OF AGREEMENT

   This Agreement shall begin January 13, 2020 and shall end September 30, 2021, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement.

3. The Budget and Scope of Work, Attachment A to the Agreement, are hereby modified as set forth in 1st Revision Attachment A to this Modification, a copy of which is attached hereto and incorporated herein by reference.

4. All provisions of the Agreement being modified and any attachments in conflict with this Modification shall be and are hereby changed to conform with this Modification, effective on the date of execution of this Modification by both parties.

5. All provisions not in conflict with this Modification remain in full force and effect, and are to be performed at the level specified in the Agreement.

6. Quarterly Reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the dates set out below.

SUB-RECIPIENT: CITY OF BONITA SPRINGS

By:_____

Name and Title: _____

Date: _____

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By:_____

Name and Title: Jared Moskowitz, Director

Date: _____

Attachment A

1st Revision)

Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage in the subdivisions of Palmira Golf Club and Village Walk in Bonita Springs, Lee County, Florida, funded through the Hazard Mitigation Grant Program HMGP) **DR-4337-265-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency FEMA).

The Sub-Recipient, the City of Bonita Springs, shall conduct Phase I of this project, which includes the preliminary engineering designs and calculations, surveys, permitting, and notices. No construction activities are approved at this time. The Sub-Recipient shall complete the Phase I work in accordance with all applicable federal, state and local laws, regulations and codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of the subdivisions of Palmira Golf Club and Village Walk of Bonita Springs, located in Bonita Springs, Florida, 34135. Coordinates (26.331573, -81.706244).

Specifically, the project is in the eastern boundary of Radio Tower Boulevard under Bonita Road and along Logan Boulevard to an East/West spreader swale.

The scope is for Phase I only, which includes but is not limited to surveying, engineering, design, plans preparation, permitting and bidding for the proposed project, for Phase II approval. No construction activities for this project have been approved.

When completed, the Sub-Recipient shall provide deliverables for Phase II review of the following proposed activities.

The Phase II proposed scope of work shall improve the existing stormwater system by installing pipes, control structures, and open ditches.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

TASKS DELIVERABLES:

A) Tasks:

1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the Phase I scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations.

   All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

   The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all areas in a neat and

presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed. The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

2) The Sub-Recipient shall monitor and manage the Phase I portion of this project in accordance with the Hazard Mitigation Grant Program application and supporting documentation as submitted to the Division and subsequently approved by the Division and FEMA. The Division and FEMA shall render a Phase II determination upon completion of the review of Phase I deliverables. No construction activities are approved at this time. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

   Phase I consists of fees; for conducting survey, drainage study, engineering, design, public notices, and/or permitting associated with the modification(s) needed to upgrade the drainage. Verification of upstream and downstream impacts shall be necessary for determining project eligibility.

   All Phase I work shall be completed in accordance with all applicable state, local and federal laws and regulations and documented, as appropriate.

   Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all scope of work changes, if any.

   a) Two sets of engineering Signed/Sealed final design and analysis, surveying, and Hydrologic and Hydraulic (H&H) Studies.

   b) Construction Plans and bid documents.

   c) Revised cost estimate for Phase II – construction include Phase I costs), to implement the design project.

   d) Design documents shall provide a detailed description which includes specifics on project scope of work, depth and extent of ground disturbance at all construction locations of the project.

   e) Color maps including topographical, aerial, and ground disturbance.

   f) Color photographs of the project area and areas of ground disturbance.

   g) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management

District (WMD) shall be required. Any conditions for compliance shall be included in the final design plans, narrative and project implementation actions.

h) Copy of the United States Army Corps of Engineers (USACE) permit or No Permit Required notification.

i) Any other documentation requested by the Division, not limited to Project Conditions and Requirements herein.

3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Direct Expenses: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses: The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient.

Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual Phase I costs related to the project as identified in the project application and this scope of work. The Requests for Reimbursement (RFR) shall include:

a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;

b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;

c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's Request for Reimbursement shall include the final Phase I project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of Phase I activities, which include engineering, designing, plans preparation, permitting and bidding for the proposed project, for Phase II approval, and to implement measures to improve the drainage of the subdivisions of Palmira Golf Club and Village Walk of Bonita Springs, Florida 34135.

The project shall be designed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

1) The Sub-Recipient shall submit signed and sealed Engineering plans that clearly show the engineer's estimate of the pre and post-mitigation effects of the proposed project and the relationship of the damages to be mitigated commensurate with the level of funding requested). The H&H study shall contain at least 3 scenarios, where one represents the level of protection; under each scenario, the Sub-Recipient must identify the losses before and after mitigation structural, content, displacement, road closure duration, or any other needed to show the improvements after the mitigation project is implemented). This includes, but is not limited to, the existing and proposed hydrology and hydraulics for the level of event being mitigated.

2) Demonstrate mitigation effectiveness, in part, by showing the physical location(s) and elevation(s) of the infrastructure/structures that are being damaged and FEMA Special Flood Hazard Areas on the same plan.

3) Submit a refined cost estimate, to include final Phase I Fees and Phase II Construction Materials and Labor.

D) Environmental:

1) Any change to the approved scope of work shall require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

2) Acceptance of federal funding requires the Sub-Recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.

3) Meet all required Environmental laws and policies, and all necessary Environmental compliance documents shall be obtained as applicable.

   a) United States Army Corps of Engineers (USACE): Consultation with the USACE is required. A permit or No Permit Required shall be submitted.

   b) Copy of all environmental permits or applications; any obtained from the Florida Department of Environmental Protection (FDEP), and/or local Water Management District (WMD) shall be submitted. Any conditions for compliance shall be included in the final design plans, narrative, and project implementation actions.

4) Historical Preservation compliance documents shall be obtained. Review documentation required:

   a) Color maps including topographical and aerial with the project location clearly marked.

   b) Color photographs of any area with ground disturbance (electronic).

   c) Indicate if project site is located within a designated historic district or historic neighborhood.

5) Tribal Consultation shall be required for proposed ground disturbing activities. The following documents shall be required and submitted as part of deliverables:

   a) Color ground disturbance maps showing the full extent of the project footprint and depth of ground disturbance. Geographic latitude/longitude (decimal degree format) of the proposed construction areas and staging areas.

   b) Previous and current use of proposed project area.

   c) Any known site work or historic uses for the proposed location.

   d) Any available studies that may have taken place on the property.

6) Phase I of this project is approved with the condition that the above list of deliverables shall be submitted for review and approval by the Division and FEMA before Phase II is considered.

7) No construction work may begin until Phase II is approved by the Division and FEMA.

E) Programmatic:

1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.

2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.

3) The Sub-Recipient must “obtain prior written approval for any budget revision which would result in a need for additional funds” [44 CFR 13(c)], from the Division and FEMA.

4) A Public Notice shall be published to notify interested parties of the proposed activity. Notices shall be published in a manner that anyone that may be affected or interested in this project has access to the posting, using the Division template, as applicable.

5) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new

schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.

6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.

7) Phase I – Design of this project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA before Phase II – Construction is considered.

8) When Phase I is completed, the Sub-Recipient must provide 100% completed designs, calculations, a full set of signed and sealed plans and, permits for a Phase II review. A final BCA using developed technical data and study results will take place. The data inputs to the final BCA for Phase II approval, must be based on the inputs and outputs of a hazard related study such as erosion, Hydraulic Hydrologic study, damage calculations, road closures, etc. No assumptions or historical damage will be acceptable for final BCA of Phase II approval. No construction activities for this project have been approved.

9) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.

This is FEMA project number **4337-265-R.** It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on August 23, 2019; this Agreement was executed on January 13, 2020; and the Period of Performance for this project shall end on **September 30, 2021**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;

2) Disallow all or part of the cost of the activity or action not in compliance;

3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;

4) Withhold further awards for the program; or

5) Take other remedies that may be legally available.

Schedule of Work

Phase I –

State/Local Contracting:	1	Month
H&H Study:	3	Months
Engineering Design Specifications:	8	Months
Permitting / Survey:	7	Months
Deliverables Submitted to FDEM:	5	Months
Total Period of Performance:	**24**	**Months**

BUDGET

Line Item Budget*

	Project Cost	Federal Share	Non-Federal Share
Materials:	$0.00	$0.00	$0.00
Labor:	$0.00	$0.00	$0.00
Fees:	$217,500.00	$163,125.00	$54,375.00
Initial Agreement Amount:	**$217,500.00**	**$163,125.00**	**$54,375.00**
***Contingency Funds:	$0.00	$0.00	$0.00
Project Total:	**$217,500.00**	**$163,125.00**	**$54,375.00**

Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.

***** ***This project has an estimated $0.00 in contingency funds.*** *Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.*

Project Management costs are included for this project in the amount of $0.00

Funding Summary

Federal Share:	$163,125.00	75%)
Non-Federal Share:	$54,375.00	25%)
Total Project Cost:	**$217,500.00**	**100.00%)**

BONITA SPRINGS CITY COUNCIL	GREEN SHEET:	21-02-028

AGENDA ITEM SUMMARY

REQUESTED MOTION: Consider approval of the applicant's Bald Eagle Management Plan for bald eagle nest LE911 located at Latitude 26.353486, Longitude -81.7814714, 26431 Old 41 Road in accordance with LDC Chapter 7 Article III. – Bald Eagles

MEETING DATE: 2/3/2021

AGENDA:		REQUIREMENT/PURPOSE: (Specify)		REQUESTOR OF INFORMATION:
☐	PRESENTATIONS	☐	STATUTE	Laura Gibson, Environmental Specialist Community Development Department
☒	CONSENT	☒	ORDINANCE	
☐	PUBLIC HEARING	☐	ADMIN. CODE	
☐	MAYOR AND COUNCIL MEMBER ITEMS	☐	OTHER	
☐	MAYOR AND COUNCIL MEMBER'S REPORTS			
☐	CITY ATTORNEY ITEMS			
☐	CITY MANAGER ITEMS			

BACKGROUND:

The City of Bonita Springs protects its Southern Bald Eagle population through Objective 7.6 of the Conservation and Coastal Management Element of the Comprehensive Plan and Ordinance 10-05 which was incorporated into Chapter 7 Article III of the Land Development Code (LDC). The purpose of the Comprehensive Plan policies and Land Development Regulations are to protect bald eagle nesting habitat and a specified area around nests from development and human created disturbances from construction and other activities. One way to help prevent disturbances is through a Bald Eagle Management Plan (BEMP) which the LDC requires for certain developments to establish protection practices for critical eagle nesting habitat through limitation of disturbance or alteration to these areas and management of the preserved portions of the critical eagle nesting habitat.

Environmental Sciences staff learned of this new nest location in November 2020, just before the scheduled Pre-Construction meeting for the site. The Development Order for O'Reilly's Auto Parts was issued in September. Staff immediately sent a notification of City requirements to the property owner where the nest is located and the engineer of the O'Reilly's construction site. The engineer created a map of the 660-foot nest buffer in relation to the construction site. During the Pre-Construction meeting staff instructed the engineer, contractor, and owner of the development site of the LDC and federal requirements which necessitate either certain protections during any construction within the buffer area or no construction until eaglets from the nest have fledged. The owner chose to use a BEMP and adhere to its requirements so that construction could proceed.

The protected buffer area overlays a small portion of the project site which will include parking and drive aisles, drainage facilities and landscaping. The LDC and National Bald and Golden Eagle Protection Act prohibit construction work during the nesting season without a Bald Eagle Management Plan and/or monitoring for the disturbance of eagle nesting per approved monitoring guidelines. The BEMP addresses these activities with required monitoring of the eagles to determine disturbance and halting or adjustment of any construction activities observed to cause disturbance.

The Applicant and Staff are in agreement with the attached BEMP, and LDC Sec. 7-79(d)(2) requires approval of the BEMP by the City Council.

Attachments: O'Reillys BEMP, LDC 7, Article III, National Guidelines, and Florida Monitoring Guidelines

IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ **YES** ☐ **NO**

IF YES, WHICH STRATEGIC OBJECTIVE? Environmental Protection

STAFF RECOMMENDATIONS: Consider approval of the applicant's Bald Eagle Management Plan.

REVIEWED BY:

City Manager: **Arleen Hunter**

City Attorney: **Derek Rooney**

City Clerk: **Debra Filipek**

Department Director: **John Dulmer**

COUNCIL ACTION:

☐ **APPROVED**
☐ **DENIED**
☐ **DEFERRED**
☐ **OTHER**

O’Reilly Auto Parts Store Bonita (DOS20-68231-BOS)

Bald Eagle Management Plan
Nest LE911

Section 26, Township 47 South, Range 25 East
Lee County, Florida

December 2020

Prepared for:

Aileron Investment Management
3401 W. Cypress Street #210
Tampa, FL 33607

Prepared by:

DexBender
4470 Camino Real Way, Suite 101
Fort Myers, FL 33966

I. INTRODUCTION

The 1.26± acres O'Reilly Auto Parts Store project is located at 26501 Old 41 Road, Bonita Springs, Florida (Figure 1). The property is bordered to the south by vacant land, to the west by residential developments, and to the east by Old US 41 Road. The Dollar General Store is located to the north.

Nest LE911 is a new nest (per Audubon Florida EagleWatch Program (coordinates 26.353528, -81.781677)) located within a cell phone tower, on the Florida Power & Light Company parcel (26430 Old US 41 Rd.). This nest is located approximately 598' northwest of the proposed northwest property line (Figure 2).

This management plan has been created to outline the project's proposed protection and mitigation measures for Nest LE911.

II. SITE CONDITIONS

The proposed O'Reilly Auto Parts Store project consists of a 1.26± ac. parcel partially under construction (cleared and silt fence installed). The property on which Nest LE911 is located (Florida Power & Light Co) consists of a building, parking, storage and undeveloped pine flatwoods.

O'Reilly Auto Parts Store Development Order was approved for a 7,400 S.F. retail office building and associated infrastructure and water management facilities.

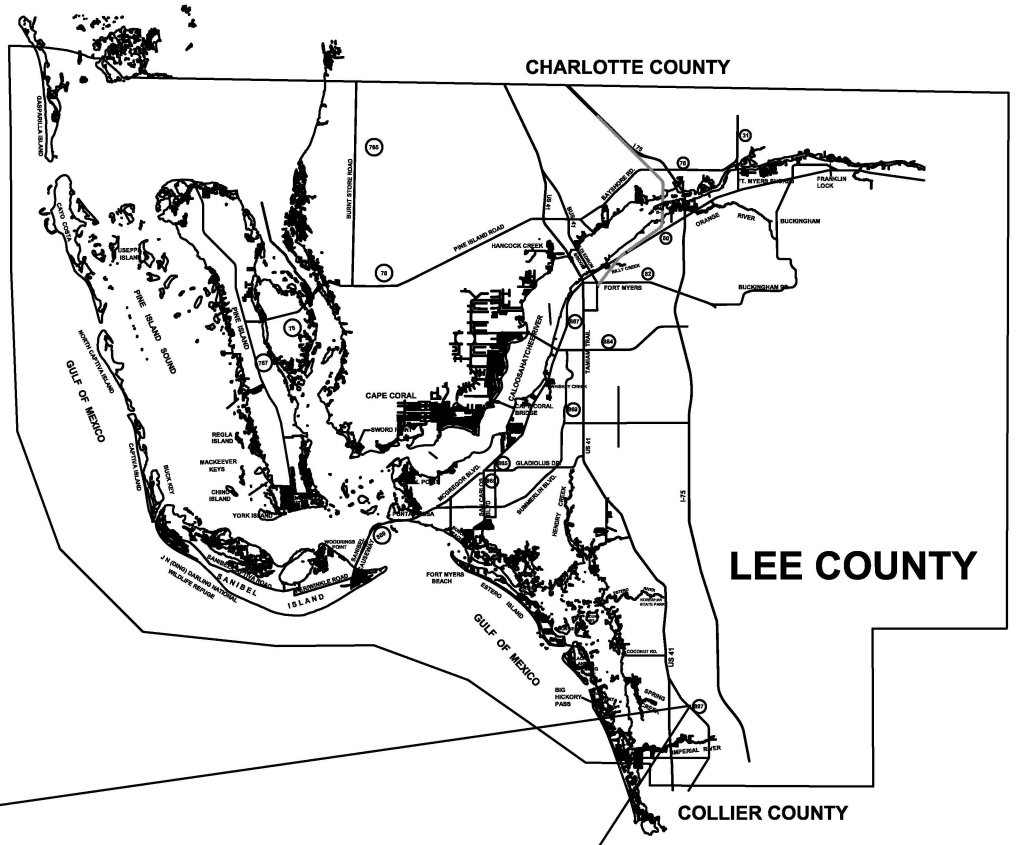
III. SITE OBSERVATIONS

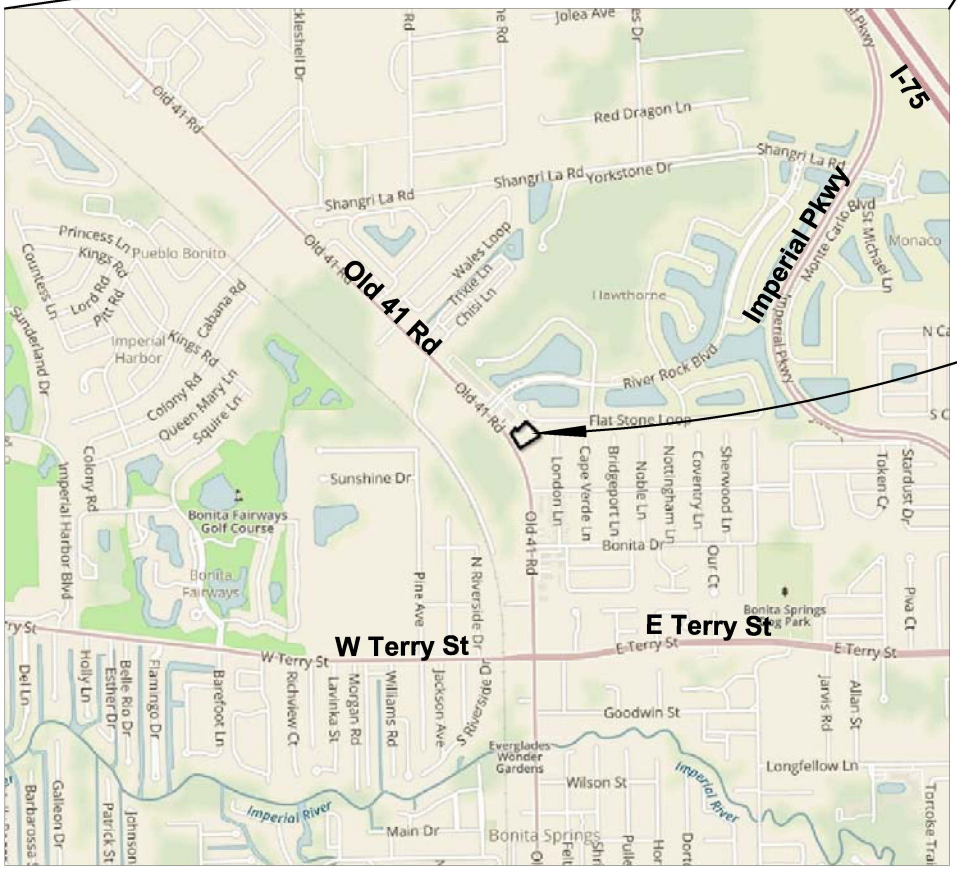
The bald eagle's nest is located in a cell tower on the Florida Power & Light property. LE911 was observed by City of Bonita Springs Community Development (COBSCD) staff on November 27 and 28, 2020. One adult eagle was observed at the nest by staff. *DexBender* observed the nest on December 7, 2020. No eagles were present during this site inspection.

The following is a description of the various human activities that were observed during the December 7, 2020 site inspection. There was a high volume of vehicular traffic (cars, trucks, emergency vehicles, and busses) along Old US 41 Road resulting in a significant amount of noise. River Rock Blvd, the entrance to Hawthorn Retail Condominium and the Dollar General, is 321' from the nest. Traffic into these two commercial uses was moderate. The subject parcel's northwest property boundary is 598' from the nest. The project site has been cleared and silt fence installed. There are no know perch trees or flight paths at this time.

SECTION: 26
TOWNSHIP: 47 S
RANGE: 25 E

O'Reilly Auto Parts Store Bonita





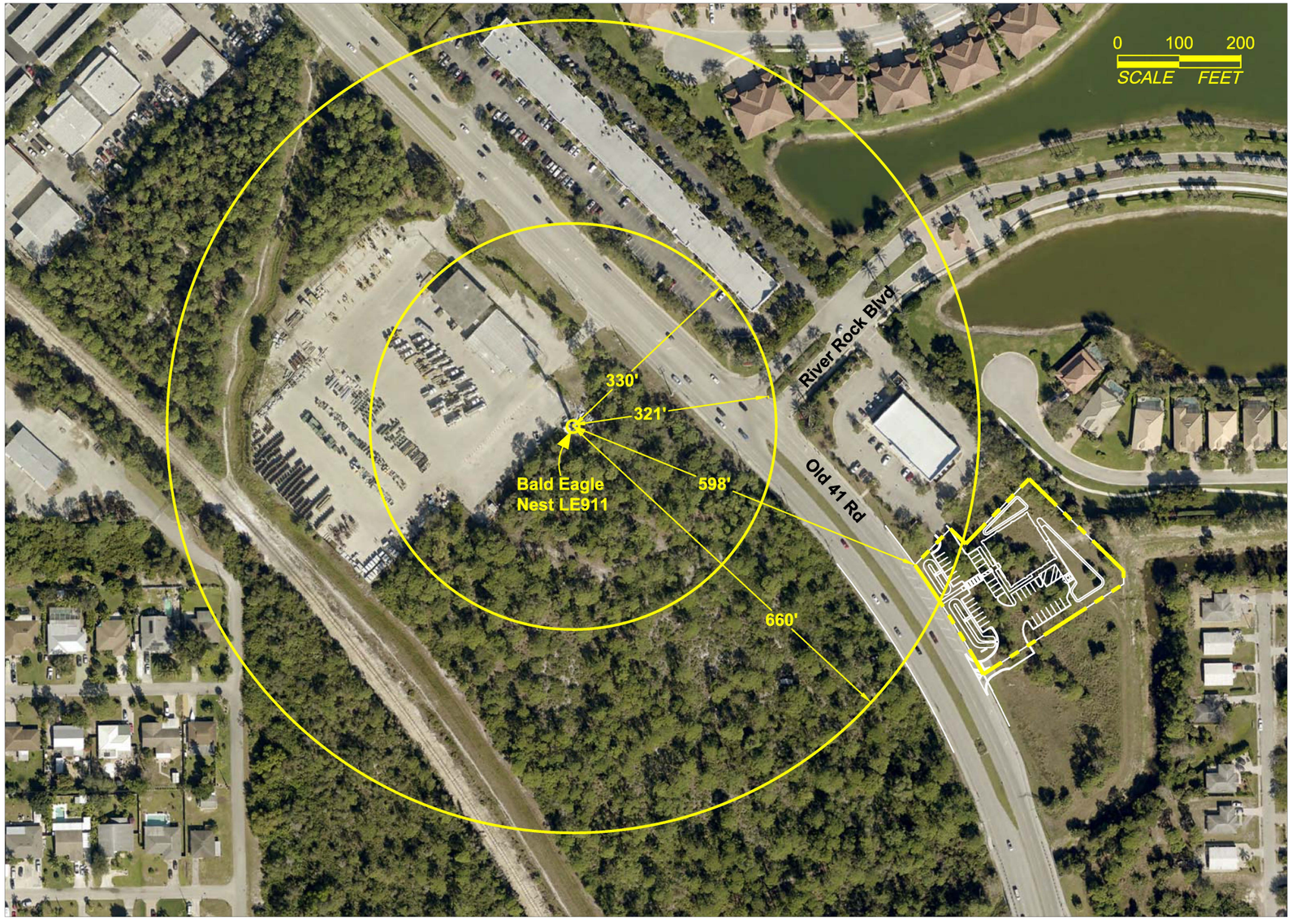
PERMIT USE ONLY, NOT FOR CONSTRUCTION

December 16, 2020 10:18:14 a.m.
Drawing: AIERON2LOCATION.DWG

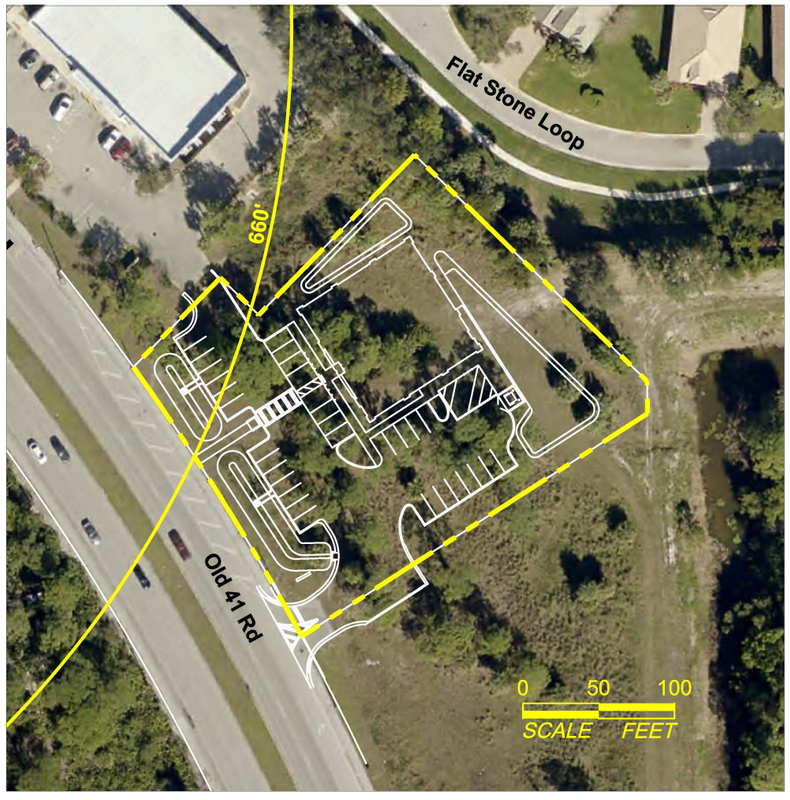
Figure 1. Location Map

DEXBENDER ENVIRONMENTAL CONSULTING
FORT MYERS 239-334-3680

SECTION: 26
TOWNSHIP: 47 S
RANGE: 25 E



Detail



Notes:
1. Property boundary, site plan, and eagle nest location obtained from Waldrop Engineering.
2. Map includes 2020 aerial photography.

PERMIT USE ONLY, NOT FOR CONSTRUCTION

December 16, 2020 11:00:37 a.m.
Drawing: AIERON2PLAN.DWG

Figure 2. Bald Eagle Management Plan Map

O'Reilly Auto Parts Store Bonita
336/522

DexBender Environmental Consulting
FORT MYERS 239-334-3680

IV. GENERAL DEVELOPMENT GUIDELINES

The protection measures outlined below have been designed utilizing the FWS's *National Bald Eagle Management Guidelines* (FWS 2007a) and Article III, Section 7-72 through 7-80 of the City of Bonita Springs Code of Ordinances. These proposed restrictions and requirements apply only to the O'Reilly Auto Parts Store project and are not binding on any other property in the vicinity of Bald Eagle Nest LE911.

If Nest LE911 is vacated before the end of the nesting season (May 15th) or if the COBSCD determines that Nest LE911 has been abandoned, construction activities may commence upon confirmation of those conditions. A determination that the nest is not active shall be consistent with the *Bald Eagle Monitoring Guidelines* (FWS 2007b).

A. 330 - 660 Feet Zone Activities and Restrictions

Approximately 0.10 acre of the property is inside the 660 feet of Nest LE911 (Figure 2). This will consist of the excavated storm water detention area and parking lot. The restrictions described below are only applicable to the portion of the property between 330 feet and 660 feet of Nest LE911.

1. Major exterior construction activities, such as initial site clearing, major earth work, grading, driving of building support piles, building pad construction, building exterior framing, and exterior roofing may occur during the nesting season provided that the activities do not disturb the nesting bald eagles as defined by the *Bald Eagle Monitoring Guidelines*. Monitoring consistent with the *Bald Eagle Monitoring Guidelines* shall be required during these construction activities.

2. The exterior construction activities listed below may also occur during the nesting season provided that the activities do not disturb the nesting bald eagles as defined by the *Bald Eagle Monitoring Guidelines*. Whenever the exterior construction activities listed below occur during the nesting season, monitoring consistent with the *Bald Eagle Monitoring Guidelines* shall be required.

    a. Street and sidewalk paving
    b. Landscape installation and maintenance
    c. Exterior stucco application or painting

    COBSCD will be notified of these proposed activities and the activities will not be initiated until written authorization has been received from COBSCD.

3. Interior construction (i.e., electrical, drywall, carpeting, etc.) may occur at any time, including during the nesting season without implementing monitoring so long as reasonable measure to reduce noise audible outside of the building are taken (i.e.,

keep windows and doors closed during finishing activities). COBSCD will be notified when interior construction activities will occur.

4. The use of any chemicals that are known to be toxic to wildlife shall be prohibited within 660± feet of the bald eagle nest. The use of all chemical will be in accordance with labeling instructions.

5. After construction is completed, normal commercial activities will be allowed throughout the year.

B. Greater Than 660 Feet Zone Activities and Restrictions

The proposed uses of the property more than 660 feet of Bald Eagle Nest LE911 consist of the remainder of the O'Reilly Auto Parts development. Construction activities and normal commercial activities will be allowed outside of 660± feet of the bald eagle nest throughout the year.

V. IMPLEMENTATION

1. The landowner/developer and the future Property Owners Association (if any) will be responsible for following this Bald Eagle Management Plan. A qualified ecologist will monitor Nest LE911 (if work as described above is undertaken during the nesting season) consistent with the *Bald Eagle Monitoring Guidelines* (Typically, a minimum of three days each week and four hours each day (beginning at 1/2 hour before sunrise) from onset of nesting behavior through the fourth week post-hatching and care of eaglets) and will submit the reports to COBSCD staff on a monthly basis. **Monitoring is not required on days when no infrastructure development, exterior building construction, or other human activities referenced in the National Management Guidelines occurs within 660 feet of the nest tree. Monitoring will be scheduled to occur on the days that are representative of all major phases of these activities at times when they will occur.** Staff will review these reports and may also inspect the site to verify compliance with the conditions of this Bald Eagle Management Plan. Any violation of these conditions may result in a Stop Work Order being issued to halt all construction activity during the bald eagle nesting season, including building inspections, until the violation is resolved.

All of the management practices will remain in effect until the nest is deemed abandoned or lost by COBSCD. None of these management practices will be required after the nest is deemed abandoned or lost. The nest will be defined as abandoned if the nest is intact or partially intact but has been inactive through five or more consecutive nesting seasons. The nest will be defined as lost if the nest or nest tree is destroyed by natural causes (e.g. nest that fell apart or was blown out of a tree, or the tree itself was lost) and is not rebuilt in the same tree within three nesting seasons.

VI. BALD EAGLE MANAGEMENT PLAN MODIFICATIONS

Any changes to this Bald Eagle Management Plan must be reviewed and approved by COBSDC staff through a development order minor change process. Any future owners of the O'Reilly Auto Parts Store that are affected by this Bald Eagle Management Plan will be provided with a copy of this plan.

REFERENCES

Florida Fish and Wildlife Conservation Commission. 2008. Bald Eagle Management Plan. 60p.

U.S. Fish and Wildlife Service. 2007a. National Bald Eagle Management Guidelines. 23p.

U.S. Fish and Wildlife Service. 2007b. Bald Eagle Monitoring Guidelines. 20p.

City of Bonita Springs

Land Development Code

Chapter 7 - ENVIRONMENT, NATURAL RESOURCES AND MARINE FACILITIES, STRUCTURES AND EQUIPMENT

Article III. – BALD EAGLES

ARTICLE III. - BALD EAGLES

Sec. 7-72. - Purpose of article.

In order to maintain a stable or increasing population of the bald eagle in Bonita Springs by protecting eagle habitat, it is necessary and appropriate to protect, enhance, and preserve the nest of the eagle and its immediate environs. With reasonable land compensation incentives and proper habitat management, the bald eagle population in the city can be maintained. This article is intended to protect the critical nesting habitat of the bald eagle and promote national, state, and community pride and esteem by negotiating with owners of land surrounding eagle nests to provide an optimal management plan for land subject to imminent development, including providing special compensation incentives to private property owners for loss of property committed to critical bald eagle nesting habitat. This article is also intended to provide information and assistance to property owners to enable them to avoid violations of city, county, state and federal law.

(Ord. No. 10-05, § 1(7-111), 6-2-2010)

Sec. 7-73. - Definitions.

The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned nest means a nest that is intact or partially intact but has been inactive through five or more consecutive nesting seasons.

Active nest means a nest that shows or showed evidence of breeding by bald eagles, such as an adult attending the nest or in incubating position, a clutch of eggs, or a brood of nestlings, at any time during the current or most recent nesting season.

Agricultural activities means bona fide farm operations as defined in the Florida Right to Farm Act, F.S. § 823.14.

Alternate nest means a nest that is intact or partially intact and has been used by bald eagles at any time during the past five nesting seasons, but was not used during the current or most recent nesting season. An inactive nest is considered to be an alternate nest until it has been inactive for five consecutive nesting seasons, at which time it becomes an abandoned nest.

Bald eagle (*Haliaeetus leucocephalus*) means a mature eagle with white plumage on its head and tail feathers, or an immature eagle with dark plumage, which resides throughout the state around estuarine areas and along the lakes and river drainage basins within the interior of the state, county and city.

Buffer area means a natural or manmade area designated by the city council in accordance with section 7-79 that must remain predominantly in its natural or created native vegetated state to protect eagles, nest trees, or other critical eagle nesting habitat. Buffer areas may range in any distance averaging 660 feet from a nest and be irregularly shaped areas, except that a larger buffer area may be offered voluntarily in accordance with section 7-80(3).

Critical eagle nesting habitat means habitat which, if lost, could result in the elimination of nesting eagles from the area in question. Critical eagle nesting habitat typically provides functions for the bald eagle during the nesting portion of that species' life cycle. This area includes eagle nest trees and their immediate environs and may include other areas or features such as perch trees, flight paths, and alternate nests within the buffer area.

Disturb means to agitate or bother a bald eagle to a degree that causes or is likely to cause, based on the best scientific information available:

(1) Injury to the eagle;

(2) A decrease in its productivity by substantially interfering with normal breeding, feeding or sheltering behavior; or

(3) Nest abandonment by substantially interfering with normal breeding, feeding or sheltering behavior.

Fledgling means a young eagle that is capable of flight and has left the nest, usually at ten to 12 weeks of age. Fledglings may return to the nest for several weeks to be fed or to roost.

Flight path means the route within the buffer area most frequently traveled by eagles directly to and from their nest, perch trees, and important foraging areas.

Foraging area means the location where eagles feed, typically near open waters such as rivers, lakes, reservoirs, and bays where fish and waterfowl are abundant, or in area with little or no water where prey species are abundant (e.g., rabbit, rodents or carrion).

FWC means the Florida Fish and Wildlife Conservation Commission or its successor.

Inactive nest means a nest that was not used during the current or most recent nesting season.

Lost nest means a nest where the nest or nest tree is destroyed by natural causes (e.g., nest that fell apart or was blown out of a tree, or tree itself was lost) and is not rebuilt in the same tree within three nesting seasons.

Nesting season means the period from October 1 to May 15, unless the young fledge before or after May 15 as determined by city environmental sciences staff.

Nestling means a young eagle (eaglet) that is incapable of flight and is dependent on its parents. Once an eaglet fledges (i.e., leaves the nest), it becomes a fledgling.

Perch tree means a tree used by bald eagles for resting, sleeping, foraging, hunting, feeding, lookout, display or thermal benefit.

Unified control has the same meaning as defined in chapter 4 and chapter 9.

USFWS means the United States Fish and Wildlife Service or its successor.

(Ord. No. 10-05, § 1(7-112), 6-2-2010)

Sec. 7-74. - Violation of ordinance; penalty.

(a) Any person convicted of violation of any of the provisions of this article may be punished as provided in section 1-5. Such person will also be responsible for costs and expenses involved in the case. Each day such violation continues will be considered a separate offense.

(b) Any violator of this article may be required to restore the critical eagle nesting habitat to its original undisturbed condition. If restoration is not undertaken within a reasonable time after notice, the city may take necessary corrective action, the cost of which will be placed as a lien upon the property.

(c) In addition, any violation of this article is a public nuisance and may be restrained by injunction by any interested party.

(d) The city will notify the FWC of wildlife complaints or potential FWC rule violations. The city will coordinate with FWC in enforcement activities.

(Ord. No. 10-05, § 1(7-113), 6-2-2010)

Sec. 7-75. - Provisions of article supplemental.

This article does not replace the Federal Endangered Species Act, the Federal Migratory Bird Treaty Act, the Federal Bald and Golden Eagle Protection Act, the Florida Endangered Species Act, or the

permitting requirements of FWC's Bald Eagle Permitting Framework, that is incorporated in FWC Rule 68A-16.002, Florida Administrative Code, but is intended to supplement those laws to ensure protection of critical eagle nesting habitat in the city.

(Ord. No. 10-05, § 1(7-114), 6-2-2010)

Sec. 7-76. - Applicability of article.

This article applies only to all real property within 660 feet (or 750 feet if impact fee credits are issued pursuant to section 7-80(3)) of a nest unless the nest is abandoned or lost. Compliance with this article will be required prior to receiving a building permit, development order, zoning approval, notice of clearing, vegetation removal permits or amendments thereto.

(Ord. No. 10-05, § 1(7-115), 6-2-2010)

Sec. 7-77. - Public acquisition of rights and interest in critical eagle nesting habitat lands.

The city may acquire rights and interests in real property designated as a critical eagle nesting habitat. When a developer or property owner cannot accommodate critical eagle nesting habitat through reasonable site planning or proper access, the city may acquire an interest through:

(1) Receiving donations of critical eagle nesting habitat lands;

(2) Purchase or conveyance by dedication of a perpetual conservation easement;

(3) Outright purchase or lease of critical eagle nesting habitat;

(4) Acquisition through eminent domain proceedings pursuant to Article II, Section 9, and Article X, Section 6, of the State Constitution and applicable provisions of the state statutes; or

(5) Implementation by the city council of any combination of these or other actions to acquire rights and interests that balance the public and private interests.

(Ord. No. 10-05, § 1(7-117), 6-2-2010)

Sec. 7-78. - Notification procedure.

The city will notify the FWC and the USFWS upon receipt of any application for a planned development rezoning, a development order, a notice of clearing, or a building permit for any property located within 660 feet of a nest. The notice must include any available information gathered regarding the behavior of the eagles that are occupying the nest.

(Ord. No. 10-05, § 1(7-118), 6-2-2010)

Sec. 7-79. - Mechanisms for the protection of critical eagle nesting habitat.

(a) *Construction of single- or two-family dwelling unit (including accessory structures.)* Appropriate conditions limiting or prohibiting development during the nesting season may be attached to building permit approvals for property to which this article is applicable where such conditions are deemed necessary by the director of the department of community development (or designee) to prevent a loss of critical eagle nesting habitat. Such conditions may include, but are not limited to, distances from the nest, defining the dates, equipment, and hours of operation for exterior construction to avoid disturbing nesting eagles, eggs or nestlings.

(b) *Agricultural activities.* All persons intending to conduct new agricultural activities on property to which this article is applicable must consult with city staff prior to approval of an application for a notice of clearing or the commencement of activities. Any improvements within 330 feet must be conducted with a bald eagle management plan consistent with the FWC Bald Eagle Management Plan and designed to protect the habitat. Any proposal for improvements within 330 feet must indicate that the crop planting or harvesting will not occur during nesting season to avoid impacts to the bald eagle habitat.

(c) *Exotic vegetation removal.* All persons intending to remove exotic vegetation, even if required to do so by city ordinance, on property where an active or alternate nest is within 660 feet must consult with city environmental sciences staff prior to vegetation removal. Appropriate conditions may be placed on the exotic removal notice.

(d) *All other development.*

(1) All persons contemplating the development of property to which this article is applicable are to consult with the environmental sciences division as early in the planning and design process as possible to ensure enhancement or protection of critical eagle nesting habitat within the buffer area. No construction (structures or site work) may occur within 660 feet during the nesting season, unless otherwise modified in an approved bald eagle management plan, in accordance with the National Guidelines and this article.

(2) Property owners and/or developers are required to prepare a management plan that protects critical eagle nesting habitat. However, no new bald eagle management plan will be required for projects in which a bald eagle management plan was submitted to and accepted by the city to support a building permit, local development order, development of regional impact, or zoning application approval. A new or amended bald eagle management plan will be required if subsequent development or a change in use is proposed that is inconsistent with the previously reviewed bald eagle management plan, or if a new or revised bald eagle management plan is required by condition or stipulation of the existing authorization.

a. Prior to consideration and approval by resolution of the city council, all eagle management plans must be submitted and will be reviewed by environmental sciences staff.

b. The director of community development or designee must recommend approval, denial, or approval of the proposed eagle management plan with conditions, or continue consideration of the proposed eagle management plan to seek technical advice from outside sources or to meet further with the applicant to revise or modify the proposed eagle management plan.

c. Staff will present the proposed bald eagle management plan to the city council, along with the written staff opinion and any recommendation from outside sources, if any. This may include any advisory board set up by resolution of city council to assist with monitoring nests and eagle activity.

(3) All development within critical eagle nesting habitat and buffer areas must be consistent with the approved management plan.

(4) Management plans to protect or enhance critical eagle nesting habitat must include the following items, where applicable:

a. Description of the landscape within and surrounding the critical eagle nesting habitat, including FLUCCFS map, locations and height of active and alternate nest trees and perch trees, tree survey, and a description of the location, height, species and density of understory and canopy vegetation, as related to visibility between the active nest and proposed development.

b. History and behavior patterns of the eagle pair.

c. A one inch equals 200 feet aerial map and a map at the scale of the development that shows the location of the eagle's nest, flight path to and from the nest, location and size of visual obstacles, such as trees, between the nest and proposed development, nearest

known foraging area for the eagle, location and type of existing and permitted developments within 1,500 feet of the nest, and other critical eagle nesting habitat features, as well as the proposed development.

d. The boundaries, size, and shape of the proposed buffer area.

e. Conservation measures designed to minimize potential adverse impacts of the development on nesting bald eagles that may result in disturbance or abandonment of the nest. Such conservation measures include, but are not limited to, compliance with the management plan and compliance with national or state guidelines, establishment of a planted landscape buffer, construction phasing indicating timing and location of construction activities during nesting and non-nesting periods (i.e., no construction within 330 feet of a nest during nesting season), height limits on buildings within the buffer area, protection of the flight path and the nesting tree, monitoring of eagles and nests using the federal monitoring guidelines, conservation easement, and other necessary measures to protect or enhance critical eagle nesting habitat.

f. Techniques to maintain viable nesting habitat. These techniques may include controlled burning, planting, or removal of vegetation, invasive exotic species control, maintaining hydrologic regimes, and monitoring.

g. Deed restrictions, protective covenants, easements, or other legal mechanisms running with the land that provide reasonable assurances that the approved management plan will be implemented and followed by all subsequent owners of the property in question.

h. A commitment to educate future owners, tenants, or other users of the development about the specific requirements of the approved eagle management plan and the state and federal eagle protection laws.

(5) The legal effect of management plans will be limited geographically to property owned or controlled by the proponent of the plan.

(6) In determining whether the proposed project and conservation measures protect or enhance eagle habitat in accordance with this article and the Bonita Plan, environmental sciences staff will consider the intensity of the proposed and existing development, quality of habitat, behavior of the specific nesting eagles, extent of measures proposed in the eagle management plan, and the consistency with the guidelines promulgated by FWC and the USFWS in the review of management plans and may request technical assistance from the FWC or the USFWS whenever necessary. This review will be the basis of staff recommendation to the city council.

(7) An approved management plan will remain effective, notwithstanding the abandonment of a nest, unless the abandonment occurs prior to the use of any incentives (see section 7-80) and the property owner relinquishes the incentives by amending the development order or taking other appropriate action.

(Ord. No. 10-05, § 1(7-119), 6-2-2010)

Sec. 7-80. - Compensation incentives for protection of critical eagle nesting habitat.

If the city council elects not to acquire a critical eagle nesting habitat, then the city may permit all or some of the following special compensation benefits as incentives to the developer or property owner for the purpose of protecting critical eagle nesting habitat in exchange for the property owner's agreement to institute mechanisms for protection or enhancement of critical eagle nesting habitat on the property:

(1) For a buffer area of 330 feet in radius or an approximate equivalent acreage, minimum, the following benefits will be granted:

a. The property owner will be allowed to transfer density from within the buffer area to designated upland areas within the subject property at the same density permitted for the property as determined through the residential planned development process. For a buffer

area, or portion thereof, composed of wetlands, an internal transfer of one development right per five acres will apply.

b. The property owner will be allowed priority review and processing of zoning and development applications for the subject property and, if applicable, one other parcel under unified control.

(2) For a buffer area of 660 feet in radius or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsection (1) of this section, may be granted:

a. The city will establish an account to pay community development the zoning application fee on the subject property;

b. The city will establish an account to pay community development building permit application fees on the subject property;

c. The city will establish an account to pay community development review-related fees on the subject property; and

d. The eagle preserve will be available to offset any indigenous preserve or open space requirement at a ratio of 1.5:1 (1.5 acre of indigenous preserve or open space area is offset by each acre of eagle preserve); provided, however, that such incentive has not already been applied in accordance with section 3-417(b)(3) or 3-456(e).

(3) For a buffer area of 750 feet in radius, or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsections (1) and (2) of this section, will be granted: The city will provide a credit against regional park impact fees on the subject property, and if applicable, one other parcel under unified control located within the same regional park impact fee district. In no event will the credit towards regional park impact fee exceed the appraised value of the dedicated land.

(4) In order to receive the benefits mentioned in this section, the buffer areas must be designated as critical eagle nesting habitat and must be conveyed to the city by either warranty deed or by dedication of a perpetual conservation easement.

(5) In no event will the amount of fees waived or credited set forth in subsections (2) and (3) of this section exceed twice the appraised value of the buffer area conveyed to the county. The appraised value will be based on two current documented appraisals of the fair market value or sales price of the land. Appraisals must be prepared by qualified appraisers and are subject to approval by the city manager.

(6) City council may by resolution establish an advisory board to provide input on any incentive plan.

(Ord. No. 10-05, § 1(7-120), 6-2-2010)

Secs. 7-81—7-103. - Reserved.

NATIONAL BALD EAGLE MANAGEMENT GUIDELINES

U.S. Fish and Wildlife Service

May 2007

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INTRODUCTION

The bald eagle (*Haliaeetus leucocephalus*) is protected by the Bald and Golden Eagle Protection Act (Eagle Act) and the Migratory Bird Treaty Act (MBTA). The MBTA and the Eagle Act protect bald eagles from a variety of harmful actions and impacts. The U.S. Fish and Wildlife Service (Service) developed these National Bald Eagle Management Guidelines to advise landowners, land managers, and others who share public and private lands with bald eagles when and under what circumstances the protective provisions of the Eagle Act may apply to their activities. A variety of human activities can potentially interfere with bald eagles, affecting their ability to forage, nest, roost, breed, or raise young. The Guidelines are intended to help people minimize such impacts to bald eagles, particularly where they may constitute "disturbance," which is prohibited by the Eagle Act.

The Guidelines are intended to:

(1) Publicize the provisions of the Eagle Act that continue to protect bald eagles, in order to reduce the possibility that people will violate the law,

(2) Advise landowners, land managers and the general public of the potential for various human activities to disturb bald eagles, and

(3) Encourage additional nonbinding land management practices that benefit bald eagles (see Additional Recommendations section).

While the Guidelines include general recommendations for land management practices that will benefit bald eagles, the document is intended primarily as a tool for landowners and planners who seek information and recommendations regarding how to avoid disturbing bald eagles. Many States and some tribal entities have developed state-specific management plans, regulations, and/or guidance for landowners and land managers to protect and enhance bald eagle habitat, and we encourage the continued development and use of these planning tools to benefit bald eagles.

Adherence to the Guidelines herein will benefit individuals, agencies, organizations, and companies by helping them avoid violations of the law. However, the Guidelines themselves are not law. Rather, they are recommendations based on several decades of behavioral observations, science, and conservation measures to avoid or minimize adverse impacts to bald eagles.

The U.S. Fish and Wildlife Service strongly encourages adherence to these guidelines to ensure that bald and golden eagle populations will continue to be sustained. The Service realizes there may be impacts to some birds even if all reasonable measures are taken to avoid such impacts. Although it is not possible to absolve individuals and entities from liability under the Eagle Act or the MBTA, the Service exercises enforcement discretion to focus on those individuals, companies, or agencies that take migratory birds without regard for the consequences of their actions and the law, especially when conservation measures, such as these Guidelines, are available, but have not been implemented. The Service will prioritize its enforcement efforts to focus on those individuals or entities who take bald eagles or their parts, eggs, or nests without implementing appropriate measures recommended by the Guidelines.

The Service intends to pursue the development of regulations that would authorize, under limited circumstances, the use of permits if “take” of an eagle is anticipated but unavoidable. Additionally, if the bald eagle is delisted, the Service intends to provide a regulatory mechanism to honor existing (take) authorizations under the Endangered Species Act (ESA).

During the interim period until the Service completes a rulemaking for permits under the Eagle Act, the Service does not intend to refer for prosecution the incidental “*take*” of any bald eagle under the MBTA or Eagle Act, if such take is in full compliance with the terms and conditions of an incidental take statement issued to the action agency or applicant under the authority of section 7(b)(4) of the ESA or a permit issued under the authority of section 10(a)(1)(B) of the ESA.

The Guidelines are applicable throughout the United States, including Alaska. The primary purpose of these Guidelines is to provide information that will minimize or prevent violations only of *Federal* laws governing bald eagles. In addition to Federal laws, many states and some smaller jurisdictions and tribes have additional laws and regulations protecting bald eagles. In some cases those laws and regulations may be more protective (restrictive) than these Federal guidelines. If you are planning activities that may affect bald eagles, we therefore recommend that you contact both your nearest U.S. Fish and Wildlife Service Field Office (see the contact information on p.16) and your state wildlife agency for assistance.

LEGAL PROTECTIONS FOR THE BALD EAGLE

The Bald and Golden Eagle Protection Act

The Eagle Act (16 U.S.C. 668-668c), enacted in 1940, and amended several times since then, prohibits anyone, without a permit issued by the Secretary of the Interior, from “taking” bald eagles, including their parts, nests, or eggs. The Act provides criminal and civil penalties for persons who “take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof.” The Act defines “take” as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.” “Disturb’’ means:

> "Disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle=s return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment.

A violation of the Act can result in a criminal fine of $100,000 ($200,000 for organizations), imprisonment for one year, or both, for a first offense. Penalties increase substantially for additional offenses, and a second violation of this Act is a felony.

The Migratory Bird Treaty Act
The MBTA (16 U.S.C. 703-712), prohibits the taking of any migratory bird or any part, nest, or egg, except as permitted by regulation. The MBTA was enacted in 1918; a 1972 agreement supplementing one of the bilateral treaties underlying the MBTA had the effect of expanding the scope of the Act to cover bald eagles and other raptors. Implementing regulations define "take" under the MBTA as "pursue, hunt, shoot, wound, kill, trap, capture, possess, or collect."

Copies of the Eagle Act and the MBTA are available at: http://permits.fws.gov/ltr/ltr.shtml.

State laws and regulations
Most states have their own regulations and/or guidelines for bald eagle management. Some states may continue to list the bald eagle as endangered, threatened, or of special concern. If you plan activities that may affect bald eagles, we urge you to familiarize yourself with the regulations and/or guidelines that apply to bald eagles in your state. Your adherence to the Guidelines herein does not ensure that you are in compliance with state laws and regulations because state regulations can be more specific and/or restrictive than these Guidelines.

NATURAL HISTORY OF THE BALD EAGLE

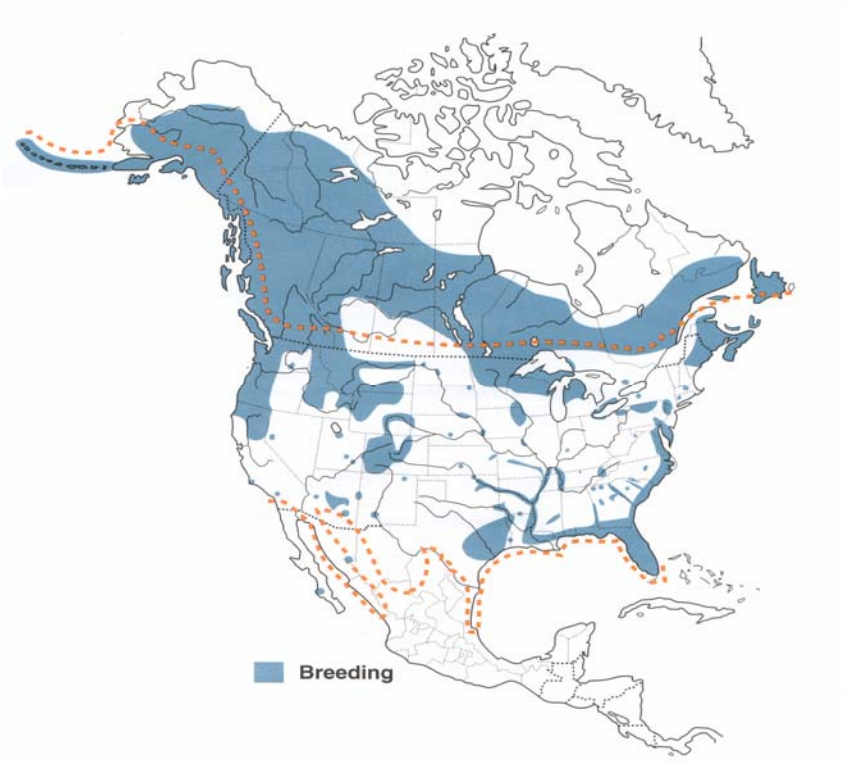
Bald eagles are a North American species that historically occurred throughout the contiguous United States and Alaska. After severely declining in the lower 48 States between the 1870s and the 1970s, bald eagles have rebounded and re-established breeding territories in each of the lower 48 states. The largest North American breeding populations are in Alaska and Canada, but there are also significant bald eagle populations in Florida, the Pacific Northwest, the Greater Yellowstone area, the Great Lakes states, and the Chesapeake Bay region. Bald eagle distribution varies seasonally. Bald eagles that nest in southern latitudes frequently move northward in late spring and early summer, often summering as far north as Canada. Most eagles that breed at northern latitudes migrate southward during winter, or to coastal areas where waters remain unfrozen. Migrants frequently concentrate in large numbers at sites where food is abundant and they often roost together communally. In some cases, concentration areas are used year-round: in summer by southern eagles and in winter by northern eagles.

Juvenile bald eagles have mottled brown and white plumage, gradually acquiring their dark brown body and distinctive white head and tail as they mature. Bald eagles generally attain adult plumage by 5 years of age. Most are capable of breeding at 4 or 5 years of age, but in healthy populations they may not start breeding until much older. Bald eagles may live 15 to 25 years in the wild. Adults weigh 8 to 14 pounds (occasionally reaching 16 pounds in Alaska) and have wingspans of 5 to 8 feet. Those in the northern range are larger than those in the south, and females are larger than males.

Where do bald eagles nest?

Breeding bald eagles occupy "territories," areas they will typically defend against intrusion by other eagles. In addition to the active nest, a territory may include one or more alternate nests (nests built or maintained by the eagles but not used for nesting in a given year). The Eagle Act prohibits removal or destruction of both active and alternate bald eagle nests. Bald eagles exhibit high nest site fidelity and nesting territories are often used year after year. Some territories are known to have been used continually for over half a century.

Bald eagles generally nest near coastlines, rivers, large lakes or streams that support an adequate food supply. They often nest in mature or old-growth trees; snags (dead trees); cliffs; rock promontories; rarely on the ground; and with increasing frequency on human-made structures such as power poles and communication towers. In forested areas, bald eagles often select the tallest trees with limbs strong enough to support a nest that can weigh more than 1,000 pounds. Nest sites typically include at least one perch with a clear view of the water where the eagles usually forage. Shoreline trees or snags located in reservoirs provide the visibility and accessibility needed to locate aquatic prey. Eagle nests are constructed with large sticks, and may be lined with moss, grass, plant stalks, lichens, seaweed, or sod. Nests are usually about 4-6 feet in diameter and 3 feet deep, although larger nests exist.



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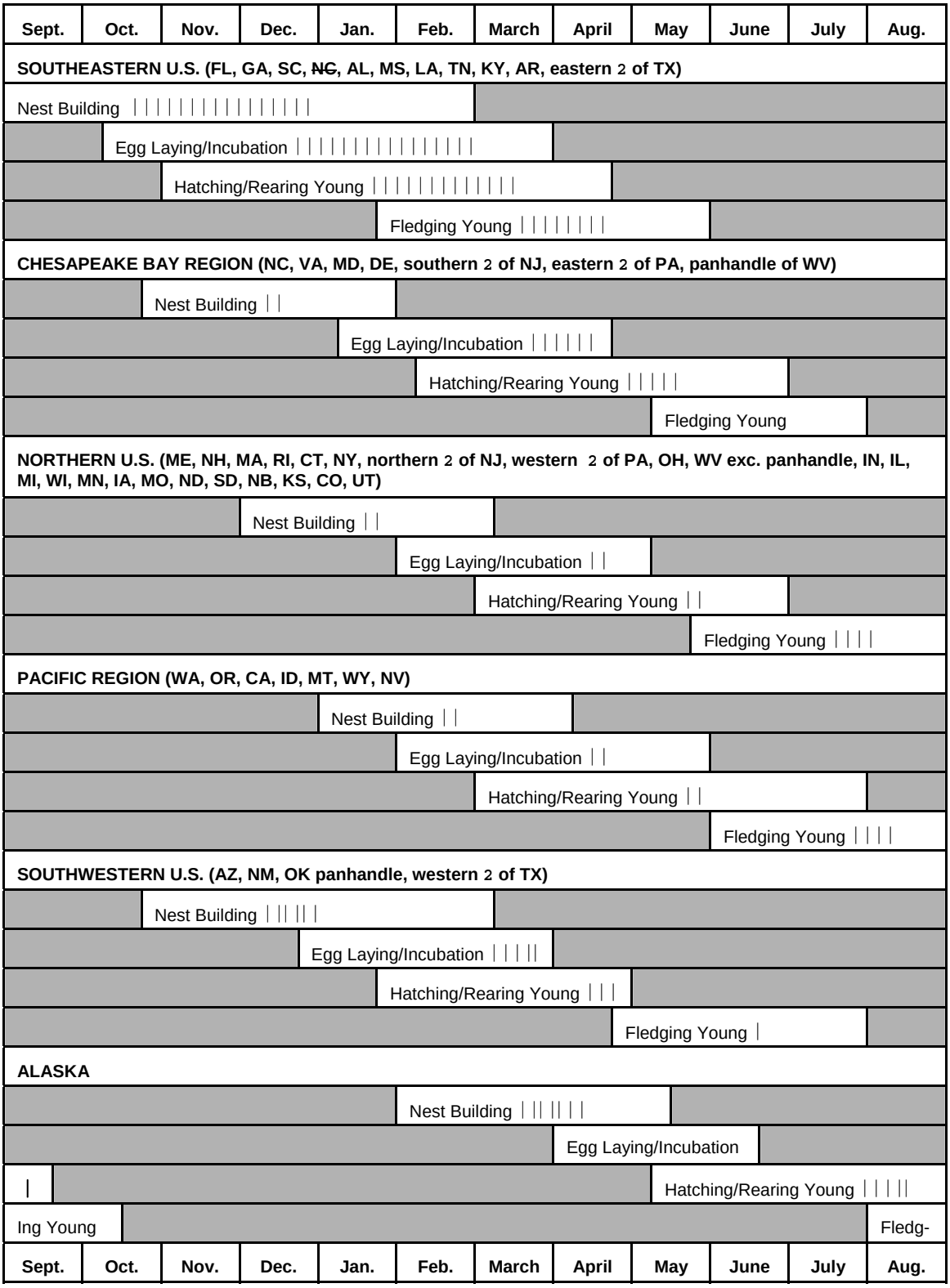
The range of breeding bald eagles in 2000 (shaded areas). This map shows only the larger concentrations of nests; eagles have continued to expand into additional nesting territories in many states. The dotted line represents the bald eagle's wintering range.

When do bald eagles nest?

Nesting activity begins several months before egg-laying. Egg-laying dates vary throughout the U.S., ranging from October in Florida, to late April or even early May in the northern United States. Incubation typically lasts 33-35 days, but can be as long as 40 days. Eaglets make their first unsteady flights about 10 to 12 weeks after hatching, and fledge (leave their nests) within a few days after that first flight. However, young birds usually remain in the vicinity of the nest for several weeks after fledging because they are almost completely dependent on their parents for food until they disperse from the nesting territory approximately 6 weeks later.

The bald eagle breeding season tends to be longer in the southern U.S., and re-nesting following an unsuccessful first nesting attempt is more common there as well. The following table shows the timing of bald eagle breeding seasons in different regions of the country. The table represents the range of time within which the majority of nesting activities occur in each region and does not apply to any specific nesting pair. Because the timing of nesting activities may vary within a given region, you should contact the nearest U.S. Fish and Wildlife Service Field Office (see page 16) and/or your state wildlife conservation agency for more specific information on nesting chronology in your area.

Chronology of typical reproductive activities of bald eagles in the United States.



How many chicks do bald eagles raise?
The number of eagle eggs laid will vary from 1-3, with 1-2 eggs being the most common. Only one eagle egg is laid per day, although not always on successive days. Hatching of young occurs on different days with the result that chicks in the same nest are sometimes of unequal size. The overall national fledging rate is approximately one chick per nest, annually, which results in a healthy expanding population.

What do bald eagles eat?
Bald eagles are opportunistic feeders. Fish comprise much of their diet, but they also eat waterfowl, shorebirds/colonial waterbirds, small mammals, turtles, and carrion. Because they are visual hunters, eagles typically locate their prey from a conspicuous perch, or soaring flight, then swoop down and strike. Wintering bald eagles often congregate in large numbers along streams to feed on spawning salmon or other fish species, and often gather in large numbers in areas below reservoirs, especially hydropower dams, where fish are abundant. Wintering eagles also take birds from rafts of ducks at reservoirs and rivers, and congregate on melting ice shelves to scavenge dead fish from the current or the soft melting ice. Bald eagles will also feed on carcasses along roads, in landfills, and at feedlots.

During the breeding season, adults carry prey to the nest to feed the young. Adults feed their chicks by tearing off pieces of food and holding them to the beaks of the eaglets. After fledging, immature eagles are slow to develop hunting skills, and must learn to locate reliable food sources and master feeding techniques. Young eagles will congregate together, often feeding upon easily acquired food such as carrion and fish found in abundance at the mouths of streams and shallow bays and at landfills.

The impact of human activity on nesting bald eagles
During the breeding season, bald eagles are sensitive to a variety of human activities. However, not all bald eagle pairs react to human activities in the same way. Some pairs nest successfully just dozens of yards from human activity, while others abandon nest sites in response to activities much farther away. This variability may be related to a number of factors, including visibility, duration, noise levels, extent of the area affected by the activity, prior experiences with humans, and tolerance of the individual nesting pair. The relative sensitivity of bald eagles during various stages of the breeding season is outlined in the following table.

Nesting Bald Eagle Sensitivity to Human Activities

Phase	Activity	Sensitivity to Human Activity	Comments
I	Courtship and Nest Building	Most sensitive period; likely to respond negatively	Most critical time period. Disturbance is manifested in nest abandonment. Bald eagles in newly established territories are more prone to abandon nest sites.
II	Egg laying	Very sensitive period	Human activity of even limited duration may cause nest desertion and abandonment of territory for the breeding season.
III	Incubation and early nestling period (up to 4 weeks)	Very sensitive period	Adults are less likely to abandon the nest near and after hatching. However, flushed adults leave eggs and young unattended; eggs are susceptible to cooling, loss of moisture, overheating, and predation; young are vulnerable to elements.
IV	Nestling period, 4 to 8 weeks	Moderately sensitive period	Likelihood of nest abandonment and vulnerability of the nestlings to elements somewhat decreases. However, nestlings may miss feedings, affecting their survival.
V	Nestlings 8 weeks through fledging	Very sensitive period	Gaining flight capability, nestlings 8 weeks and older may flush from the nest prematurely due to disruption and die.

If agitated by human activities, eagles may inadequately construct or repair their nest, may expend energy defending the nest rather than tending to their young, or may abandon the nest altogether. Activities that cause prolonged absences of adults from their nests can jeopardize eggs or young. Depending on weather conditions, eggs may overheat or cool too much and fail to hatch. Unattended eggs and nestlings are subject to predation. Young nestlings are particularly vulnerable because they rely on their parents to provide warmth or shade, without which they may die as a result of hypothermia or heat stress. If food delivery schedules are interrupted, the young may not develop healthy plumage, which can affect their survival. In addition, adults startled while incubating or brooding young may damage eggs or injure their young as they abruptly leave the nest. Older nestlings no longer require constant attention from the adults, but they may be startled by loud or intrusive human activities and prematurely jump from the nest before they are able to fly or care for themselves. Once fledged, juveniles range up to ¼ mile from the nest site, often to a site with minimal human activity. During this period, until about six weeks after departure from the nest, the juveniles still depend on the adults to feed them.

The impact of human activity on foraging and roosting bald eagles

Disruption, destruction, or obstruction of roosting and foraging areas can also negatively affect bald eagles. Disruptive activities in or near eagle foraging areas can interfere with feeding, reducing chances of survival. Interference with feeding can also result in reduced productivity (number of young successfully fledged). Migrating and wintering bald eagles often congregate at specific sites for purposes of feeding and sheltering. Bald eagles rely on established roost sites because of their proximity to sufficient food sources. Roost sites are usually in mature trees where the eagles are somewhat sheltered from the wind and weather. Human activities near or within communal roost sites may prevent eagles

from feeding or taking shelter, especially if there are not other undisturbed and productive feeding and roosting sites available. Activities that permanently alter communal roost sites and important foraging areas can altogether eliminate the elements that are essential for feeding and sheltering eagles.

Where a human activity agitates or bothers roosting or foraging bald eagles to the degree that causes injury or substantially interferes with breeding, feeding, or sheltering behavior and causes, or is likely to cause, a loss of productivity or nest abandonment, the conduct of the activity constitutes a violation of the Eagle Act's prohibition against disturbing eagles. The circumstances that might result in such an outcome are difficult to predict without detailed site-specific information. If your activities may disturb roosting or foraging bald eagles, you should contact your local Fish and Wildlife Service Field Office (see page 16) for advice and recommendations for how to avoid such disturbance.

RECOMMENDATIONS FOR AVOIDING DISTURBANCE AT NEST SITES

In developing these Guidelines, we relied on existing state and regional bald eagle guidelines, scientific literature on bald eagle disturbance, and recommendations of state and Federal biologists who monitor the impacts of human activity on eagles. Despite these resources, uncertainties remain regarding the effects of many activities on eagles and how eagles in different situations may or may not respond to certain human activities. The Service recognizes this uncertainty and views the collection of better biological data on the response of eagles to disturbance as a high priority. To the extent that resources allow, the Service will continue to collect data on responses of bald eagles to human activities conducted according to the recommendations within these Guidelines to ensure that adequate protection from disturbance is being afforded, and to identify circumstances where the Guidelines might be modified. These data will be used to make future adjustments to the Guidelines.

To avoid disturbing nesting bald eagles, we recommend (1) keeping a distance between the activity and the nest (distance buffers), (2) maintaining preferably forested (or natural) areas between the activity and around nest trees (landscape buffers), and (3) avoiding certain activities during the breeding season. The buffer areas serve to minimize visual and auditory impacts associated with human activities near nest sites. Ideally, buffers would be large enough to protect existing nest trees and provide for alternative or replacement nest trees.

The size and shape of effective buffers vary depending on the topography and other ecological characteristics surrounding the nest site. In open areas where there are little or no forested or topographical buffers, such as in many western states, distance alone must serve as the buffer. Consequently, in open areas, the distance between the activity and the nest may need to be larger than the distances recommended under Categories A and B of these guidelines (pg. 12) if no landscape buffers are present. The height of the nest above the ground may also ameliorate effects of human activities; eagles at higher nests may be less prone to disturbance.

In addition to the physical features of the landscape and nest site, the appropriate size for the distance buffer may vary according to the historical tolerances of eagles to human activities in particular localities, and may also depend on the location of the nest in relation

to feeding and roosting areas used by the eagles. Increased competition for nest sites may lead bald eagles to nest closer to human activity (and other eagles).

Seasonal restrictions can prevent the potential impacts of many shorter-term, obtrusive activities that do not entail landscape alterations (e.g. fireworks, outdoor concerts). In proximity to the nest, these kinds of activities should be conducted only outside the breeding season. For activities that entail both short-term, obtrusive characteristics and more permanent impacts (e.g., building construction), we recommend a combination of both approaches: retaining a landscape buffer *and* observing seasonal restrictions.

For assistance in determining the appropriate size and configuration of buffers or the timing of activities in the vicinity of a bald eagle nest, we encourage you to contact the nearest U.S. Fish and Wildlife Service Field Office (see page 16).

Existing Uses

Eagles are unlikely to be disturbed by routine use of roads, homes, and other facilities where such use pre-dates the eagles' successful nesting activity in a given area. Therefore, in most cases *ongoing* existing uses may proceed with the same intensity with little risk of disturbing bald eagles. However, some *intermittent, occasional, or irregular* uses that pre-date eagle nesting in an area may disturb bald eagles. For example: a pair of eagles may begin nesting in an area and subsequently be disturbed by activities associated with an annual outdoor flea market, even though the flea market has been held annually at the same location. In such situations, human activity should be adjusted or relocated to minimize potential impacts on the nesting pair.

ACTIVITY-SPECIFIC GUIDELINES

The following section provides the Service=s management recommendations for avoiding bald eagle disturbance as a result of new or intermittent activities proposed in the vicinity of bald eagle nests. Activities are separated into 8 categories (A – H) based on the nature and magnitude of impacts to bald eagles that usually result from the type of activity. Activities with similar or comparable impacts are grouped together.

In most cases, impacts will vary based on the visibility of the activity from the eagle nest and the degree to which similar activities are already occurring in proximity to the nest site. Visibility is a factor because, in general, eagles are more prone to disturbance when an activity occurs in full view. For this reason, we recommend that people locate activities farther from the nest structure in areas with open vistas, in contrast to areas where the view is shielded by rolling topography, trees, or other screening factors. The recommendations also take into account the existence of similar activities in the area because the continued presence of nesting bald eagles in the vicinity of the existing activities indicates that the eagles in that area can tolerate a greater degree of human activity than we can generally expect from eagles in areas that experience fewer human impacts. To illustrate how these factors affect the likelihood of disturbing eagles, we have incorporated the recommendations for some activities into a table (categories A and B).

First, determine which category your activity falls into (between categories A – H). If the activity you plan to undertake is not specifically addressed in these guidelines, follow the recommendations for the most similar activity represented.

If your activity is under A or B, our recommendations are in table form. The vertical axis shows the degree of visibility of the activity from the nest. The horizontal axis (header row) represents the degree to which similar activities are ongoing in the vicinity of the nest. Locate the row that best describes how visible your activity will be from the eagle nest. Then, choose the column that best describes the degree to which similar activities are ongoing in the vicinity of the eagle nest. The box where the column and row come together contains our management recommendations for how far you should locate your activity from the nest to avoid disturbing the eagles. The numerical distances shown in the tables are the closest the activity should be conducted relative to the nest. In some cases we have included additional recommendations (other than recommended *distance* from the nest) you should follow to help ensure that your activity will not disturb the eagles.

Alternate nests

For activities that entail permanent landscape alterations that may result in bald eagle disturbance, these recommendations apply to both active and alternate bald eagle nests. Disturbance becomes an issue with regard to alternate nests if eagles return for breeding purposes and react to land use changes that occurred while the nest was inactive. The likelihood that an alternate nest will again become active decreases the longer it goes unused. If you plan activities in the vicinity of an alternate bald eagle nest and have information to show that the nest has not been active during the preceding 5 breeding seasons, the recommendations provided in these guidelines for avoiding disturbance around the nest site may no longer be warranted. The nest itself remains protected by other provisions of the Eagle Act, however, and may not be destroyed.

If special circumstances exist that make it unlikely an inactive nest will be reused before 5 years of disuse have passed, and you believe that the probability of reuse is low enough to warrant disregarding the recommendations for avoiding disturbance, you should be prepared to provide all the reasons for your conclusion, including information regarding past use of the nest site. Without sufficient documentation, you should continue to follow these guidelines when conducting activities around the nest site. If we are able to determine that it is unlikely the nest will be reused, we may advise you that the recommendations provided in these guidelines for avoiding disturbance are no longer necessary around that nest site.

This guidance is intended to minimize disturbance, as defined by Federal regulation. In addition to Federal laws, most states and some tribes and smaller jurisdictions have additional laws and regulations protecting bald eagles. In some cases those laws and regulations may be more protective (restrictive) than these Federal guidelines.

Temporary Impacts

For activities that have temporary impacts, such as the use of loud machinery, fireworks displays, or summer boating activities, we recommend seasonal restrictions. These types of activities can generally be carried out outside of the breeding season without causing disturbance. The recommended restrictions for these types of activities can be lifted for alternate nests within a particular territory, including nests that were attended during the current breeding season but not used to raise young, after eggs laid in another nest within the territory have hatched (depending on the distance between the alternate nest and the active nest).

In general, activities should be kept as far away from nest trees as possible; loud and disruptive activities should be conducted when eagles are not nesting; and activity between the nest and the nearest foraging area should be minimized. If the activity you plan to undertake is not specifically addressed in these guidelines, follow the recommendations for the most similar activity addressed, or contact your local U.S. Fish and Wildlife Service Field Office for additional guidance.

If you believe that special circumstances apply to your situation that increase or diminish the likelihood of bald eagle disturbance, or if it is not possible to adhere to the guidelines, you should contact your local Service Field Office for further guidance.

Category A:
Building construction, 1 or 2 story, with project footprint of ½ acre or less.
Construction of roads, trails, canals, power lines, and other linear utilities.
Agriculture and aquaculture – new or expanded operations.
Alteration of shorelines or wetlands.
Installation of docks or moorings.
Water impoundment.

Category B:
Building construction, 3 or more stories.
Building construction, 1 or 2 story, with project footprint of more than ½ acre.
Installation or expansion of marinas with a capacity of 6 or more boats.
Mining and associated activities.
Oil and natural gas drilling and refining and associated activities.

	If there is no similar activity within 1 mile of the nest	***If there is similar activity closer than 1 mile from the nest***
If the activity will be visible from the nest	660 feet. Landscape buffers are recommended.	660 feet, or as close as existing tolerated activity of similar scope. Landscape buffers are recommended.
If the activity will not be visible from the nest	Category A: 330 feet. Clearing, external construction, and landscaping between 330 feet and 660 feet should be done outside breeding season. Category B: 660 feet.	330 feet, or as close as existing tolerated activity of similar scope. Clearing, external construction and landscaping within 660 feet should be done outside breeding season.

The numerical distances shown in the table are the closest the activity should be conducted relative to the nest.

Category C. Timber Operations and Forestry Practices

- Avoid clear cutting or removal of overstory trees within 330 feet of the nest at any time.

- Avoid timber harvesting operations, including road construction and chain saw and yarding operations, during the breeding season within 660 feet of the nest. The distance may be decreased to 330 feet around alternate nests within a particular territory, including nests that were attended during the current breeding season but not used to raise young, after eggs laid in another nest within the territory have hatched.

- Selective thinning and other silviculture management practices designed to conserve or enhance habitat, including prescribed burning close to the nest tree, should be undertaken outside the breeding season. Precautions such as raking leaves and woody debris from around the nest tree should be taken to prevent crown fire or fire climbing the nest tree. If it is determined that a burn during the breeding season would be beneficial, then, to ensure that no take or disturbance will occur, these activities should be conducted only when neither adult eagles nor young are present at the nest tree (i.e., at the beginning of, or end of, the breeding season, either before the particular nest is active or after the young have fledged from that nest). Appropriate Federal and state biologists should be consulted before any prescribed burning is conducted during the breeding season.

- Avoid construction of log transfer facilities and in-water log storage areas within 330 feet of the nest.

Category D. Off-road vehicle use (including snowmobiles). No buffer is necessary around nest sites outside the breeding season. During the breeding season, do not operate off-road vehicles within 330 feet of the nest. In open areas, where there is increased visibility and exposure to noise, this distance should be extended to 660 feet.

Category E. Motorized Watercraft use (including jet skis/personal watercraft). No buffer is necessary around nest sites outside the breeding season. During the breeding season, within 330 feet of the nest, (1) do not operate jet skis (personal watercraft), and (2) avoid concentrations of noisy vessels (e.g., commercial fishing boats and tour boats), except where eagles have demonstrated tolerance for such activity. Other motorized boat traffic passing within 330 feet of the nest should attempt to minimize trips and avoid stopping in the area where feasible, particularly where eagles are unaccustomed to boat traffic. Buffers for airboats should be larger than 330 feet due to the increased noise they generate, combined with their speed, maneuverability, and visibility.

Category F. Non-motorized recreation and human entry (e.g., hiking, camping, fishing, hunting, birdwatching, kayaking, canoeing). No buffer is necessary around nest sites outside the breeding season. If the activity will be visible or highly audible from the nest, maintain a 330-foot buffer during the breeding season, particularly where eagles are unaccustomed to such activity.

Category G. Helicopters and fixed-wing aircraft.
Except for authorized biologists trained in survey techniques, avoid operating aircraft within 1,000 feet of the nest during the breeding season, except where eagles have demonstrated tolerance for such activity.

Category H. Blasting and other loud, intermittent noises.
Avoid blasting and other activities that produce extremely loud noises within 1/2 mile of active nests, unless greater tolerance to the activity (or similar activity) has been demonstrated by the eagles in the nesting area. This recommendation applies to the use of fireworks classified by the Federal Department of Transportation as Class B explosives, which includes the larger fireworks that are intended for licensed public display.

RECOMMENDATIONS FOR AVOIDING DISTURBANCE AT FORAGING AREAS AND COMMUNAL ROOST SITES

1. Minimize potentially disruptive activities and development in the eagles' direct flight path between their nest and roost sites and important foraging areas.

2. Locate long-term and permanent water-dependent facilities, such as boat ramps and marinas, away from important eagle foraging areas.

3. Avoid recreational and commercial boating and fishing near critical eagle foraging areas during peak feeding times (usually early to mid-morning and late afternoon), except where eagles have demonstrated tolerance to such activity.

4. Do not use explosives within ½ mile (or within 1 mile in open areas) of communal roosts when eagles are congregating, without prior coordination with the U.S. Fish and Wildlife Service and your state wildlife agency.

5. Locate aircraft corridors no closer than 1,000 feet vertical or horizontal distance from communal roost sites.

ADDITIONAL RECOMMENDATIONS TO BENEFIT BALD EAGLES

The following are additional management practices that landowners and planners can exercise for added benefit to bald eagles.

1. Protect and preserve potential roost and nest sites by retaining mature trees and old growth stands, particularly within ½ mile from water.

2. Where nests are blown from trees during storms or are otherwise destroyed by the elements, continue to protect the site in the absence of the nest for up to three (3) complete breeding seasons. Many eagles will rebuild the nest and reoccupy the site.

3. To avoid collisions, site wind turbines, communication towers, and high voltage transmission power lines away from nests, foraging areas, and communal roost sites.

4. Employ industry-accepted best management practices to prevent birds from colliding with or being electrocuted by utility lines, towers, and poles. If possible, bury utility lines in important eagle areas.

5. Where bald eagles are likely to nest in human-made structures (e.g., cell phone towers) and such use could impede operation or maintenance of the structures or jeopardize the safety of the eagles, equip the structures with either (1) devices engineered to discourage bald eagles from building nests, or (2) nesting platforms that will safely accommodate bald eagle nests without interfering with structure performance.

6. Immediately cover carcasses of euthanized animals at landfills to protect eagles from being poisoned.

7. Do not intentionally feed bald eagles. Artificially feeding bald eagles can disrupt their essential behavioral patterns and put them at increased risk from power lines, collision with windows and cars, and other mortality factors.

8. Use pesticides, herbicides, fertilizers, and other chemicals only in accordance with Federal and state laws.

9. Monitor and minimize dispersal of contaminants associated with hazardous waste sites (legal or illegal), permitted releases, and runoff from agricultural areas, especially within watersheds where eagles have shown poor reproduction or where bioaccumulating contaminants have been documented. These factors present a risk of contamination to eagles and their food sources.

CONTACTS

The following U.S. Fish and Wildlife Service Field Offices provide technical assistance on bald eagle management:

Alabama	Daphne	(251) 441-5181
Alaska	Anchorage	(907) 271-2888
	Fairbanks	(907) 456-0203
	Juneau	(907) 780-1160
Arizona	Phoenix	(602) 242-0210
Arkansas	Conway	(501) 513-4470
California	Arcata	(707) 822-7201
	Barstow	(760) 255-8852
	Carlsbad	(760) 431-9440
	Red Bluff	(530) 527-3043
	Sacramento	(916) 414-6000
	Stockton	(209) 946-6400
	Ventura	(805) 644-1766
	Yreka	(530) 842-5763
Colorado	Lakewood	(303) 275-2370
	Grand Junction	(970) 243-2778
Connecticut	(See New Hampshire)	
Delaware	(See Maryland)	
Florida	Panama City	(850) 769-0552
	Vero Beach	(772) 562-3909
	Jacksonville	(904) 232-2580
Georgia	Athens	(706) 613-9493
	Brunswick	(912) 265-9336
	Columbus	(706) 544-6428
Idaho	Boise	(208) 378-5243
	Chubbuck	(208) 237-6975
Illinois/Iowa	Rock Island	(309) 757-5800
Indiana	Bloomington	(812) 334-4261
Kansas	Manhattan	(785) 539-3474
Kentucky	Frankfort	(502) 695-0468
Louisiana	Lafayette	(337) 291-3100
Maine	Old Town	(207) 827-5938
Maryland	Annapolis	(410) 573-4573
Massachusetts	(See New Hampshire)	
Michigan	East Lansing	(517) 351-2555
Minnesota	Bloomington	(612) 725-3548
Mississippi	Jackson	(601) 965-4900
Missouri	Columbia	(573) 234-2132
Montana	Helena	(405) 449-5225
Nebraska	Grand Island	(308) 382-6468
Nevada	Las Vegas	(702) 515-5230
	Reno	(775) 861-6300
New Hampshire	Concord	(603) 223-2541
New Jersey	Pleasantville	(609) 646-9310
New Mexico	Albuquerque	(505) 346-2525
New York	Cortland	(607) 753-9334
	Long Island	(631) 776-1401
North Carolina	Raleigh	(919) 856-4520
	Asheville	(828) 258-3939
North Dakota	Bismarck	(701) 250-4481
Ohio	Reynoldsburg	(614) 469-6923
Oklahoma	Tulsa	(918) 581-7458
Oregon	Bend	(541) 383-7146
	Klamath Falls	(541) 885-8481
	La Grande	(541) 962-8584
	Newport	(541) 867-4558
	Portland	(503) 231-6179
	Roseburg	(541) 957-3474
Pennsylvania	State College	(814) 234-4090
Rhode Island	(See New Hampshire)	
South Carolina	Charleston	(843) 727-4707
South Dakota	Pierre	(605) 224-8693
Tennessee	Cookeville	(931) 528-6481
Texas	Clear Lake	(281) 286-8282
Utah	West Valley City	(801) 975-3330
Vermont	(See New Hampshire)	
Virginia	Gloucester	(804) 693-6694
Washington	Lacey	(306) 753-9440
	Spokane	(509) 891-6839
	Wenatchee	(509) 665-3508
West Virginia	Elkins	(304) 636-6586
Wisconsin	New Franken	(920) 866-1725
Wyoming	Cheyenne	(307) 772-2374
	Cody	(307) 578-5939

National Office
U.S. Fish and Wildlife Service
Division of Migratory Bird Management
4401 North Fairfax Drive, MBSP-4107
Arlington, VA 22203-1610
(703) 358-1714
http://www.fws.gov/migratorybirds

State Agencies

To contact a state wildlife agency, visit the Association of Fish & Wildlife Agencies' website at http://www.fishwildlife.org/where_us.html

GLOSSARY

The definitions below apply to these National Bald Eagle Management Guidelines:

Communal roost sites – Areas where bald eagles gather and perch overnight – and sometimes during the day in the event of inclement weather. Communal roost sites are usually in large trees (live or dead) that are relatively sheltered from wind and are generally in close proximity to foraging areas. These roosts may also serve a social purpose for pair bond formation and communication among eagles. Many roost sites are used year after year.

Disturb – To agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

In addition to immediate impacts, this definition also covers impacts that result from human-caused alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle=s return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment.

Fledge – To leave the nest and begin flying. For bald eagles, this normally occurs at 10-12 weeks of age.

Fledgling – A juvenile bald eagle that has taken the first flight from the nest but is not yet independent.

Foraging area – An area where eagles feed, typically near open water such as rivers, lakes, reservoirs, and bays where fish and waterfowl are abundant, or in areas with little or no water (i.e., rangelands, barren land, tundra, suburban areas, etc.) where other prey species (e.g., rabbit, rodents) or carrion (such as at landfills) are abundant.

Landscape buffer – A natural or human-made landscape feature that screens eagles from human activity (e.g., strip of trees, hill, cliff, berm, sound wall).

Nest – A structure built, maintained, or used by bald eagles for the purpose of reproduction. An **active** nest is a nest that is attended (built, maintained or used) by a pair of bald eagles during a given breeding season, whether or not eggs are laid. An **alternate** nest is a nest that is not used for breeding by eagles during a given breeding season.

Nest abandonment – Nest abandonment occurs when adult eagles desert or stop attending a nest and do not subsequently return and successfully raise young in that nest for the duration of a breeding season. Nest abandonment can be caused by altering habitat near a nest, even if the alteration occurs prior to the breeding season. Whether the eagles migrate during the non-breeding season, or remain in the area throughout the non-breeding season, nest abandonment can occur at any point between the time the eagles return to the nesting site for the breeding season and the time when all progeny from the breeding season have

dispersed.

Project footprint – The area of land (and water) that will be permanently altered for a development project, including access roads.

Similar scope – In the vicinity of a bald eagle nest, an existing activity is of similar scope to a new activity where the types of impacts to bald eagles are similar in nature, and the impacts of the existing activity are of the same or greater magnitude than the impacts of the potential new activity. Examples: (1) An existing single-story home 200 feet from a nest is similar in scope to an additional single-story home 200 feet from the nest; (2) An existing multi-story, multi-family dwelling 150 feet from a nest has impacts of a greater magnitude than a potential new single-family home 200 feet from the nest; (3) One existing single-family home 200 feet from the nest has impacts of a lesser magnitude than three single-family homes 200 feet from the nest; (4) an existing single-family home 200 feet from a communal roost has impacts of a lesser magnitude than a single-family home 300 feet from the roost but 40 feet from the eagles' foraging area. The existing activities in examples (1) and (2) are of similar scope, while the existing activities in example (3) and (4) are not.

Vegetative buffer – An area surrounding a bald eagle nest that is wholly or largely covered by forest, vegetation, or other natural ecological characteristics, and separates the nest from human activities.

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BALD EAGLE MONITORING GUIDELINES

Prepared For

United States Fish and Wildlife Service

September 2007

(Revision of Bald Eagle Monitoring Guidelines Issued September 2006)

PREFACE

The U.S. Fish and Wildlife Service's (Service) Florida Ecological Services Field Offices (FO's) in Jacksonville, Panama City and Vero Beach received and reviewed monitoring reports for more than five years as prescribed by our Bald Eagle Monitoring Guidelines (pre-2002 draft, 2002, 2005) (Monitoring Guidelines) for applicants proposing construction activities occurring within 1500 feet of an active bald eagle nest during the nesting season. The cumulative result of those monitoring reports was that the Service did not observe from the data any indicators of disturbance, abnormal or atypical behavior, or nest abandonment that would have caused the applicant and/or the Service to halt construction activities during the nesting season. Consequently, the Service and the Florida Fish and Wildlife Conservation Commission (FWC) jointly concluded that monitoring of construction and nesting activities occurring from 750 feet to 1500 feet (secondary zone) was no longer warranted for projects involving construction within those distances from an active nest during nesting season.

The Service's Florida FO's revised the 2005 Monitoring Guidelines again in September 2006 to incorporate modifications that would be applicable to the draft National Bald Eagle Management Guidelines that would be implemented under the Bald and Golden Eagle Protection Act (Eagle Act) once delisting of the bald eagle was finalized. These National Management Guidelines addressed construction and a variety of other human activities that can potentially interfere with bald eagles, affecting their ability to forage, nest, roost, breed, or raise young.

The Service published a notice of availability in the Federal Register (72 Fed.Reg. 31332) on June 5, 2007, finalizing the National Management Guidelines (dated May 2007), followed by the announcement on June 28, 2007 to remove the bald eagle from the Federal List of Endangered and Threatened species effective August 8, 2007. As such, it is necessary to make additional revisions to the September 2006 Monitoring Guidelines to assure consistency with these recent policy and regulatory changes.

These revised 2007 Monitoring Guidelines accordingly are now applicable for human activities that have potential to cause disturbance within 660 feet of an active nest. Additional criteria for disturbance are defined by the codified definition of "disturb" under the Eagle Act at 50 CFR 22.3. Monitoring generally is not recommended for projects when activities occur beyond 660 feet of an active nest, as those data are no longer required. However, additional criteria for

monitoring may be indicated in previously issued Biological Opinions that reference these Monitoring Guidelines, or in such cases where public safety issues exist related to airport operations and activities, electrical facilities and communication tower facilities where monitoring is required in order to determine the most appropriate action to avoid a safety hazard to both the public and the bald eagles. A number of Federal and State laws and/or regulations prohibit, cumulatively, such acts as harassing, harming, disturbing, molesting, pursuing, etc. bald eagles, or destroying their nests. The purpose of these Monitoring Guidelines is to provide a scientific standard for documenting and evaluating bald eagle response to human activities. Such activities may lead to an alteration of otherwise normal nesting behavior and ultimately to nest abandonment and/or death of eggs or eaglets. These Monitoring Guidelines are advisory in nature.

The FWC maintains a database of all known bald eagle territories in Florida (http://wld.fwc.state.fl.us/eagle/eaglenests/), which should be consulted to determine the specific nest number and nesting history. It should be noted that: 1) the nest locations (latitude/longitude coordinates) in this database are approximate and should not be relied upon to establish accurate distances from proposed construction activities, 2) some territories have alternate nests that may not be reported in the database, and 3) many bald eagle territories are unknown and/or may support new active nests that have been established in recent years. Any bald eagle nest discrepancies or new nest locations should be reported to the FWC bald eagle database coordinator at 352-955-2230.

The development of this document is a collaborative effort by Federal, State and private biologists who have extensive experience in the research and management of bald eagles in the Southeastern United States. J. Steve Godley[1] prepared the initial draft and all attachments, while Tom H. Logan[2, 3] served as editor and coordinator of technical and editorial reviews of subsequent drafts. Candace Martino[4] provided invaluable coordination to facilitate necessary input from each of the authors, and contributed technical and editorial comments for this latest edition. Dan Sullivan[2] provided editorial comments that were critical to the completion and technical quality of this document, as did Stephen A. Nesbitt[2], John H. White[2], Al Begazo[4], and Tony Steffer[5] for earlier editions of these Monitoring Guidelines.

[1] Biological Research Associates, LLC
[2] Florida Fish and Wildlife Conservation Commission
[3] Breedlove, Dennis & Associates, Inc.
[4] U.S. Fish and Wildlife Service
[5] Raptor Management Consultants. Inc.

BALD EAGLE MONITORING GUIDELINES

A. Introduction

The Service and FWC recommend biological monitoring of the nesting territory if new activities which include construction of buildings, roads, trails, canals, power lines, and other linear utilities; new or expanded operations of agriculture and aquaculture, alteration of shorelines or wetlands, installation of docks or moorings, marinas, water impoundment, and mining and associated activities is proposed to occur within 660 feet of the nest tree during the nesting season (October 1 - May 15, Service 1987). The Service also recommends that monitoring be conducted where an eagle's nest is located on or adjacent to, in close proximity of, electrical transmission towers, communication towers, airport runways, or other locations where they may create hazards to themselves or humans. These circumstances may require more intense monitoring, which may include increased frequency and hours of monitoring. These resulting data are deemed necessary for the Service to make appropriate decisions as to whether nest removal or relocation is warranted and subsequently permitable under new proposed regulations under 50 CRF 22.27 for Eagle Nest Take under the Eagle Act.

These Monitoring Guidelines have been developed to provide agency personnel and others a scientific standard for gathering data that may be used to evaluate eagle responses to human and development activities, which may indicate an alteration of otherwise normal nesting behavior. The Monitoring Guidelines 1) describe normal nesting behavior of bald eagles, 2) identify specific behavioral responses of adult and young eagles that may warrant cessation of activities, 3) propose the type and level of monitoring necessary to detect a change in normal behavior, and 4) develop a procedure for reporting the observations to the USFWS/FWC, which may be used for halting or modifying the above described activities, if necessary.

Buehler (2000) and references cited therein provide excellent summaries of the biology and nesting behavior of bald eagles. Nesting behavior and response of individual eagle pairs to human activities may vary, but nesting chronology and otherwise normal behavior are relatively fixed and predictable. The probability that a pair of bald eagles will abandon their nest increases with the intensity and proximity of human activities to their nest, and decreases with the time and energy the adult eagles have invested in the eggs or young and to what extent the adult birds may habituate to human activities. This is based upon the ecological parental investment theory (e.g., Trivers 1972, Wilson 1975, Dawkins 1977) and practical experience gained from observing bald eagle/human interactions over the past two decades in Florida (e.g., Wood 1992, Nesbitt et al. 1993, Wood and Collopy 1995, Millsap et al. 2004). Accordingly, the need for appropriate monitoring and concern for disturbance is highest prior to egg laying, the closer and more intense development activities occur to the nest tree, and for nesting territories in more rural environments.

All infrastructure development, exterior building construction, and other referenced activities within 660 feet of the nest tree should, as a general rule, be completed during the non-nesting season. Infrastructure construction includes all land and lot clearing; fill work; construction of roads, drainage, sewer and storm water facilities; and installation of water, electricity and other

utilities. However, it often is not possible to complete these above-referenced activities and other human related actions during the non-nesting season. These guidelines are applicable to those circumstances where these activities must be conducted during nesting season from 330-660 feet of the nest tree**. Please Note: The Service recommends that none of the above-referenced activities be conducted from 0-330 feet during nesting season, even when a buffer zone of less than 330 feet is established in accordance with the National Bald Eagle Management Guidelines; therefore, monitoring in these instances is not applicable.**

B. Monitoring Requirements

The Monitor is defined as personnel formally educated in the biological sciences, well experienced in recognizing specific patterns and changes of eagle behavior and capable of recording those observations in a scientific manner, and is contracted by the landowner, company or entity (Responsible Party) responsible for having the activity monitored. Continuity of monitoring, data collection and reporting is best maintained if one person conducts all monitoring for a specific project site. Close coordination is essential if more than one monitor is required. Monitoring should be conducted from a location that provides a clear vantage point of the nest and the surroundings (including the referenced activities), yet far enough from the nest (e.g., > 660 feet where possible) to ensure monitoring does not cause disturbance to the eagles. Monitoring from closer locations could cause disturbance and should be avoided. Conducting the monitoring from inside a parked vehicle or from a portable blind can further minimize observer disturbance. Monitoring should be conducted using both binoculars and a high-powered spotting scope during periods when referenced activity is occurring during the nesting season (generally October 1 – May 15) and within 660 feet of the nest tree, or as specified otherwise, by Service or FWC technical assistance.

The purpose of monitoring is to detect any abnormal behavior of the adult eagles or their chicks that may be elicited in response to human activities occurring within 660 feet of the nest tree and that potentially could result in disturbance as defined under 50 CFR 22, abandonment of the nest (and/or territory), or death of the eggs or eaglets. **In cases where the Responsible Party is relying upon conditions/recommendations specified in a Biological Opinion or agency document, procedures should be established between the Monitor and the Responsible Party for suspension of work and immediate notification to the Service and FWC upon observation of such abnormal behavior of nesting eagles (see Section D for details)**. Once an applicant agrees to monitor in accordance with these Monitoring Guidelines, they are held to *all* requirements of these Monitoring Guidelines.

Monitoring should begin no later than October 1 and continue through fledging, if activity is anticipated or planned to occur within 660 feet of the nest tree during the nesting season. Fledging is considered to have occurred at that age when young of the year have achieved the ability to sustain flight (see Section C.7 for details).

- **Initial Monitoring to Confirm Occupancy of the Nesting Territory:** Bald eagles are considered to have returned to the territory when one or both members of the pair appears, flies, perches, roosts, exhibits courtship, carries nest material, begins repair of the existing nest and/or begins construction of a new nest on the territory. The regulated

protection zone is considered to be the area within a 660-foot radius of the nest tree; although, some pairs may construct a new, alternate nest at farther distances. All eagle nests are protected unless declared ”abandoned” in accordance with provisions of the National Bald Eagle Management Guidelines (May 2007). All alternate nests should be monitored until such time as the eagles have been observed incubating in one of the nests on the territory. Monitoring can then cease for the alternate nests in which nesting does not occur. However, if the nest in which nesting begins is lost prior to February 1, monitoring of all alternate nests should be re-initiated to determine if re-nesting occurs on the territory.

Initial monitoring of eagles to determine territory occupancy shall be conducted a minimum of one day per week and consist of in sequence: 1) nest tree observations for a minimum of two hours starting ½ hour before sunrise, followed by 2) nest tree inspection for indirect evidence of eagle use if no adults are observed. *Never* approach a nest tree if adult eagles are observed on the territory on that day. The following shall constitute positive indirect evidence that bald eagles have returned to the nesting territory: 1) fresh moss or green tree branches placed or interwoven into the nest top, or 2) fresh droppings ("whitewash") on vegetation or the ground beneath the nest tree. Such droppings typically are deposited below the nest cup or favored perch branches. Do not confuse white, dried pine resin with eagle droppings: droppings rub off upon touch, whereas resin does not. Direct or indirect evidence of territory occupancy by adult eagles triggers the requirement for more intensive monitoring (see Monitoring During Early Phases of the Nesting Cycle, below). The results of both direct bald eagle observations and nest tree inspections must be recorded each week on the Bald Eagle Monitoring Data Sheet (Figure 1). A Confirmation of Nest Territory Occupancy Report describing the basis for the determination shall be submitted to the Service and the FWC (see Section D for reporting details) within one week of finding positive evidence of bald eagle nest territory occupancy. **This report also shall include a specific schedule of dates planned for monitoring during the next month.** Each subsequent monthly report submitted to the Service and FWC shall contain a schedule of monitoring dates for the upcoming month, with the understanding that any scheduling changes shall be reported to the agencies by email as soon as possible.

- **Monitoring During Early Phases of the Nesting Cycle:** The normal cycle of bald eagle nesting behavior is described below. Once a territory is determined to be occupied, it should be considered active, and nesting eagles should, at that time, be monitored a minimum of three days each week and four hours each day (beginning at 1/2 hour before sunrise) from onset of nesting behavior through the fourth week post-hatching and care of eaglets. **Monitoring is ***not*** required on days when no infrastructure development, exterior building construction, or other human activities referenced in the National Management Guidelines occurs within 660 feet of the nest tree.** Monitoring should be scheduled to occur on the days that are representative of all major phases of these activities at times when they will occur.

- **Monitoring During Last Phase of the Nesting Cycle:** Monitoring frequency for activities may be reduced to one day each week (four hours beginning 1/2 hour before sunrise) beginning five weeks post-hatching and continue until fledging occurs or May

15, whichever occurs first. However, this once a week monitoring event should occur on days that are representative of all major phases of these activities at times when they will occur.

- **Special Circumstances:** Additional monitoring may be appropriate should special circumstances arise as described in Section C.6. The monitoring and construction plans for any nesting territory may be re-evaluated for modifications during any year. Weekly nest territory monitoring may cease after February 1 of that nesting season if: 1) no adult bald eagles are observed on the territory or 2) if an eagle was observed on the territory, but nesting was not attempted, or a nest attempt was documented to have failed and re-nesting was not attempted. Additionally, monitoring may cease if great horned owls (*Bubo virginianus*) are documented to have occupied the nest and there are no alternate nest sites available to the eagles within 660 feet of the project, and no evidence of eagles constructing a new nest within 660 feet of the project. Evidence must be clear from information recorded in the Bald Eagle Monitoring Data Sheets and/or provision of additional data, that circumstances exist that would warrant any modification of planned monitoring (i.e. increase, decrease or termination of monitoring).

- **General Comments:** Residential and commercial development is the most common form of human activity that requires monitoring. Single-family homes typically may require a minimum of 5 months for completion of construction, and all major stages of construction (described below), except truss placement, occur over multiple days. Monitoring should be timed to include truss placement. In all cases, the Monitor should use a site plan of the project to prepare weekly maps on which to document the specific construction activities that are occurring within 660 feet of the nest tree. Recorded construction activities should include, but not be limited to, the stage of construction of each home (i.e., fill placement, slab pouring, sidewall construction, truss placement, roofing, external finish work, internal finish work and landscaping). All observations of construction and eagle behavior *must* be recorded using the attached data sheet (Figure 1).

The following nest cycle activities must be documented and monitored for comparison with normal nesting behavior (see Section C for details) and for detecting and evaluating behavior that may be indicative of disturbance and/or pending risk:

1. Temporal patterns of nest attendance by the adults.
2. Observations of courtship, mating and nest building/maintenance.
3. Incubation and brooding behavior.
4. Feeding, growth and care of the eaglet(s).
5. Flight patterns to and from the nest tree.
6. Fledging of the eaglet(s).

All behavioral data and construction activities should be recorded within 15 minute intervals to facilitate analysis as a basis for detecting and evaluating behavior which may indicate pending risk. Figure 2 summarizes the typical nesting chronology of bald eagles in Florida. Please note that egg laying typically occurs during mid-December in Florida, but may vary by year, pair and latitude, and can extend from October through April, with most late nesters likely representing

second breeding attempts (Buehler 2000). Figure 3 provides a typical pattern of nest attendance and phenology of a pair of eagles in Sarasota County, Florida, monitored over a three-year period during one 4-hour observation period each week from October through May.

Nesting behavior which may be interpreted as abnormal, a response to construction activities and/or indicative of pending risk may include, but not be limited to: 1) adults raising or standing up over the nest, 2) increased time spent away from the nest by the adults that is not associated with normal nesting phenology, 3) changes in flight patterns or perch tree use, 4) distress calls, 5) flushing behavior from the nest tree or perch trees, 6) changes in the feeding schedule of the eaglet(s) and 7) premature fledging of the eaglet(s). Descriptions of specific behaviors that would warrant concern and may be indicative of pending risk are described below. Such behaviors occasionally result from factors other than human disturbance, such as death of an adult, sterility or immaturity (i.e., one member of the pair not in definitive plumage), entrance of a foreign adult eagle or great horned owls into the territory, inadequate food supply for the number of eaglets present, etc. Therefore, it is very important that observations of any abnormal behavior be reported immediately to assure proper interpretation and appropriate courses of action (see Section D for details).

C. Normal Nesting Behavior and Indicators of Disturbance

1. Adult Behavior at the Nest

Eagles often assume an alert posture in response to an unusual event. This behavior also may be accompanied by distress calls and ultimately result in flushing behavior (Fraser et al. 1985, Buehler et al. 1991, McGerigal et al. 1991). Incubating adults may react to a distraction or an annoyance by rising from their incubation posture and standing over their eggs. They also may step off the eggs and stand on the side of the nest. They may or may not vocalize in conjunction with this behavior. Such standing behavior may be seen prior to flying and as an indication that the bird may flush from the nest in response to a distraction. The bird also may settle back down into incubation posture without flying, once the distraction has passed or the bird has decided the distraction is not a sufficient threat to warrant flushing from the nest. This behavior (whether the adult flushes or not) does indicate that the disturbance is great enough to interfere with normal behavior and is of concern. This posture could be confused with stretching or egg turning which are normal parts of incubation behavior. It will be the responsibility of the monitoring biologist to accurately judge whether a bird is exhibiting normal behavior or is reacting to a distraction or an annoyance that could be interpreted as “disturbance.”

2. Patterns of Nest Attendance

Figure 3 provides a representative example of normal baseline nest attendance by at least one adult eagle during the nesting season. Please note that attendance may be sporadic early in the nesting season, but increases dramatically immediately prior to egg-laying. At least one adult is present almost 100% of the time during the 35-day incubation period and the first 2-3 weeks post-hatching (Fraser 1981, Wallin 1982). Females average about 1/5 larger in size than males, and the sexes are distinguishable when the pair is together. The female does the majority of the incubation and early nestling attendance, although the male participates in both activities. One

adult (usually female) broods constantly during inclement (i.e., cool or rainy) weather, and will shade the young to avoid heat stress until a chick(s) is approximately 4 weeks of age (Jenkins 1989, Herrick 1924). Nest attendance declines sharply after 5-6 weeks, and the adults often roost and loaf away from the nest.

Nest attendance would be considered abnormal if: 1) at least one adult is not present during two consecutive, 4-hour (minimum) monitoring days prior to egg laying or 2) both adults are absent for more than two consecutive 15-minute periods during incubation, early brooding or inclement weather prior to 4 weeks post-hatch.

3. Flight Patterns Between Nest and Feeding Areas

Florida eagles generally nest in proximity to water, and flight paths to and from the nest often are relatively direct to their feeding areas. Flight information should include recording the direction of each flight to and from the nest in the eight cardinal directions. Simple chi-square or other non-parametric statistics can be used to test if flight patterns are random, directed towards foraging areas or away from on-going human activity.

4. Vocalizations on the Nesting Territory

Verner and Lehman (1982) describe three distinctive calls of nesting birds that are typical responses to human approaches: 1) a "chatter call" described as consisting of 3-4 introductory notes separated by short gasps of silence (<1s) followed by a rapid sequence of descending notes, usually 6-9 notes in sequence (*kwit kwit kwit kwit kee-kee-kee-kee-kee*), 2) a "peal" consisting of a high-pitched, prolonged, gull-like cry, often repeated 3-5 times and 3) a "wails" call that is seldom given (Buehler 2000). Variants of these calls may also be given in response to an intruding adult eagle or other raptors, such as great horned owls, and the chatter call also is often given upon approach to the nest tree by a member of the pair, independent of human disturbance. Any distress call must be investigated to determine cause, and **any construction or human activity that may be responsible for the distress call, must be halted or modified immediately**.

5. Flushing Behavior

Adult eagles may flush from the nest tree, particularly if humans are on foot (Fraser et al. 1985, Buehler et al. 1991, Grubb and King 1991, McGarigal et al. 1991, Grubb et al. 1992). Risk increases with the duration and frequency of events. The sensitivity of eagles to human disturbance varies between individuals and across populations, as measured by experimental flushing studies (e.g., Stalmaster and Newman 1978, Knight and Knight 1984, Fraser et al. 1985, Buehler et al. 1991, McGarigal et al. 1991). Unfortunately, no similar studies have been conducted in Florida. The response of individual eagles may range from temporary agitation (alert posture) to flushing from the nest or perch tree, to permanent displacement. Humans in vehicles generally elicit a much lower response than those on foot. Additionally, eagles that nest in proximity to existing human activities may habituate and be more tolerant to forms of human activity than they may have previously experienced.

Flushing behavior is more typically in response to human approach to the nest on foot; therefore, it is imperative that the monitor attempt to stop all such approaches. **Any construction or other human activities that appear to have caused flushing should be halted immediately**.

6. Feeding Schedule of the Eaglet(s)

Although both sexes secure food and feed the young, the male provides most of the food in the first two weeks, while the female tends the young in the nest (Wallen 1982, Gerrard and Bortolotti 1988). The female often delivers as much prey as the male after 3-4 weeks. Adults typically bring the food to the nest and tear off small pieces to feed the young. Eaglets are able to tear off food and feed themselves at approximately 6 weeks of age, although the adults often dismember larger prey (Palmer et al. 1988). Adults typically deliver food 2-8 times per day (mean = 4), and the early morning period accounts for proportionately more food deliveries (Herrick 1924). Food delivery rates also typically decrease as eaglets mature and or eaglet numbers decline with normal attrition. Therefore, deliveries may not be observed during some monitoring periods for older broods. The nutritional requirements of eaglets have not been reported in the literature (Buehler 2000), but free ranging adult bald eagles in Washington at 5ºC were reported to consume about 77.3 g/kg per day (425.5 kJ/kg per day), slightly less than 10% of their body weight per day (Stalmaster and Gessaman 1984). Nestlings may use food that accumulates at the nest for more than one day, unless fresh food is provided (Herrick 1993). Both adults and chicks are capable of storing food in their crop, then digesting the food over time. **Additional monitoring may be appropriate should an abnormal reduction in feeding rates be observed; if accompanied by other behavioral indicators of stress (i.e., flushing and/or distress calls), the Monitor should suspend construction or other human activities and report these observations** (see Section D).

Mean brood size for successful nests in Florida bald eagles is 1.55 young per brood, with 3 young not uncommon (Nesbitt et al. 2002). One egg is laid per day, although often not always on successive days. Hatching is asynchronous and differential growth between the sexes can lead to differential mass among siblings, facilitating competition and fratricide (Bortollotti 1986). Sibling competition and mortality is greatest early in the nestling period, when size differences are greatest. The largest chick typically gets the majority of food in clutches with more than one chick. Brood reduction from starvation of the youngest chick may occur in broods of any size, unless food is abundant (Gerrard and Bortollotti 1988).

It is important to quantify, to the extent possible, the size and type of prey brought to the nest during all observation periods. These data may be useful for determining if the eaglet(s) is receiving adequate food and if human activity may be interfering with food delivery schedules.

7. Fledging of the Eaglet(s)

Eaglets typically fledge at approximately 11 weeks of age in Florida (Wood 1992), but nest departure can occur at 8-14 weeks (Buehler 2000). The eaglets usually begin to move about the nest and branches of the nest tree at least 2 weeks before fledging, flapping and developing muscle strength, flight coordination and landing ability in preparation for their first flight from the nest tree. These eaglets are referred to as “branchers.” Fledging typically is considered to have occurred when the eaglets have begun to make extended flights from the nest to adjacent

trees, have begun to soar and/or are seen flying around the territory with the parents. It is not uncommon for up to half of initial nest departures to be unsuccessful, with the eaglet falling to and remaining on the ground for days or weeks before regaining flight ability; in most cases, the parents will continue to feed these young (Kussman 1977, Fraser 1981). **Successful fledging**, for purposes of these Guidelines, **is defined as the time at which the eaglet(s) has near fully developed primaries and is capable of strong, coordinated, independent flight**.

Care must be taken to confirm that any premature fledging is, in fact, human related, since premature fledging is a common occurrence that may be independent of human activity.

D. Reporting Requirements

The **purpose of monitoring** bald eagles and eaglets at their nests under these Guidelines **is to minimize the occurrence of disturbance leading to nest abandonment and/or death of eggs or eaglets**, and avoid potential violations of the Eagle Act. As such, monitoring is a serious obligation. Falsification of monitoring reports can lead to criminal prosecution of both the Monitor and the Responsible Party that is contracted to conduct the monitoring. The Monitor and their supervisor *must* sign and date each completed monitoring sheet (Figure 1) beneath the statement, which reads: "I have read and understand the Bald Eagle Monitoring Guidelines. This report represents a true, accurate and representative description of the site conditions and eagle behavior at the time of monitoring".

As long as the Monitor has not detected any, irregularities or abnormalities as described above, then **Only** a summary report of monitoring results (See Figure 4) should be mailed via hardcopy or email to the appropriate Service Field Office and FWC (Endangered Species Coordinator, Tallahassee) on a monthly basis when the Monitor has not detected any irregularities, or abnormalities as described above. Individual Bald Eagle Monitoring Data Sheets should be retained on file by the Monitor for a minimum of 3 years for reference, should such need occur. **A final report that summarizes monitoring results and the fate of any reproductive effort must be sent to the reviewing agencies within one month of the conclusion of monitoring**. The Monitor has the obligation to immediately report any suspension of work activities and/or any documented abnormal behavior, as defined in Section C above, to the Responsible Party and the Service and FWC**, and subsequently send the individual Bald Eagle Monitoring Data Sheets describing all relevant activities to all parties.** The Service and FWC will coordinate a review within a week of the reported behavior and circumstances associated with any suspension of work activities. A verbal determination followed by a written recommendation will be issued in a timely manner as to whether construction should resume or be modified, or if monitoring frequency should be increased.

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BONITA SPRINGS CITY COUNCIL	GREEN SHEET:	21-02-030

AGENDA ITEM SUMMARY

REQUESTED MOTION: Approve contract amendment #1 between the City and the Florida Department of Economic Opportunity (FDEO) for the CDBG-DR Voluntary Home Buyout Program – Contract Agreement #I0086

MEETING DATE: 2/3/2021

AGENDA:		REQUIREMENT/PURPOSE: (Specify)		REQUESTOR OF INFORMATION:
☐	PRESENTATIONS	☐	STATUTE	Matt Feeney Assistant City Manager Elly Soto McKuen Senior Project Manager
☒	CONSENT	☐	ORDINANCE	
☐	PUBLIC HEARING	☐	ADMIN. CODE	
☐	MAYOR AND COUNCIL MEMBER ITEMS	☒	OTHER	
☐	MAYOR AND COUNCIL MEMBER'S REPORTS			
☐	CITY ATTORNEY ITEMS			
☐	CITY MANAGER ITEMS			

BACKGROUND:
The City received U.S. Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) funding for the Quinn/Downs/Dean West of Imperial Parkway Voluntary Home Buyout Program. City Council approved the $5.0 million agreement on May 14, 2020 with a fully executed agreement received from FDEO on April 6, 2020.

FDEO contacted the City to advise they would be amending the agreement to reflect a new FDEO contact person and other policy and program requirements.

Attachment: (1) Amendment #1 – FDEO Contract #I0086; (2) FDEO Contract #I0086

IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ YES ☐ NO

IF YES, WHICH STRATEGIC OBJECTIVE? 1) Improve Stormwater Management, 3) Strengthen/Enhance City Finances, 4) Environmental Protection, 7) Government Transparency

STAFF RECOMMENDATIONS: Approve contract amendment #1 between the City and the Florida Department of Economic Opportunity for the CDBG-DR Voluntary Home Buyout Program – Contract Agreement #I0086

REVIEWED BY:

City Manager: **Arleen Hunter**
City Attorney: **Derek Rooney**
City Clerk: **Debra Filipek**
Department Director: **Matt Feeney**

COUNCIL ACTION:

☐ **APPROVED**
☐ **DENIED**
☐ **DEFERRED**
☐ **OTHER**

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AMENDMENT ONE
TO SUBRECIPIENT AGREEMENT BETWEEN
THE DEPARTMENT OF ECONOMIC OPPORTUNITY
AND
THE CITY OF BONITA SPRINGS

On April 7, 2020, the State of Florida, Department of Economic Opportunity ("DEO") and the City of Bonita Springs ("Subrecipient"), entered into agreement I0086 for Voluntary Home Buyout Program activities under the United States Department of Housing and Urban Development ("HUD") Community Development Block Grant Disaster Recovery ("CDBG-DR") program). DEO and the City of Bonita Springs may individually be referred to herein as a "Party" or collectively as the "Parties".

WHEREAS, Section (4.) of the Agreement provides that any amendment to the agreement shall be in writing executed by the Parties thereto; and

WHEREAS, the Parties wish to amend the agreement as set forth herein;

NOW THEREFORE, the Parties hereby agree to the following:

1. Preamble, paragraph 2 is hereby deleted in its entirety and replaced with the following:

   WHEREAS, pursuant to Public Law (P.L.) P.L. 115-123 Bipartisan Budget Act of 2018, P.L. 115-56, the "Continuing Appropriations Act, 2018" and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 „ and the "Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant - Disaster Recovery Grantees", 83 Federal Register No. 28 (February 9, 2018), 83 Federal Register No. 157 (August 14, 2018); (hereinafter collectively referred to as the "Federal Register Guidance"), the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD") has awarded Community Development Block Grant - Disaster Recovery (CDBG-DR) funds to DEO for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 United States Code (U.S.C.) 5301 et seq.) and described in the State of Florida Action Plan for Disaster Recovery 2018 (hereinafter referred to as the "Action Plan"). DEO is hereinafter referred to from time to time as "Grantee".

2. Section (14) Citizen Complaints is hereby deleted in its entirety and replaced with the following:

   (14) **Citizen Complaints.** The goal of the State is to provide an opportunity to resolve complaints in a timely manner. The subrecipient must provide a response to all inquiries and complaints within 15 working days of receipt. Following the initial response, the subrecipient will make every effort to provide a resolution to complaints within the 15-working day period. If a resolution cannot be reached within the 15-working day period, the complainant/inquirer will receive a status update on the issue(s) and, if possible, a timeframe for when a resolution can be reached. Constituent Management Services Lead will monitor response times to ensure compliance and will adjust timeframes for additional responses as needed. The response must be provided within 15 working days of the receipt of the complaint, as expected by HUD, and to provide the right to participate in the process and appeal a decision when there is reason for an applicant to believe its application was not handled according to program policies. All applications, guidelines and websites will include details on the right to file a complaint or appeal and the process for filing a complaint or beginning an appeal.

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Applicants are allowed to appeal program decisions related to one of the following activities:
(a) A program eligibility determination
(b) A program assistance award calculation and
(c) A program decision concerning housing unit damage and the resulting program outcome.

Citizens may file a written complaint or appeal through the Office of Disaster Recovery email at CDBG-DR@deo.myflorida.com or submit by postal mail to the following address:

Attention: Office of Disaster Recovery
Florida Department of Economic Opportunity
107 East Madison Street
The Caldwell Building, MSC 160
Tallahassee, Florida 32399

The subrecipient will handle citizen complaints by conducting:
(a) Investigations as necessary
(b) Resolution or
(c) Follow-up actions.

If the complainant is not satisfied by the Subrecipient's determination, then the complainant may file a written appeal by following the instructions issued in the letter of response. If, at the conclusion of the appeals process, the complainant has not been satisfied with the response, a formal complaint may then be addressed directly to the regional Department of Housing and Urban Development (HUD) at:

Department of Housing & Urban Development
Charles E. Bennet Federal Building
400 West Bay Street, Suite 1015
Jacksonville, FL 32202

The Florida Office of Disaster Recovery operates in Accordance with the Federal Fair Housing Law (The Fair Housing Amendments Act of 1988). Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination: 1-800-669-9777 (Toll Free), 1-800-927-9275 (TTY) or www.hud.gov/fairhousing.

3. Section (16) Notice and Contact, subparagraph (b), is amended as follows:

(b) The name and address of DEO's Grant Manager for this Agreement is:

Michael Day
107 East Madison Street - MSC 160
Tallahassee, Florida 32399-6508
Phone: (850) 717-8543
Fax:(850) 921-3117
Email: Michael.Day@deo.myflorida.com

4. Section (23) Lobbying Prohibition, subparagraph (b), item 3., is amended as follows:

3. The Subrecipient shall require that 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 as described in this Paragraph (23), above. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into this transaction imposed by 31 U.S.C. § 1352.

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Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than one hundred thousand dollars ($100,000) for each such failure.

5. Attachment A – Scope of Work, Section 1. Project Description, paragraph three is hereby deleted in its entirety and replaced with the following:

   There are two options under this grant: The first option is to use the CDBG-DR funding as a leverage to match funding projects that are also eligible for the Hazard Mitigation Grant Program (HMGP) provided by the Federal government. The second option is to work directly with DEO to acquire parcels of properties of residential areas that meet low- and moderate- income area requirements, and/or assist low-and moderate-income households.

6. Attachment A – Scope of Work, Section 2. Subrecipient Responsibilities, subparagraph A.25., is hereby deleted in its entirety.

7. Attachment A – Scope of Work, Section 2. Subrecipient Responsibilities, subsection B, Tasks 1-7, are hereby amended to replace all references of "shall" with "may."

8. Attachment A – Scope of Work, Section 2. Subrecipient Responsibilities, subsection C, Task 1, is hereby amended to replace all references of "shall" with "may."

9. Attachment A – Scope of Work, Section 2. Subrecipient Responsibilities, subsection D, Tasks 1-2, are hereby amended to replace all references of "shall" with "may."

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10. Attachment A – Scope of Work, Section 3. Deliverables, is hereby deleted in its entirety and replaced with the following:

The Subrecipient agrees to provide the following services as specified:

Deliverable I	**Minimum Level of Service (to submit for request for payment)**	**Financial Consequences**
Project Design and Implementation Subrecipient shall complete an eligible deliverable task as detailed in Attachment A, Section 2., B. above.	The Subrecipient shall be reimbursed upon completion of a minimum of one deliverable task per housing unit as detailed in Attachment A, Section 2, B., evidenced by invoices(s) noting completed tasks with supporting documentation (such as payroll, invoices from contractors, etc.) as applicable upon the approval from DEO for the work completed in Deliverable I.	Failure to perform the minimum level of service shall result in nonpayment for this deliverable for each payment request.
Deliverable II	**Minimum Level of Service (to submit for request for payment)**	**Financial Consequences**
Homeowner Buyout and Incentives Subrecipient shall complete an eligible deliverable task as detailed in Attachment A, Section 2., C. above.	The Subrecipient shall be reimbursed upon completion of a minimum of one project deliverable task as detailed in Attachment A, Section 2. C; evidenced by invoices(s) noting completed tasks with supporting documentation (such as payroll, invoices from contractors, etc.) as applicable upon the approval from DEO for the work completed in Deliverable II.	Failure to perform the minimum level of service shall result in nonpayment for this deliverable for each payment request.
Deliverable III	**Minimum Level of Service (to submit for request for payment)**	**Financial Consequences**
Demolition and Closeout Subrecipient shall complete an eligible deliverable task as detailed in Attachment A, Section 2., D. above.	The Subrecipient shall be reimbursed upon completion of a minimum of one project deliverable task as detailed in Attachment A, Section 2. D; evidenced by invoices(s) noting completed tasks with supporting documentation (such as payroll, invoices from contractors, etc.) as applicable upon the approval from DEO for the work completed in Deliverable III. The Subrecipient shall be reimbursed upon completion of a minimum of 100 percent of the demolition activities for each project; evidenced by the final inspection of the site after the activities have been completed, signed by the contractor, certified by the housing specialist or building inspector for the project.	Failure to perform the minimum level of service shall result in nonpayment for this deliverable for each payment request.
		TOTAL AWARD NOT TO EXCEED $5,000,000.00

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11. All other terms and conditions remain in effect.

IN WITNESS HEREOF, by signature below, the Parties agree to abide by the terms, conditions, and provisions of Agreement I0086 as amended. This Amendment is effective the date the last Party signs this Amendment.

CITY OF BONITA SPRINGS, A FLORIDA MUNICIPAL CORPORATION IN THE STATE OF FLORIDA	**DEPARTMENT OF ECONOMIC OPPORTUNITY**
SIGNED:	SIGNED:
RICK STEINMEYER	**DANE EAGLE**
MAYOR	**EXECUTIVE DIRECTOR**
DATE:	DATE:

Approved as to form and legal sufficiency, subject only to full and proper execution by the Parties.

OFFICE OF GENERAL COUNSEL
DEPARTMENT OF ECONOMIC OPPORTUNITY

By: _____

Approved Date: _____

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DEO Agreement No.: I0086

State of Florida
Department of Economic Opportunity

Federally-Funded
Community Development Block Grant
Disaster Recovery (CDBG-DR) Voluntary Home Buyout Program
Subrecipient Agreement

THIS AGREEMENT is entered into by the State of Florida, Department of Economic Opportunity, (hereinafter referred to as "DEO") and the City of Bonita Springs, a Florida Municipal Corporation in the State of Florida, hereinafter referred to as the "Subrecipient" (each individually a "Party" and collectively "the Parties").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

WHEREAS, pursuant to Public Law (P.L.) 114-254, the "Further Continuing and Security Assistance Appropriations Act, 2017" and P.L. 115-31, the "Consolidated Appropriations Act, 2017, (hereinafter jointly referred to as the "Appropriation Acts"), and the "Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant - Disaster Recovery DEOs", 81 Fed. Reg. 224 (November 21, 2016); 82 Fed. Reg. 11 (January 18, 2017); and 82 Fed. Reg. 150 (August 7, 2017) (hereinafter collectively referred to as the "Federal Register Guidance"), the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD") has awarded Community Development Block Grant - Disaster Recovery (CDBG-DR) funds to DEO for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 United States Code (U.S.C.) 5301 *et seq.*) and described in the State of Florida Action Plan for Disaster Recovery (hereinafter referred to as the "Action Plan"). DEO is hereinafter referred to from time to time as "Grantee".

WHEREAS, CDBG-DR funds made available for use by the Subrecipient under this Agreement constitute a subaward of the DEO's Federal award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations and the terms and conditions of DEO's Federal award.

WHEREAS, the Subrecipient has legal authority to enter into this Agreement and by signing this Agreement, the Subrecipient represents and warrants to DEO that it will comply with all the requirements of the subaward described herein.

WHEREAS, the aggregate use of CDBG-DR funds shall principally benefit low- and moderate-income persons in a manner that ensures at least 70 percent of the grant amount awarded under this Agreement is expended for activities that benefit such persons.

NOW THEREFORE, DEO and the Subrecipient agree to the following:

(1) Scope of Work. The Scope of Work for this Agreement includes Attachment A, Scope of Work. With respect to Attachment B, Project Budget Detail, and Attachment C, Activity Work Plan, the Subrecipient shall submit to DEO such Attachments in conformity with the current examples attached hereto as necessary and appropriate. Provided further, if there is a disagreement between the Parties, with respect to the formatting and

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contents of such attachments, then DEO's decisions with respect to same shall prevail, at DEO's sole and absolute discretion.

(2) Incorporation of Laws, Rules, Regulations and Policies. The Subrecipient agrees to abide by all applicable State and Federal laws, rules and regulations, including but not necessarily limited to, the Federal laws and regulations set forth at 24 CFR 570 and the State's Action Plan.

(3) Period of Agreement. This Agreement begins upon execution by both Parties (effective date) and ends 24 months after execution by DEO, unless otherwise terminated as provided in this Agreement. DEO shall not grant any extension of the Agreement unless the Subrecipient provides justification satisfactory to DEO in its sole discretion, and the Director of DEO's Office of Disaster Recovery approves such extension.

(4) Modification of Agreement. Modifications to this Agreement shall be valid only when executed in writing by the Parties. Any modification request by the Subrecipient constitutes a request to negotiate the terms of this Agreement. DEO may accept or reject any proposed modification based on DEO's sole determination and absolute discretion, that any such acceptance or rejection is in the State's best interest.

(5) Records.

(a) The Subrecipient's performance under this Agreement shall be subject to 2 C.F.R. part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

(b) Representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability, and representatives of the Federal government and their duly authorized representatives shall have access to any of the Subrecipient's books, documents, papers and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.

(c) The Subrecipient shall maintain books, records and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by DEO under this Agreement.

(d) The Subrecipient will provide to DEO all necessary and appropriate financial and compliance audits in accordance with Paragraph (6) titled "Audit Requirements" and Attachments J and K herein and ensure that all related party transactions are disclosed to the auditor.

(e) The Subrecipient shall retain sufficient records to show its compliance with the terms of this Agreement and the compliance of all subrecipients, contractors, subcontractors and consultants paid from funds under this Agreement for a period of six (6) years from the date DEO issues the final closeout for this award. The Subrecipient shall also comply with the provisions of 24 CFR 570.502(a)(7)(ii). The Subrecipient shall further ensure that audit working papers are available upon request for a period of six (6) years from the date DEO issues the final closeout of this Agreement, unless extended in writing by DEO. The six-year period may be extended for the following reasons:

1. Litigation, claim or audit initiated before the six-year period expires or extends beyond the six-year period, in which case the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

2. Records for the disposition of non-expendable personal property valued at $1,000 or more at the time of acquisition shall be retained for six (6) years after final disposition.

3. Records relating to real property acquired shall be retained for six (6) years after the closing on the transfer of title.

(f) The Subrecipient shall maintain all records and supporting documentation for the Subrecipient and for all contractors, subcontractors and consultants paid from funds provided under this Agreement,

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including documentation of all program costs in a form sufficient to determine compliance with the requirements and objectives of the scope of work and all other applicable laws and regulations.

(g) The Subrecipient shall either (i) maintain all funds provided under this Agreement in a separate bank account or (ii) ensure that the Subrecipient's accounting system shall have sufficient internal controls to separately track the expenditure of all funds from this Agreement. Provided further, that the only option available for advanced funds is to maintain such advanced funds in a separate bank account. There shall be no commingling of funds provided under this Agreement with any other funds, projects or programs. DEO may, in its sole discretion, disallow costs made with commingled funds and require reimbursement for such costs as described herein, Subparagraph (21)(e), Repayments.

(h) The Subrecipient, including all of its employees or agents, contractors, subcontractors and consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to representatives of DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the Federal government or their duly authorized representatives. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

(6) Audit Requirements

(a) The Subrecipient shall conduct a single or program-specific audit in accordance with the provisions of 2 C.F.R. part 200 if it expends seven hundred fifty thousand dollars ($750,000) or more in Federal awards from all sources during its fiscal year.

(b) Within sixty (60) calendar days of the close of the fiscal year, on an annual basis, the Subrecipient shall electronically submit a completed Audit Compliance Certification to audit@deo.myflorida.com, and DEO's grant manager; a blank version of which is attached hereto as Attachment K. The Subrecipient's timely submittal of one completed Audit Compliance Certification for each applicable fiscal year will fulfill this requirement within all agreements (e.g., contracts, grants, memorandums of understanding, memorandums of agreement, economic incentive award agreements, etc.) between DEO and the Subrecipient.

(c) In addition to the submission requirements listed in Attachment J titled "Audit Requirements", the Subrecipient shall send an electronic copy of its audit report to DEO's grant manager for this Agreement by June 30 following the end of each fiscal year in which it had an open CDBG-DR subgrant.

(d) Subrecipient shall also comply with the Federal Audit Clearinghouse rules and directives, including but not limited to the pertinent Report Submissions provisions of 2 CFR 200.512, when such provisions are applicable to this Agreement.

(7) Reports. The Subrecipient shall provide DEO with all reports and information set forth in Attachment G titled "Reports." Both the monthly and quarterly reports, as well as the administrative closeout reports must include the status and progress of the Subrecipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement. Upon request by DEO, the Subrecipient shall provide additional program updates or information. If all required reports and copies are not sent to DEO or are not completed in a manner acceptable to DEO, payments may be withheld until the reports are properly completed. DEO may also take other action as stated in Paragraph (12) Remedies or otherwise allowable by law.

(8) Inspections and Monitoring

(a) The Subrecipient shall permit DEO and auditors to have access to the Subrecipient's records and financial statements as DEO determines is necessary for DEO to meet the requirements of 2 C.F.R. part 200.

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(b) The Subrecipient must submit to monitoring of its activities by DEO as DEO determines necessary to ensure that the subaward is used for authorized purposes in compliance with Federal statutes, regulations and the terms and conditions of this agreement.

(c) This review must include: (1) reviewing financial and performance reports required by DEO, (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from DEO as detected through audits, on-site reviews and other means and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the Subrecipient from DEO as required by 2 C.F.R. §200.521.

(d) Corrective Actions:

DEO may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. DEO may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from the pass-through entity as detected through audits, on-site reviews and other means. In response to audit deficiencies or other findings of noncompliance with this Agreement, DEO may impose additional conditions on the use of the CDBG-DR funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

(9) Duplication of Benefits. The Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5155 *et seq.*) and described in Appropriations Acts. The Subrecipient must comply with HUD's requirements for duplication of benefits, imposed by the Federal Register Guidance. The Subrecipient shall carry out the activities under this Agreement in compliance with DEO's procedures to prevent duplication of benefits. Subrecipient shall sign a Subrogation Agreement (See Attachment M).

(10) Liability.

(a) If the Subrecipient is a state agency or subdivision, as defined in Section 768.28(2), F.S., pursuant to Section 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability for the other Party for the other Party's negligence.

(b) The Subrecipient further agrees to assume sole responsibility, training and oversight of the parties it deals with or employs to carry out the terms of this Agreement to the extent set forth in Section 768.28, Florida Statutes. The subrecipient shall hold DEO harmless against all claims of whatever nature arises from the work and services performed by third parties under this Agreement. Nothing herein shall be construed as consent by the Subrecipient to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

(c) If the Subrecipient is a state agency or subdivision, as defined in Section 768.28, F.S., then the Subrecipient agrees to be fully responsible for its negligent or tortious acts or omissions, which result in claims or suits against DEO. The subrecipient agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, F.S. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement, contract or subcontract.

(d) Nothing herein is intended to serve as a waiver of sovereign immunity by DEO or the Subrecipient.

(11) Events of Default. If any of the following events occur ("Events of Default"), DEO may, in its sole and absolute discretion, elect to terminate any obligation to make any further payment of funds, exercise any of the remedies set forth in Paragraph (12) Remedies or pursue any remedy at law or in equity, without limitation: (a) Any warranty or representation made by the Subrecipient, in this Agreement or any previous agreement with DEO, is or becomes false or misleading in any respect, or if

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the Subrecipient fails to keep or perform any of the obligations, terms, or covenants in this Agreement or any previous agreement with DEO, and/or has not cured them in timely fashion and/or is unable or unwilling to meet its obligations under this Agreement and/or as required by statute, rule, or regulation;

(b) Any material adverse change occurs in the financial condition of the Subrecipient at any time during the term of this Agreement and the Subrecipient fails to cure this adverse change within thirty (30) calendar days from the date written notice is sent by DEO;

(c) The Subrecipient fails to submit any required report or submits any required report with incorrect, incomplete or insufficient information or fails to submit additional information as requested by DEO;

(d) The Subrecipient fails to perform or timely complete any of its obligations under this Agreement, including participating in DEO's Implementation Workshop.

The Parties agree that in the event DEO elects to make payments or partial payments after any Events of Default, it does so without waiving the right to exercise any remedies allowable herein or at law and without becoming liable to make any further payment.

(e) Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay the Subrecipient believes is excusable under this paragraph, Subrecipient shall notify DEO in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Subrecipient could reasonably foresee that a delay could occur as a result or (2) within five (5) calendar days after the date Subrecipient first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE SUBRECIPIENT'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY**. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. DEO, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify Subrecipient of its decision in writing. No claim for damages, other than an extension of time, shall be asserted against DEO. Subrecipient shall not be entitled to an increase in the Agreement price or payment of any kind from DEO for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, Subrecipient shall perform at no increased cost, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to DEO or the State, in which case, DEO may do any or all of the following: (1) accept allocated performance or deliveries from Subrecipient, provided that Subrecipient grants preferential treatment to DEO with respect to products or services subjected to allocation; (2) purchase from other sources (without recourse to and by Subrecipient for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity or (3) terminate the Agreement in whole or in part.

(12) Remedies. If an Event of Default occurs, DEO shall provide thirty (30) calendar days written notice to the Subrecipient and if the Subrecipient fails to cure within those thirty (30) calendar days DEO may choose to exercise one or more of the following remedies, either concurrently or consecutively:

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(a) Terminate this Agreement upon twenty-four (24) hour written notice by DEO sent in conformity with Paragraph (16) Notice and Contact;

(b) Begin any appropriate legal or equitable action to enforce performance of this Agreement;

(c) Withhold or suspend payment of all or any part of a request for payment;

(d) Demand that the Subrecipient return to DEO any funds used for ineligible activities or unallowable costs under this Agreement or any applicable law, rule or regulation governing the use of the funds; and

(e) Exercise any corrective or remedial actions, including but not limited to:

1. Requesting additional information from the Subrecipient to determine the reasons for or the extent of non-compliance or lack of performance;
2. Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected; and/or
3. Advising the Subrecipient to suspend, discontinue or refrain from incurring costs for any activities in question.

Pursuit of any of the above remedies does not preclude DEO from pursuing any other remedies in this Agreement or provided at law or in equity. Failure to exercise any right or remedy in this Agreement or failure by DEO to require strict performance does not affect, extend or waive any other right or remedy available or affect the later exercise of the same right or remedy by DEO for any other default by the Subrecipient.

(13) Dispute Resolution. DEO shall decide disputes concerning the performance of the Agreement, document dispute decisions in writing and serve a copy of same on the Subrecipient. All decisions are final and conclusive unless the Subrecipient files a petition for administrative hearing with DEO within twenty-one (21) days from the date of receipt of the decision. Exhaustion of administrative remedies prescribed in Chapter 120, F.S., is an absolute condition precedent to the Subrecipient's ability to pursue any other form of dispute resolution; provided however, that the Parties may mutually agree to employ the alternative dispute resolution procedures outlined in Chapter 120, F.S.

(14) Citizen Complaints. The goal of the State is to provide an opportunity to resolve complaints in a timely manner, usually within fifteen (15) business days as expected by HUD, if practicable, and to provide the right to participate in the process and appeal a decision when there is reason for an applicant to believe its application was not handled according to program policies. All applications, guidelines and websites will include details on the right to file a complaint or appeal and the process for filing a complaint or beginning an appeal.

Applicants are allowed to appeal program decisions related to one of the following activities:
(a) A program eligibility determination
(b) A program assistance award calculation and
(c) A program decision concerning housing unit damage and the resulting program outcome.

Citizens may file a written complaint or appeal through the Office of Disaster Recovery email at CDBG-DR@deo.myflorida.com or submit by postal mail to the following address:

Attention: Office of Disaster Recovery
Florida Department of Economic Opportunity

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107 East Madison Street
The Caldwell Building, MSC 160
Tallahassee, Florida 32399

The subrecipient will handle citizen complaints by conducting:

(a) Investigations as necessary
(b) Resolution or
(c) Follow-up actions.

If the complainant is not satisfied by the Subrecipient's determination, then the complainant may file a written appeal by following the instructions issued in the letter of response. If, at the conclusion of the appeals process, the complainant has not been satisfied with the response, a formal complaint may then be addressed directly to the DEO at:

Department of Economic Opportunity
Caldwell Building, MSC-400
107 E Madison Street
Tallahassee, FL 32399

The Florida Office of Disaster Recovery operates in Accordance with the Federal Fair Housing Law (The Fair Housing Amendments Act of 1988). Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination: 1-800-669-9777 (Toll Free), 1-800-927-9275 (TTY) or www.hud.gov/fairhousing.

(15) Termination.

(a) DEO may suspend or terminate this Agreement for cause upon twenty-four (24) hour written notice, from the date notice is sent by DEO. Cause includes, but is not limited to the Subrecipient's improper or ineffective use of funds provided under this Agreement; fraud; lack of compliance with any applicable rules, regulations, statutes, executive orders, HUD guidelines, policies, directives or laws; failure, for any reason, to timely and/or properly perform any of the Subrecipient's obligations under this Agreement; submission of reports that are incorrect or incomplete in any material respect and refusal to permit public access to any document, paper, letter or other material subject to disclosure under law, including Chapter 119, F.S., as amended. The aforementioned reasons for Termination are listed in the immediately preceding sentence for illustration purposes but are not limiting DEO's sole and absolute discretion with respect to DEO's right to terminate this Agreement. In the event of suspension or termination, the Subrecipient shall not be entitled to recover any cancellation charges or unreimbursed costs.

(b) DEO may unilaterally terminate this Agreement, in whole or in part, for convenience by providing the Subrecipient fourteen (14) days written notice from the date notice is sent by DEO, setting forth the reasons for such termination, the effective date and, in the case of partial termination, the portion to be terminated. However, if in the case of partial termination, DEO determines that the remaining portion of the award will not accomplish the purpose for which the award was made, DEO may terminate the portion of the award which will not accomplish the purpose for which the award was made. The Subrecipient shall continue to perform any work not terminated. In the event of termination for convenience, the Subrecipient shall not be entitled to recover any cancellation charges or unreimbursed costs for the terminated portion of work.

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(c) The Parties may terminate this Agreement for their mutual convenience in writing, in the manner agreed upon by the Parties, which must include the effective date of the termination.

(d) In the event that this Agreement is terminated, the Subrecipient shall not incur new obligations under the terminated portion of the Agreement after the date the Subrecipient has received the notification of termination. The Subrecipient shall cancel as many outstanding obligations as possible. DEO shall disallow all costs incurred after the Subrecipient's receipt of the termination notice. The Subrecipient shall not be relieved of liability to DEO because of any breach of the Agreement by the Subrecipient. DEO may, to the extent authorized by law, withhold payments to the Subrecipient for the purpose of set-off until the exact amount of damages due to DEO from the Subrecipient is determined.

(e) Upon expiration or termination of this Agreement the Subrecipient shall transfer to DEO any CDBG-DR funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG-DR funds.

(f) Upon expiration or termination of this Agreement, the Subrecipient shall follow the agreement closeout procedures set forth in rule 73C- 23.0051 (5), FAC

(g) Any real property under Subrecipient's control that was acquired or improved in whole or in part with CDBG-DR funds (including CDBG-DR funds provided to the subrecipient in the form of a loan) in excess of $25,000 must either:

1. Be used to meet a national objective until five years after expiration or termination of this Agreement, unless otherwise agreed upon by the Parties, or except as otherwise set forth herein; or

2. If not used to meet a national objective, Subrecipient shall pay to DEO an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG-DR funds for the acquisition or improvement of the property for five years after expiration or termination of this Agreement.

(h) The rights and remedies under this clause are in addition to any other rights or remedies provided by law or under this Agreement.

(16) Notice and Contact.

(a) All notices provided under or pursuant to this Agreement shall be in writing, either by hand delivery, first class or certified mail with return receipt requested, to the representative identified below at the address set forth below or said notification attached to the original of this Agreement.

(b) The name and address of DEO's Grant Manager for this Agreement is:

Joshua Bradt
107 East Madison Street - MSC 160
Tallahassee, Florida 32399-6508
Phone: (850) 717-8436
Fax:(850) 921-3117
Email: joshua.bradt@deo.myflorida.com

(c) The name and address of the Local Government Project Contact for this Agreement is:

Elly McKuen
9101 Bonita Beach Rd
Bonita Springs, FL 34135
Phone: (239) 949-6246
Fax:
Email: elly.mckuen@cityofbonitasprings.org

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(d) If different representatives or addresses are designated by either Party after execution of this Agreement, notice of the name, title and address of the new representative will be provided as stated in Paragraph (16) above.

(17) Contracts. If the Subrecipient contracts any of the work required under this Agreement, a copy of the proposed contract template and any proposed amendments, extensions, revisions or other changes thereto, must be forwarded to DEO for prior written approval. For each contract, the Subrecipient shall report to DEO as to whether that contractor or any subcontractors hired by the contractor, is a minority vendor, as defined in Section 288.703, F.S. The Subrecipient shall comply with the procurement standards in 2 C.F.R. §200.318 - §200.326 when procuring property and services under this Agreement (refer to Attachment D).

The Subrecipient shall include the following terms and conditions in any contract pertaining to the work required under this Agreement:

(a) the period of performance or date of completion;

(b) the performance requirements;

(c) that the contractor is bound by the terms of this Agreement;

(d) that the contractor is bound by all applicable State and Federal laws, rules, and regulations;

(e) that the contractor shall hold DEO and the Subrecipient harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement;

(f) the obligation of the Subrecipient to document in Subrecipient's reports the contractor's progress in performing its work under this Agreement;

(g) the requirements of 2 CFR Appendix II to Part 200 – Contract Provision for Non-Federal Entity Contract Under Federal Awards – (refer to Attachment L)

The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities (24 C.F.R. 570.489(l)), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, payment, performance bonds, if applicable, and liquidated damages.

The Subrecipient must ensure all contracts and agreements clearly state the period of performance or date of completion and incorporate performance requirements.

The Subrecipient shall maintain oversight of all activities performed under this Agreement and shall ensure that its contractors perform according to the terms and conditions of the procured contracts or agreements and the terms and conditions of this Agreement.

(18) Terms and Conditions. This Agreement contains all the terms and conditions agreed upon by the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous understandings. No waiver by DEO may be effective unless made in writing by an authorized DEO official

(19) Attachments.

(a) If any inconsistencies or conflict between the language of this Agreement and the attachments arise, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

(b) This Agreement contains the following attachments:

Attachment A – Scope of Work

Attachment B – Project Detail Budget (Example)

Attachment C – Activity Work Plan (Example)

Attachment D – Program and Special Conditions

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Attachment E – State and Federal Statutes, Regulations and Policies
Attachment F – Civil Rights Compliance
Attachment G – Reports
Attachment H – Warranties and Representations
Attachment I – Audit Requirements
Exhibit 1 to Attachment I – Funding Sources
Attachment J – Audit Compliance Certification
Attachment K – SERA Access Authorization Form
Attachment L - 2 CFR Appendix II to Part 200
Attachment M – Subrogation Agreement

(20) Funding/Consideration.

(a) The funding for this Agreement shall not exceed **Five Million dollars and Zero Cents ($5,000,000.00)** subject to the availability of funds. The State of Florida and DEO's performance and obligation to pay under this Agreement is contingent upon annual appropriations by the Legislature and subject to any modification in accordance with Chapter 216, F.S. or the Florida Constitution.

(b) DEO will provide funds to the Subrecipient by issuing a Notice of Subgrant Award/Fund Availability ("NFA") through DEO's financial management information system. Each NFA may contain specific terms, conditions, assurances, restrictions or other instructions applicable to the funds provided by the NFA. By accepting funds made available through an NFA, the Subrecipient agrees to comply with all terms, conditions, assurances, restrictions or other instructions listed in the NFA.

(c) By execution of this Agreement, the Subrecipient certifies that necessary written administrative procedures, processes and fiscal controls are in place for the operation of its CDBG-DR program for which the Subrecipient receives funding from DEO. These written administrative procedures, processes and fiscal controls must, at minimum, comply with applicable state and federal law, rules, regulations, guidance and the terms of this Agreement. The Subrecipient agrees to comply with all the terms and conditions of Attachment D titled "Program and Special Conditions".

(d) The Subrecipient shall expend funds only for allowable costs and eligible activities, in accordance with the Scope of Work.

(e) The Subrecipient shall request all funds in the manner prescribed by DEO. The authorized signatory for the Subrecipient set forth on the SERA Access Authorization Form, Attachment L, to this Agreement, must approve the submission of each Request for Funds ("RFF") on behalf of the Subrecipient.

(f) Except as set forth herein, or unless otherwise authorized in writing by DEO, costs incurred for eligible activities or allowable costs prior to the effective date of this Agreement are ineligible for funding with CDBG-DR funds.

(g) If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the Federal Office of Management and Budget, the Florida Legislature, the State Chief Financial Officer or under Subparagraph (20)(i), Mandated Conditions of this Agreement, all obligations on the part of DEO to make any further payment of funds will terminate and the Recipient shall submit its administrative closeout report and subgrant agreement closeout package within thirty (30) calendar days from receipt of notice from DEO.

(h) The Subrecipient is ultimately responsible for the administration of this Agreement, including monitoring and oversight of any person or entity retained or hired by the Subrecipient.

(21) Repayments.

(a) The Subrecipient shall only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period. The Subrecipient shall ensure that its contractors,

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subcontractors and consultants only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period.

(b) In accordance with Section 215.971, F.S., the Subrecipient shall refund to DEO any unobligated funds which have been advanced or paid to the Subrecipient.

(c) The Subrecipient shall refund to DEO any funds paid in excess of the amount to which the Subrecipient or its contractors, subcontractors or consultants are entitled under the terms and conditions of this Agreement.

(d) The Subrecipient shall refund to DEO any funds received for an activity if the activity does not meet one of the three National Objectives listed in 24 C.F.R. § 570.483(b), (c) and (d); provided, however, the Subrecipient is not required to repay funds for subgrant administration unless DEO, in its sole discretion, determines the Subrecipient is at fault for the ineligibility of the activity in question.

(e) The Subrecipient shall refund to DEO any funds not spent in accordance with the conditions of this Agreement or applicable law. Such reimbursement shall be sent to DEO, by the Subrecipient, within thirty (30) calendar days from Subrecipient's receipt of notification of such non-compliance.

(f) In accordance with Section 215.34(2), F.S., if a check or other draft is returned to DEO for collection, the Subrecipient shall pay to DEO a service fee of $15.00 or five percent of the face amount of the returned check or draft, whichever is greater. All refunds or repayments to be made to DEO under this Agreement are to be made payable to the order of "Department of Economic Opportunity" and mailed directly to DEO at the following address:

Department of Economic Opportunity
Community Development Block Grant Programs Cashier
107 East Madison Street – MSC 400
Tallahassee, Florida 32399-6508

(22) Mandated Conditions.

(a) The validity of this Agreement is subject to the truth and accuracy of all the information, representations and materials submitted or provided by the Subrecipient in this Agreement, in any later submission or response to a DEO request or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations and materials are incorporated herein by reference.

(b) This Agreement shall be construed under the laws of the State of Florida and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. The Parties explicitly waive any right to jury trial.

(c) If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then that provision shall be null and void only to the extent of the conflict or unenforceability, and that provision shall be severable from and shall not invalidate any other provision of this Agreement.

(d) Any power of approval or disapproval granted to DEO under the terms of this Agreement shall survive the term of this Agreement.

(e) This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(f) The Subrecipient shall comply with all applicable local, state and federal laws, including the Americans With Disabilities Act of 1990, as amended; the Florida Civil Rights Act, as amended, Chapter 760, Florida Statutes; Title VII of the Civil Rights Act of 1964, as amended; (P.L. 101-336, 42 U.S.C. § 12101 *et seq.*) and laws which prohibit discrimination by public and private entities on in employment, public accommodations, transportation, state and local government services and telecommunications.

(g) Pursuant to Section 287.133(2)(a), F.S., a person or affiliate, as defined in Section 287.133(1), F.S., who has been placed on the convicted vendor list following a conviction for a public entity crime may not

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submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of thirty-five thousand dollars ($35,000) for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. By executing this Agreement, the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the convicted vendor list. The Subrecipient shall disclose if it or any of its affiliates is placed on the convicted vendor list.

(h) Pursuant to Section 287.134(2)(a), F.S., an entity or affiliate, as defined in Section 287.134(1), who has been placed on the discriminatory vendor list may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity. By executing this Agreement, the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the discriminatory vendor list. The Subrecipient shall disclose if it or any of its affiliates is placed on the discriminatory vendor list.

(i) All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

(j) Any bills for travel expenses shall be submitted and reimbursed in accordance with Section 112.061, F.S., the rules promulgated thereunder and 2 C.F.R. § 200.474.

(k) If the Subrecipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to DEO or be applied against DEO's obligation to pay the Agreement award amount.

(l) The Subrecipient hereby acknowledges that the Subrecipient is subject to Florida's Government in the Sunshine Law (Section 286.011, F.S.) with respect to the meetings of the Subrecipient's governing board or the meetings of any subcommittee making recommendations to the governing board. The Subrecipient hereby agrees that all such aforementioned meetings shall be publicly noticed, open to the public and the minutes of all the meetings shall be public records made available to the public in accordance with Chapter 119, F.S.

(m) The Subrecipient shall comply with section 519 of P. L. 101-144, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990; and section 906 of P.L. 101-625, the Cranston-Gonzalez National Affordable Housing Act, 1990, by having, or adopting within ninety (90) days of execution of this Agreement, and enforcing, the following:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

(23) Lobbying Prohibition.

(a) No funds or other resources received from DEO under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(b) The Subrecipient certifies, by its signature to this Agreement, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, 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 the awarding of any Federal contract, the making of any Federal grant,

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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 Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. The Subrecipient shall require that 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 as described in this Paragraph (22), above. 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 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than one hundred thousand dollars ($100,000) for each such failure.

(24) Copyright, Patent and Trademark.

Any and all patent rights accruing under or in connection with the performance of this Agreement are hereby reserved to the State of Florida. Any and all copyrights accruing under or in connection with the performance of this Agreement are hereby transferred by the Subrecipient to the State of Florida.

(a) If the Subrecipient has a pre-existing patent or copyright, the Subrecipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

(b) If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement or in any way connected with it, the Subrecipient shall refer the discovery or invention to DEO for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films or other copyrightable material are produced, the Subrecipient shall notify DEO. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Subrecipient to the State of Florida.

(c) Within thirty (30) calendar days of execution of this Agreement, the Subrecipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Subrecipient shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists, and DEO shall have the right to all patents and copyrights which accrue during performance of the Agreement.

(25) Legal Authorization.

(a) The Subrecipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Subrecipient certifies that the undersigned person has the authority to legally execute and bind the Subrecipient to the terms of this Agreement. DEO may, at its discretion, request documentation evidencing the undersigned has authority to bind the Subrecipient to this Agreement as of the date of execution; any such documentation is incorporated herein by reference.

(b) The Subrecipient warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, investigation or any other legal or financial condition that would in any way prohibit,

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restrain or diminish the Subrecipient's ability to satisfy its Agreement obligations. The Subrecipient shall immediately notify DEO in writing if its ability to perform is compromised in any manner during the term of the Agreement.

(26) Public Record Responsibilities.

(a) In addition to the Subrecipient's responsibility to directly respond to each request it receives for records, in conjunction with this Agreement and to provide the applicable public records in response to such request, the Subrecipient shall notify DEO of the receipt and content of all such requests by sending an email to PRRequest@deo.myflorida.com within one (1) business day from receipt of the request.

(b) The Subrecipient shall keep and maintain public records required by DEO to perform the Subrecipient's responsibilities hereunder. The Subrecipient shall, upon request from DEO's custodian of public records, provide DEO 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 by Chapter 119, F.S., or as otherwise provided by law. The Subrecipient shall allow public access to all documents, papers, letters or other materials made or received by the Subrecipient in conjunction with this Agreement, unless the records are exempt from Article I, Section 24(a) of the Florida Constitution and Section 119.07(1), F.S. For records made or received by the Subrecipient in conjunction with this Agreement, the Subrecipient shall respond to requests to inspect or copy such records in accordance with Chapter 119, F.S. For all such requests for records that are public records, as public records are defined in Section 119.011, F.S., the Subrecipient shall be responsible for providing such public records per the cost structure provided in Chapter 119, F.S., and in accordance with all other requirements of Chapter 119, F.S., or as otherwise provided by law.

(c) This Agreement may be terminated by DEO for refusal by the Subrecipient to comply with Florida's public records laws or to allow public access to any public record made or received by the Subrecipient in conjunction with this Agreement.

(d) If, for purposes of this Agreement, the Subrecipient is a "contractor" as defined in Section 119.0701(1)(a), F.S. ("Subrecipient-contractor"), the Subrecipient-contractor shall transfer to DEO, at no cost to DEO, all public records upon completion including termination, of this Agreement or keep and maintain public records required by DEO to perform the service. If the Subrecipient-contractor transfers all public records to the public agency upon completion of the Agreement, the Subrecipient-contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Subrecipient-contractor keeps and maintains public records upon completion of the Agreement, the Subrecipient-contractor shall meet all applicable requirements for retaining public records in accordance with Chapters 119 and 257, F.S. All records stored electronically must be provided to DEO, upon request from DEO's custodian of public records, in a format that is compatible with the information technology systems of DEO.

(e) If DEO does not possess a record requested through a public records request, DEO shall notify the Subrecipient-contractor of the request as soon as practicable, and the Subrecipient-contractor must provide the records to DEO or allow the records to be inspected or copied within a reasonable time. If the Subrecipient-contractor does not comply with DEO's request for records, DEO shall enforce the provisions set forth in this Agreement. A Subrecipient-contractor who fails to provide public records to DEO within a reasonable time may be subject to penalties under Section 119.10, F.S.

(f) The Subrecipient shall notify DEO verbally within twenty-four (24) chronological hours and in writing within seventy-two (72) chronological hours if any data in the Subrecipient's possession related to this Agreement is subpoenaed or improperly used, copied or removed (except in the ordinary course of business) by anyone except an authorized representative of DEO. The Subrecipient shall cooperate with DEO, in taking all steps as DEO deems advisable, to prevent misuse, regain possession or otherwise protect the State's rights and the data subject's privacy.

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(g) The Subrecipient acknowledges that DEO is subject to the provisions of Chapter 119, F.S., relating to public records and that reports, invoices and other documents the Subrecipient submits to DEO under this Agreement constitute public records under Florida Statutes. The Subrecipient shall cooperate with DEO regarding DEO's efforts to comply with the requirements of Chapter 119, F.S.

(h) If the Subrecipient submits records to DEO that are confidential and exempt from public disclosure as trade secrets or proprietary confidential business information, such records should be identified as such by the Subrecipient prior to submittal to DEO. Failure to identify the legal basis for each exemption from the requirements of Chapter 119, F.S., prior to submittal of the record to DEO serves as the Subrecipient's waiver of a claim of exemption. The Subrecipient shall ensure 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 Agreement term and following completion of the Agreement if the Subrecipient-contractor does not transfer the records to DEO upon completion, including termination, of the Agreement.

(i) **IF SUBRECIPIENT-CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT-CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS by telephone at 850-245-7140, via email at PRRequest@deo.myflorida.com, or by mail at Department of Economic Opportunity, Public Records Coordinator, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-4128.**

(j) To the extent allowable by law, the Subrecipient shall be fully liable for the actions of its agents, employees, partners, contractors and subcontractors and shall fully indemnify, defend, and hold harmless the State and DEO, and their officers, agents and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to public record requests or public record law violation(s), alleged to be caused in whole or in part by the Subrecipient, its agents, employees, partners, contractors or subcontractors, provided, however, that the Subrecipient does not indemnify for that portion of any costs or damages proximately caused by the negligent act or omission of the State or DEO. DEO, in its sole discretion, has the right, but not the obligation, to enforce this indemnification provision.

(k) DEO does not endorse any Subrecipient, commodity, or service. Subject to Chapter 119, F.S., Subrecipient shall not publicly disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to, mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking Subrecipient's name and either a description of the Agreement or the name of DEO or the State in any material published, either in print or electronically, to any other entity that is not a Party to this Agreement, except potential or actual employees, agents, representatives or subcontractors with the professional skills necessary to perform the work services required by the Agreement.

(l) The Subrecipient shall comply with the requirements set forth in Section 119.0701, F.S., when entering into any public agency contract for services after the Effective Date of this Agreement. The Subrecipient shall amend each of the Subrecipient's public agency contracts for services already in effect as of the Effective Date of this Agreement and which contract will or may be funded in whole or in part with any public funds. DEO may terminate this Agreement if the Subrecipient does not comply with this provision.

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(27) Employment Eligibility Verification.

(a) Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires DEO contracts in excess of nominal value to expressly require the Subrecipient to:

1. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Subrecipient during the Agreement term; and,

2. Include in all contracts under this Agreement the requirement that contractors, subcontractors, consultants and subrecipients performing work or providing services pursuant to this Agreement use the E-Verify system to verify the employment eligibility of all new employees hired by the contractors, subcontractors, consultants and subrecipients during the term of the contract.

(b) The Department of Homeland Security's E-Verify system can be found at:

http://www.uscis.gov/e-verify

(c) If the Subrecipient does not have an E-Verify MOU in effect, the Subrecipient must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Agreement.

(28) Program Income.

(a) The Subrecipient shall report to DEO all program income (as defined at 24 C.F.R. § 570.500(a) or in the Federal Register Guidance governing the CDBG-DR funds) generated by activities carried out with CDBG-DR funds made available under this Agreement as part of the Subrecipient's Quarterly Progress Report. The Subrecipient shall use program income in accordance with the applicable requirements of 2 C.F.R. part 200, 24 C.F.R. part 570.504, and the terms of this Agreement.

(b) Program income generated after closeout shall be returned to DEO. Program income generated prior to closeout shall be returned to DEO unless the program income is used to fund additional units of CDBG-DR activities, specified in a modification to this Agreement and duly executed prior to administrative closeout.

(29) National Objectives

All activities funded with CDBG-DR funds must meet the criteria for one of the CDBG program's National Objectives. The Subrecipient certifies that the activities carried out under this Agreement shall meet the following national objectives and satisfy the following criteria:

(a) Benefit to low- and moderate- income persons;

(b) Aid in prevention or elimination of slums or blight; and

(c) Meet a need having particular urgency (referred to as urgent need).

(30) Independent Contractor.

a) In the Subrecipient's performance of its duties and responsibilities under this Agreement, it is mutually understood and agreed that the Subrecipient is at all times acting and performing as an independent contractor. Nothing in this Agreement is intended to or shall be deemed to constitute an employer/employee relationship, partnership or joint venture between the Parties. The Subrecipient shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. Nothing in this Agreement shall be construed to create any agency or employment relationship between DEO and the Subrecipient, its employees, subcontractors or agents. Neither Party shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

(b) The Subrecipient, its officers, agents, employees, subcontractors or assignees, in performance of this Agreement shall act in the capacity of an independent contractor and not as an officer, employee, agent, joint venturer, or partner of the State of Florida.

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(c) Subrecipient shall have sole right to control the manner, method and means by which the services required by this Agreement are performed. DEO shall not be responsible to hire, supervise or pay Subrecipient's employees. Neither the Subrecipient, nor its officers, agents, employees, subcontractors or assignees are entitled to State retirement or State leave benefits, or to any other compensation of State employment as a result of performing the duties and obligations of this Agreement.

(d) The Subrecipient agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, employee, servant, joint venturer or partner of the State of Florida.

(e) Unless justified by the Subrecipient and agreed to by DEO in the Scope of Work, DEO will not furnish services of support (*e.g.*, office space, office supplies, telephone service, secretarial or clerical support) to the Subrecipient or its subcontractor or assignee.

(f) DEO shall not be responsible for withholding taxes with respect to the Subrecipient's use of funds under this Agreement. The Subrecipient shall have no claim against DEO for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, reemployment assistance benefits or employee benefits of any kind. The Subrecipient shall ensure that its employees, subcontractors and other agents, receive benefits and necessary insurance (health, workers' compensation, reemployment assistance benefits) from an employer other than the State of Florida.

(g) The Subrecipient, at all times during the Agreement, must comply with the reporting and Reemployment Assistance contribution payment requirements of Chapter 443, F.S.

(h) DEO shall not provide any training to Subrecipient, its employees, assigns, agents, representatives or subcontractors in the professional skills necessary to perform the work services required by the Agreement.

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DEO Agreement No.: I0086

State of Florida
Department of Economic Opportunity
Federally Funded Subrecipient Agreement
Signature Page

IN WITNESS THEREOF, and in consideration of the mutual covenants set forth above and, in the attachments, and exhibits hereto, the Parties executed this Agreement by their duly authorized undersigned officials.

CITY OF BONITA SPRINGS, A FLORIDA MUNCIPAL CORPORATION IN THE STATE OF FLORIDA

By _____ Signature

Peter Simmons

Title Mayor

Date 04-02-20

Federal Tax ID # 59-3649914

DUNS # 196164110

DEPARTMENT OF ECONOMIC OPPORTUNITY

By DocuSigned by: _____ Signature

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Ken Lawson

Title Executive Director

Date 4/7/2020

Approved as to form and legal sufficiency, subject only to full and proper execution by the Parties.

OFFICE OF GENERAL COUNSEL
DEPARTMENT OF ECONOMIC OPPORTUNITY

By: DocuSigned by: James Jordan

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Approved Date: 4/6/2020

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Attachment A – Scope of Work

1. Project Description

The U.S. Department of Housing and Urban Development (HUD) allocated Community Development Block Grant Disaster Recovery (CDBG-DR) funds to the State of Florida to be distributed in the Federal Emergency Management Agency (FEMA) declared counties impacted by Hurricane Irma for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 United States Code (U.S.C.) 5301 et seq.) and described in the State of Florida Action Plan for Disaster Recovery.

The City of Bonita Springs, a Florida Municipal Corporation in the State of Florida has been selected to participate in the Voluntary Home Buyout (VHB) CDBG-DR program. These funds will be used to principally benefit low- and moderate-income persons. Funds will be used to acquire properties that are in Special Flood Hazard Area (SFHA), and in high risk-flood areas to help reduce the impact of future disasters, and to assist property owners relocate outside the threat of flooding with the focus on properties that do not have flood insurance.

There are two options under this grant: The first option is to use the CDBG-DR funding as a leverage to match funding projects that are also eligible for the Hazard Mitigation Grant Program (HMGP) provided by the Federal government. The second option is to work directly with DEO to acquire contiguous parcels of properties of residential areas that meet low- and moderate- income area requirements, and/or assist low-and moderate-income households.

Necessary assistance will be provided in the form of buyout and demolition of existing housing units. Housing units whose occupants qualify as low- to moderate-- income (LMI) households will be acquired and demolished in compliance with the local building code and the U.S. Department of Housing and Urban Development's standards outlined in the Federal Register Notices.

Awards to eligible homeowners will be based on the overall level of damage in the proposed buyout area, as determined by condemnation, flood levels and/or status as beyond reasonable repair for each property, and the extent to which the proposed buyout program supports overall flood mitigation plans for the area and community.

2. Subrecipient Responsibilities

A. CDBG-DR Voluntary Home Buyout Policies and Procedures and Implementation
The City of Bonita Springs, a Florida Municipal Corporation in the State of Florida will conduct the program design and implementation services necessary to mobilize and launch its production implementation systems to support the programs and projects to help people, properties and communities recover from storm related damage due to Hurricane Irma as follows:

1. Complete and submit to DEO within 45 days of agreement execution, a staffing plan for The City of Bonita Springs, a Florida Municipal Corporation in the State of Florida, CDBG-DR Program that includes:

   a. Organizational chart; and,

   b. Job descriptions for Subrecipient's employees, contracted staff, vendors, and contractors.

   c. Scope of work and procurement plan for all contracted staff, vendors, and contractors.

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2. Develop and submit a copy of the following policies and procedures to the DEO Agreement Manager within 45 days of agreement execution:

    a. Procurement policies and procedures that incorporate 2 CFR Part 200.317-326.
    b. Administrative financial management policies, which must comply with all applicable HUD CDBG-DR and State of Florida rules.
    c. Quality assurance and quality control system policies and procedures that comply with all applicable HUD CDBG-DR and DEO Policies
    d. Policies and procedures that at a minimum, include information about the VHB application process, application requirements, underwriting criteria, compliance requirements, and reporting methodology
    e. Policies and procedures to detect and prevent fraud, waste and abuse that describe how the subrecipient will verify the accuracy of applicant information, monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items will be monitored, and procedure for referring instances of fraud, waste and abuse to HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov).
    f. Policies and procedures for the requirements under 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award.

3. Establish and administer a system of record and production and grants management reporting systems within 45 days of agreement execution.

4. Complete and submit a Project Detail Budget (Attachment B) for approval by DEO no later than 60 days after the execution of the subrecipient agreement.

5. Complete and submit an Activity Work Plan (Attachment C) for approval by DEO no later than 30 days after the execution of the subrecipient agreement.

6. Maintain organized subrecipient agreement files and make them accessible to DEO or its representatives upon request.

7. Comply with all terms and conditions of the subrecipient agreement, Voluntary Home Buyout Program Guidelines and Design, Action Plan, Action Plan Amendments, and Federal, State and local laws.

8. Attend fraud related training by HUD OIG to assist in the proper management of CDBG-DR grant funds when available.

9. Update all applicable VHB policies and procedures as needed and upon DEO request.

10. Complete procurement of all vendors for internal grants management and compliance and direct program and project production, including:

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a. Selection of vendors, subrecipients, and/or staff that will be responsible for managing applicant intake and related operations, compliance, finance and administration;
b. Selection of vendors, subrecipients, and/or staff that will be responsible for managing demolition and/or construction;
c. Selection of vendors, subrecipients, and/or staff that will be responsible for managing Land and Structure Buyout; and,
d. Selection of vendors, subrecipients, and/or staff that will be responsible for Appraisal, Environmental Review, title services, and legal services.

11. Meet or exceed federal underwriting standards. Subrecipients must establish underwriting criteria that, at a minimum, complies with CDBG underwriting criteria found at 24 CFR 570.209. Project costs must be demonstrated to be reasonable. All other sources of financing must be committed or otherwise unavailable to the applicant. Project costs must be need-based, and documentation must be sufficient to prove that CDBG funds will not supplant non-federal financial funding or support.

12. Include the following statement on all program materials and applications "Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729."

13. Ensure all projects seeking assistance under the current CDBG-DR funds for Hurricane Irma, and any future funds allocated for Hurricane Irma, provided by DEO, receive the required Environmental Clearance from DEO prior to the Subrecipient being able to commit CDBG-DR funds.

14. Evaluate each grant applicant for the potential for duplication of benefits and decline any grant amount that would constitute such a duplication.

15. Develop and submit a monthly revised detailed budget measuring the actual cost versus projected cost by the 10th day of the following month.

16. Develop and submit a monthly revised detailed timeline for implementation consistent with the milestones outlined in the VHB program guidelines and report actual progress against the projected progress.

17. Develop and submit both a monthly and quarterly report to DEO by the 10th day of the following month or quarter, that outlines the progress made to date, the projected activities to be completed in the upcoming month or quarter, and any risks or issues identified for the delivery of the project. The reports must include metrics that demonstrate the implementation costs to date with projected spending, and any other information DEO determines is necessary.

18. Obtain approval from DEO and FEMA before conveying ownership.

19. Provide scope of land use in accordance with DEO's direction, prior to closing.

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20. Enforce the proper land use according to *83 Fed. Reg. 5863* in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.

21. Enforce and monitor all deed restrictions.

22. Approve the conveying of property and the proper use of land.

23. Utilize a certified appraiser for each property that is eligible to be acquired.

24. Utilize a certified damage inspector to assess damages of each property to assure that damages were caused by Hurricane Irma.

25. The Subrecipient shall adhere to the following deadlines for the project. If the Subrecipient is unable to meet a deadline, the subrecipient shall request an extension of such deadline from DEO in writing no later than thirty (30) business days prior to the deadline. Deadlines shall not be extended outside of the Term of this agreement except by a formal amendment executed in accordance with section (4) Modification of Agreement.

Activity	Deadline
Program Design and Implementation, as outlined in Section 2., B.	9/15/2020
Completion of Homeowner buyout and Incentives, as outlined in Section 2., C.	6/15/2021
Completion of Demolition and Closeout as outlined in Section 2., D.	6/15/2022

B. Deliverable I: Program Design and Implementation

Task 1: Perform Intake for VHB applicants, which shall include the following components:

- Intake application processing
- Phone calls and/or in-person meetings with applicants
- Assist applicants with proper documentation
- Review and analyze submitted documentation
- Analyze for priority, if applicable

Task 2: Perform VHB Eligibility analysis which shall include the following components:

- Perform application authorizations
- Confirming ownership
- Confirming primary residence
- Identify priority status
- Perform damage assessment
- Identify tieback to disaster
- Income Certifications
- National Objectives Determination

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Task 3: Perform Duplication of Benefits (DOB) analysis, which shall include the following components:

- Perform FEMA data analysis
- Perform SBA data analysis
- Perform NFIP data analysis
- Perform Private Insurance data analysis
- Perform Non-profits data analysis
- Perform other assistance analysis
- Analyze spent funds
- Verify funds were spent for their intended purpose
- Complete DOB review
- Complete DOB final worksheet

Task 4: Perform the Review and Approval of VHB applicants, which shall include the following components:

- Review applicant files for completeness
- Determine pre-disaster fair market value
- Determine final applicant eligibility/ award amount
- Issue grant award to eligible applicant
- Applicant appeal process

Task 5: Complete the Environmental Review Record (ERR), which shall include the following components:

- Analyze applicant housing to determine proper ERR
- Inspection of property
- Complete tier 1 review
- Complete tier 2 review
- Complete and analyze lead-based paint testing
- Complete and analyze asbestos testing

Task 6: Perform Final Scope and Feasibility assessments, which shall include the following components:

- Revise scope for State Historic Preservation Office (SHPO) requirements
- Revise scope for lead-based paint mitigation
- Revise scope for asbestos mitigation
- Analyze for cost reasonableness and feasibility of the project
- Complete and review final inspection reports

Task 7: Complete the necessary Procurement and Closing activities which shall include the following components:

- Prepare statement of work for contractor bid
- Prepare and advertise procurement documents
- Review and respond to procurement questions
- Revise bid documents if necessary
- Review submissions and select contractor
- Conduct debarment check and contractor licensing

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- Award bid
- Review and modify agreement and award amounts
- Closing coordination
- Prepare and receive escrow
- Execute agreement with contractor

C. Deliverable II: Homeowner Buyout and Incentives

Task: 1 Complete the Homeowner Buyout and Incentive Program activities which shall include the following components:

- Property Appraisals
- Legal Services
- Conduct Title and lien searches
- Uniform Relocation Act (URA) compliance, when applicable
- Recording fees
- Perform homeowner buyout
- Perform homeowner incentives, if applicable
- Execute closing documents

D. Deliverable III: Demolition and Closeout

Task 1: Complete Demolition activities which shall include the following components:

- Notice to Proceed (NTP)
- Contractor obtains all permits
- Conduct inspections
- Conduct final walkthrough
- Process payments

Task 2: Complete grant agreement Closeout Packages which shall include the following components:

- Complete final inspection report
- Review project files prior to final closeout
- Compile closeout documentation

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3. **DELIVERABLES:**

The Subrecipient agrees to provide the following services as specified:

Deliverable I	**Minimum Level of Service (to submit for request for payment)**	**Financial Consequences**
Project Design and Implementation Subrecipient shall complete an eligible deliverable task as detailed in Attachment A, Section 2., B. Above.	The Subrecipient shall be reimbursed upon completion of a minimum of one deliverable task per housing unit as detailed in Attachment A, Section 2, B., evidenced by invoices(s) noting completed tasks with supporting documentation (such as payroll, invoices from contractors, etc.) as applicable upon the approval from DEO along with the submission of both a monthly report and a quarterly report detailing the work completed in Deliverable I. The completion of the monthly and quarterly reports alone does not meet the minimum level of service required for payment.	Failure to perform the minimum level of service shall result in nonpayment for this deliverable for each payment request.
Deliverable II	**Minimum Level of Service (to submit for request for payment)**	**Financial Consequences**
Homeowner Buyout and Incentives Subrecipient shall complete an Eligible deliverable task as detailed in Attachment A, Section 2., C. above	The Subrecipient shall be reimbursed upon completion of a minimum of one project deliverable task as detailed in Attachment A, Section 2. C; evidenced by invoices(s) noting completed tasks with supporting documentation (such as payroll, invoices from contractors, etc.) as applicable upon the approval from DEO and along with the submission of both a monthly and quarterly report detailing the work completed in Deliverable II. The completion of the monthly and quarterly reports alone does not meet the minimum level of service required for payment.	Failure to perform the minimum level of service shall result in nonpayment for this deliverable for each payment request.
Deliverable III	**Minimum Level of Service (to submit for request for payment)**	**Financial Consequences**
Demolition and Closeout Subrecipient shall complete an Eligible deliverable task as detailed in Attachment A, Section 2., D. above	The Subrecipient shall be reimbursed upon completion of a minimum of one project deliverable task as detailed in Attachment A, Section 2. D; evidenced by invoices(s) noting completed tasks with supporting documentation (such as payroll, invoices from contractors, etc.) as applicable upon the approval from DEO and along with the submission of both a monthly and quarterly	Failure to perform the minimum level of service shall result in nonpayment for this deliverable for each payment request.

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	report detailing the work completed in Deliverable III. The completion of the monthly and quarterly reports alone does not meet the minimum level of service required for payment. The Subrecipient shall be reimbursed upon completion of a minimum of 100 percent of the demolition activities for each project; evidenced by the final inspection of the site after the activities have been completed, signed by the contractor, certified by the housing specialist or building inspector for the project	
		TOTAL AWARD NOT TO EXCEED $5,000,000.00

4. DEO Responsibilities:

DEO shall receive and review the Deliverables and, upon DEO's acceptance of the Deliverables and receipt of the Subrecipient's pertinent invoices in compliance with the invoice procedures of this Agreement, DEO shall process payment to the Subrecipient in accordance with the terms and conditions of this Agreement.

DEO will administer and oversee the jurisdiction in which the program applies. DEO will be responsible for the following:

1. Provide the Voluntary Home Buyout Program Guidelines and Design, Action Plan, and Action Plan Amendments to the Subrecipient.

2. Provide updates of policies and procedures to the Subrecipient.

3. Approve the outreach campaign established by the Subrecipient that will target homeowners impacted by Hurricane Irma.

4. Approve the application process, application requirements, compliance requirements, and reporting methodology provided by the Subrecipient.

5. Review the detailed budget and measure actual cost versus projected cost on a monthly basis.

6. Review the progress made to date, the projected activities to be completed in the upcoming month, and any risks or issues identified for the delivery of the project as reported in the subrecipients required monthly and quarterly report.

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Attachment B – Project Budget Detail (Example)

Subrecipient: _____ Contract Number: _____ Modification Number: _____

Activity/Project		National Objective			Beneficiaries					Budget			
Activity	Description	LMI	Slum & Blight	Urgent Need	VLI	LI	MI	Non-LMI	Total	CDBG-DR Amount	Other Funds	Source*	Total Funds
1. Land & Structure Buyout													
	Appraisal												
	Environmental Review												
	Legal Services												
	Title Services												
	Inspection												
	Permitting												
2. Demolition													
3. Audit & Closeout													
4. Administration													
	Application Development												
	Policies & Procedures Development												
	Develop Underwriting Criteria												
	Implement Public Outreach												

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	Relocation Activities												
	Reporting												
	Totals:												

***Show the sources and amounts of Other Funds needed to complete the project below, including local funds, grants from other agencies and program income.**

Source of Other Funds	Amount
1. Leveraged Funding	
2. Match	
3.	
4.	

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Attachment C – Activity Work Plan (Example)

Subrecipient _____ Activity: _____ Project Budget: _____

Contract Number: _____ Date Prepared: _____ Modification Number: _____

Start Date (month/year)	**End Date** (month/year)	**Describe Proposed Action to be Completed by the "End Date."** ***Examples of Actions:*** *Procure Administrator or Engineer, Complete Environmental Review and Obtain Release of Funds, Request Wage Decision, Complete and Submit Design and Specifications, Advertise for and Open Bids, Issue Notice to Proceed, Construction Completion (33, 66, and 100 percent or 25, 50, 75, and 100 percent), Complete Construction Procurement Process, Advertise Availability of Housing Rehabilitation Funds, Complete Rankings of Homes per HAP, Number of Houses Rehabilitated and Submit Closeout Package to DEO.*	**Estimated Units to be Completed by the "End Date"**	**Estimated Funds to be Requested by the "End Date"**

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Attachment D – Program and Special Conditions

Program Conditions

1. The Subrecipient shall demonstrate that progress is being made in completing project activities in a timely fashion pursuant to the activity work plan. If the Subrecipient does not comply with the activity work plan schedule, a justification for the delay and a plan for timely accomplishment shall be submitted to DEO within 21 calendar days of receiving DEO's request for justification for the delay. Any project for which the Subrecipient has not completed the activities listed in the Activity Work Plan may be rescinded unless DEO agrees that the Subrecipient has provided adequate justification for the delay.

2. The Subrecipient shall maintain records of expenditure of funds from all sources that will allow accurate and ready comparison between the expenditures and the budget/activity line items as defined in the Project Detail Budget and Activity Work Plan.

3. The Subrecipient shall request DEO's approval for all professional services contracts and/or agreements that will be reimbursed with CDBG-DR funds. Copies of the following procurement documents must be provided to DEO for review:

   a. When publication of a Request for Proposal (RFP) is used as a means of solicitation, a copy of the advertisement, including an affidavit of publication;
   b. DEO will either approve the procurement or notify the Subrecipient that the procurement cannot be approved because it violates State, Federal or local procurement guidelines. The Subrecipient shall notify DEO in writing no later than 90 calendar days from the effective date of this agreement if it will not be procuring any professional services or if it will be using non-CDBG-DR funds to pay for professional services.

4. Prior to the obligation or disbursement of any funds, except for administrative expenses and not to exceed $5000, the Subrecipient shall complete the following:
   a. Submit for DEO's approval the documentation required in paragraph 3 above for any professional services contract. The Subrecipient proceeds at its own risk if more than the specified amount is incurred before DEO approves the procurement. If DEO does not approve the procurement of a professional services contract, the local government will not be able to use CDBG-DR funds for that contract beyond $5,000.
   b. Comply with 24 C.F.R. part 58 and the regulations implementing the National Environmental Policy Act, 40 C.F.R. §§ 1500-1508. When the Subrecipient has completed the environmental review process, it shall submit a Request for Release of Funds and Certification. DEO will issue an Authority to Use Grant Funds (form HUD-7015.16) when this condition has been fulfilled to the satisfaction of DEO. If DEO has not issued an Authority to use Grant Funds within 15 days of Subrecipient's submission of the required documentation, DEO shall provide the Subrecipient a written update regarding the status of the review process. **SUBRECIPIENT SHALL NOT BEGIN CONSTRUCTION BEFORE DEO HAS ISSUED THE "AUTHORITY TO USE GRANT FUNDS."**

5. The Subrecipient agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601-4655; hereinafter, the "URA"), implementing regulations at 24 C.F.R. part 42, 49 C.F.R. part 24 and 24 C.F.R. § 570.606(b), the requirements of 24 C.F.R. § 42.325 – 42.350 governing the Residential Anti-displacement and Relocation Assistance Plan under

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section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. § 5304(d)), and the requirements in 24 C.F.R. § 570.606(d), governing optional relocation assistance policies.

6. If the Subrecipient undertakes any activity subject to the URA, the Subrecipient shall document completion of the acquisition by submitting all documentation required for a desk monitoring of the acquisition, including a notice to property owners of his or her rights under the URA, an invitation to accompany the appraiser, all appraisals, offer to the owner, acceptance, contract for sale, statement of settlement costs, copy of deed, waiver of rights (for donations), as applicable. The documentation shall be submitted prior to completing the acquisition (closing) so that DEO can determine whether remedial action may be needed. The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 C.F.R. § 570.606(b)(2), that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project.

7. Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions);
   Section 3 Participation Report (Construction Prime Contractor); **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Subcontractor), (if applicable); and Section 3 Participation Report (Construction Subcontractor), (if applicable).**

8. In addition, each construction contract or agreement for new or replacement housing must contain language that requires the contractor to meet the Green Building Standard for Replacement and New Construction of Residential Housing, as defined in the Allocation notice published in the Federal Register Volume 81, Number 224 on Monday, November 21, 2016.

9. For each Request for Funds (RFF) that includes reimbursement of construction costs, the Subrecipient shall provide a copy of the American Institute of Architects (AIA) form G702, Application and Certification for Payment, or a comparable form approved by DEO, signed by the contractor and inspection engineer, and a copy of form G703, Continuation Sheet, or a comparable form approved by DEO. For each RFF that includes construction costs, the Subrecipient shall provide a copy of AIA form G702, or a comparable form approved by DEO, if applicable, signed by the contractor and the local building inspector or housing specialist and a copy of form G703, or a comparable form approved by DEO, if applicable.

10. For each project, when the Subrecipient issues the Notice to Proceed to the contractor(s), copies of the following documents shall be sent to DEO:
    a. Notice to Proceed;
    b. The contractor's performance bond (100 percent of the contract price); and
    c. The contractor's payment bond (100 percent of the contract price).

11. The Subrecipient shall undertake an activity each quarter to affirmatively further fair housing pursuant to 24 C.F.R. § 570.487(b)(4).

12. The CDBG-DR portion of the cost of post-administrative closeout audits.

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13. The Subrecipient shall ensure that a deed restriction is recorded on any real property or facility, excluding easements, acquired with CDBG-DR funds. This restriction shall limit the use of that real property or facility to the use stated in the subgrant application and that title shall remain in the name of the Subrecipient. Such deed restriction shall be made a part of the public records in the Clerk of Court of the county in which the real property is located. Any future disposition of that real property shall be in accordance with 24 C.F.R. § 570.505. Any future change of use of real property shall be in accordance with 24 C.F.R. § 570.489(j).

14. The Subrecipient shall comply with the historic preservation requirements of the National Historic Preservation Act of 1966, as amended, the procedures set forth in 36 C.F.R. part 800, and the Secretary of the Interior's Standards for Rehabilitation, codified at 36 C.F.R. 67, and Guidelines for Rehabilitating Historic Buildings.

15. Pursuant to section 102(b), Public Law 101-235, 42 U.S.C. § 3545, the Subrecipient shall update and submit Form HUD 2880 to DEO within thirty (30) calendar days of the Subrecipient's knowledge of changes in situations which would require that updates be prepared. The Subrecipient must disclose:
    a. All developers, contractors, consultants and engineers involved in the application or in the planning, development or implementation of the project or CDBG-DR-funded activity; and
    b. Any person or entity that has a financial interest in the project or activity that exceeds $50,000 or 10 percent of the grant, whichever is less.

16. If required, the Subrecipient shall submit a final Form HUD 2880, to DEO with the Subrecipient's request for administrative closeout, and its absence or incompleteness shall be cause for rejection of the administrative closeout.

17. Conflicts of interest relating to procurement shall be addressed pursuant to 24 C.F.R. § 570.489(g). Title 24 C.F.R. § 570.489(h) shall apply in all conflicts of interest not governed by 24 C.F.R. § 570.489(g), such as those relating to the acquisition or disposition of real property; CDBG-DR financial assistance to beneficiaries, businesses or other third parties; or any other financial interest, whether real or perceived. Additionally, the Subrecipient agrees to comply with, and this Agreement is subject to, Chapter 112 F.S.

18. Any payment by the Subrecipient using CDBG-DR funds for acquisition of any property, right-of-way, or easement that exceeds fair market value as determined through the appraisal process established in HUD Handbook 1378 shall be approved in writing by DEO prior to distribution of the funds. Should the Recipient fail to obtain DEO pre-approval, any portion of the cost of the acquisition exceeding Fair Market Value shall not be paid or reimbursed with CDBG-DR funds.

19. The Subrecipient shall take photographs or video of all activity locations prior to initiating any construction. As the construction progresses, additional photography or videography shall document the ongoing improvements. Upon completion of construction, final documentation of the activity locations will be provided to DEO with the administrative closeout package for this Agreement.

20. If an activity is designed by an engineer, architect or other licensed professional, it shall be certified upon completion by a licensed professional as meeting the specifications of the design, as may have been amended by change orders. The date of completion of construction shall be noted as part of the certification. This certification shall be accomplished prior to submission of an administrative closeout package and a copy of the certification shall be submitted with the administrative closeout package.

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Attachment E – State and Federal Statutes, Regulations, and Policies

The CDBG-DR funds available to the Subrecipient through this agreement constitute a subaward of the DEO's Federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. This agreement includes terms and conditions of the DEO's Federal award that are imposed on the Subrecipient and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this agreement.

The Subrecipient agrees to, and, by signing this Agreement, certifies that, it will comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by the Federal Register notices that govern the use of CDBG-DR funds available under this agreement. These Federal Register notices include, but are not limited to, Federal Register Guidance (82 FR 5591 & 82 FR 36812 and 81 FR 83254). Notwithstanding the foregoing, (1) the Subrecipient does not assume the any of DEO's responsibilities for environmental review, decision-making and action, described in 24 CFR part 58 and (2) the Subrecipient does not assume any of the DEO's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient shall also comply with all other applicable Federal, state and local laws, regulations and policies that govern the use of the CDBG-DR funds in complying with its obligations under this agreement, regardless of whether CDBG-DR funds are made available to the Subrecipient on an advance or reimbursement basis.

The Subrecipient also agrees to use funds available under this Agreement to supplement rather than supplant funds otherwise available. The Subrecipient further agrees to comply with all other applicable Federal, State and local laws, regulations and policies governing the funds provided under this Agreement, including, but not limited to the following:

I. State of Florida Requirements

State of Florida Requirements are stated throughout this Agreement and Attachments thereto.

II. Audits, Inspections, and Monitoring

1. Single Audit

The Subrecipient must be audited as required by 2 CFR part 200, subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

2. Inspections and Monitoring

The Subrecipient shall permit DEO and auditors to have access to the Subrecipient's records and financial statements as necessary for DEO to meet the requirements of 2 CFR part 200.

The Subrecipient must submit to monitoring of its activities by DEO as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this Agreement.

This review must include: (1) reviewing financial and performance reports required by the DEO; (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from DEO detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the Subrecipient from DEO as required by 2 CFR §200.521.

3. Corrective Actions

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The Subrecipient shall be subject to reviews and audits by DEO, including onsite reviews of the Subrecipient as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2). DEO may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. DEO may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews and other means. In response to audit deficiencies or other findings of noncompliance with this agreement, DEO may impose additional conditions on the use of the CDBG-DR funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

III. Drug-Free Workplace

Drug-free workplace. The Subrecipient must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the government-wide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

IV. Procurement and Contractor Oversight

The Subrecipient shall comply with the procurement standards in 2 CFR §200.318 - §200.326 when procuring property and services under this agreement. The Subrecipient shall impose the Subrecipient's obligations under this agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors.

The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities at [insert 24 CFR 570.609 or 24 CFR 570.489(l) as appropriate]. CDBG funds may not be provided to excluded or disqualified persons.

The Subrecipient shall maintain oversight of all activities under this agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this Agreement.

V. Property Standards

Real property acquired by the Subrecipient under this agreement shall be subject to 24 CFR 570.489(j) and 24 CFR 570.200(j). The Subrecipient shall also comply with the Property Standards at 2 CFR 200.310, 2 CFR 200.312, 2 CFR 200.314 through 2 CFR 200.316. The Subrecipient shall also comply with 2 CFR 200.313 Equipment, except that when the equipment is sold, the proceeds shall be program income and equipment not needed by the Subrecipient for activities under this agreement shall be transferred to DEO for its CDBG-DR program or shall be retained after Subrecipient appropriately compensates DEO

The Subrecipient shall also comply with the Property Standards in 2 CFR 200.310 through 2 CFR 200.316, except to the extent they are inconsistent with 24 CFR 570.200(j) and 24 CFR 570.489(j), in which case Subrecipient shall comply with 24 CFR 570.200(j) and 24 CFR 570.489(j), except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this agreement, pursuant to 24 CFR 570.489(e)(1)(ii).

VI. Federal Funding Accountability and Transparency Act (FFATA)

The Subrecipient shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number. The Subrecipient must also comply with provisions of the Federal Funding Accountability and Transparency Act,

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which includes requirements on executive compensation, 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

VII. Relocation and Real Property Acquisition

The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606.

In addition to other URA requirements, these regulations (49 CFR § 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the URA shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

VIII. Nondiscrimination

1. 24 CFR part 6

The Subrecipient will comply with 24 CFR part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion or sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-DR funds. Thus, the Subrecipient shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs.

2. Architectural Barriers Act and the Americans with Disabilities Act

The Subrecipient shall ensure that its activities are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995 and meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

3. State and Local Nondiscrimination Provisions

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The Subrecipient must comply with the Florida Small and Minority Business Assistance Act (§§ 288.703-288.706, F.S.);

Title VI of the Civil Rights Act of 1964 (24 CFR part 1)

(i) General Compliance:

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended. No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under 24 CFR part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(ii) Assurances and Real Property Covenants:

As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1.

If the Federal financial assistance under this Agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives DEO and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-DR funds and provided to the Subrecipient Under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

Affirmative Action

(iii) Approved Plan

The Subrecipient agrees that it shall carry out pursuant to the DEO's specifications an Affirmative Action Program in compliance with the President's Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 42 CFR 60. DEO shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the release of funds under this agreement.

(iv) Women- and Minority-Owned Businesses (W/MBE)

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The Subrecipient shall take the affirmative steps listed in 2 CFR 200.321(b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this Agreement.

(v) Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(vi) Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

IX. Labor and Employment

1. Labor Standards

The Subrecipient shall comply with the in labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis- Bacon Act, as amended (40 U.S.C. 3141, *et seq.*) and 29 CFR part 1, 3, 5, 6 and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

The Subrecipient agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall promptly be made available to DEO for review upon request.

X. Section 3 of the Housing and Urban Development Act of 1968

1. A low-income person, as this term is defined in Section 3 (b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher and or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low—income families; or (ii) A very low-income person, as this term is defined in Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437 a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

2. Compliance

The Subrecipient shall comply with the provisions of Section 3 of the Housing Urban Development Act of 1968, as amended, 12 USC 1701u, and implementing its implementing regulations at 24 CFR part 135. The Subrecipient shall include the following "Section 3 clause" at 24 CFR 135.38 in every "Section 3 covered contract" (as defined in 24 CFR 135.5).

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A. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
B. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
C. The Subrecipient will require its contractors to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
D. The Subrecipient will require its contractors to include a materially similar Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Subrecipient will require its contractors to not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
E. The Subrecipient will require its contractors to certify any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

3. Recipients of HUD federal financial assistance shall meet the following hiring and contract numerical goals to achieve compliance with Section 3 as found at 24 CFR 135.30 (Numerical goals for meeting the greatest extent feasible requirement.).

(3) Recipients of Section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in Section 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to employ Section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one-year period beginning in FY 1995;

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(ii) 20 percent of the aggregate number of new hires for the one-year period beginning in 1996; and

(iii) 30 percent of the aggregate number of new hires for the one-year period beginning in FY 1997 and continuing thereafter.

(c) Contracts. Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all Section 3 covered projects and Section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in Section 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

(1) At least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(2) At least three

(3) percent of the total dollar amount of all other Section 3 covered contracts.

XI. Conduct

1. Hatch Act

The Subrecipient shall comply with the Hatch Act, 5 USC 1501 – 1508, and shall ensure that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

Conflict of Interest

In the procurement of supplies, equipment, construction and services pursuant to this agreement, the Subrecipient shall comply with the conflict of interest provisions in the DEO's procurement policies and procedures. In all cases not governed by the conflict of interest provisions in the DEO's procurement policies and procedures, the Subrecipient shall comply with the conflict of interest provisions in 24 CFR 570.489(h).

Lobbying Certification

The Subrecipient hereby certifies that:

(i) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 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;

(ii) 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(iii) The language of paragraph (a) through (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and

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contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

(iv) 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 required by section 1352, title 31, U.S.C. 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.

XII. Religious Activities

The Subrecipient agrees that funds provided under this agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction or proselytization.

XIII. Environmental Conditions

1. Prohibition on Choice Limiting Activities Prior to Environmental Review

The Subrecipient must comply with the limitations in 24 CFR 58.22 even though the Subrecipient is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision- making and action (see 24 CFR part 58) and is not delegated the DEO's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity. If DEO has not issued an Authority to Use Grant Funds within 15 days of Subrecipient's submission of the required documentation, DEO shall provide the Subrecipient a written update regarding the status of the review process.

Air and Water

The Subrecipient shall comply with the following requirements insofar as they apply to the performance of this agreement:

- Air quality. (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)); and (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93); and
- Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.*, as amended, including the requirements specified in Section 114 and Section 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.

Flood Disaster Protection

The Subrecipient shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 USC 4012a. Additionally, the Subrecipient shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements. More information about these requirements is available in the Federal Register notices governing the CDBG-DR award and listed at the beginning of this Attachment.

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Lead-Based Paint

The Subrecipient shall follow DEO approved procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

Historic Preservation

The Subrecipient shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 CFR part 800 insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state or local historic property list.

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Attachment F – Civil Rights Compliance

Fair Housing

As a condition for the receipt of CDBG-DR funds, the Subrecipient must certify that it will "affirmatively further fair housing" in its community. The Subrecipient shall demonstrate its commitment to affirmatively further fair housing by implementing the actions listed below.

The Subrecipient shall:

1) Have in place a fair housing resolution or ordinance that covers all Federally protected classes (race, color, familial status, handicap, national origin, religion and sex);
2) Designate an employee as the Fair Housing Coordinator who is available during regular business hours to receive fair housing calls;
3) Publish the Fair Housing Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask fair housing questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website;
4) Establish a system to record the following for each fair housing call:
   a) The nature of the call,
   b) The actions taken in response to the call,
   c) The results of the actions taken and
   d) If the caller was referred to another agency, the results obtained by the referral agency;
5) Conduct at least one fair housing activity each quarter. Identical activities (see examples below) shall not be conducted in consecutive quarters; and
6) Display a fair housing poster in the CDBG-DR Office. (This does not count as a fair housing activity.)

The Subrecipient shall ensure that the fair housing contact person has received training so that he/she can handle fair housing phone inquiries or refer the inquiries to the appropriate people/agencies. Records maintained by the contact will help the community do the following:

- Define where discriminatory practices are occurring,
- Help the community measure the effectiveness of its outreach efforts, and
- Provide the community with a means to gain information that can be used to design and implement strategies that will eliminate fair housing impediments.

Examples of fair housing activities include the following:

- Making fair housing presentations at schools, civic clubs and neighborhood association meetings;
- Conducting a fair housing poster contest or an essay contest;
- Manning a booth and distributing fair housing materials at libraries, health fairs, community events, yard sales and church festivals; and
- Conducting fair housing workshops for city/county employees, realtors, bank and mortgage company employees, insurance agents and apartment complex owners.

Printing a fair housing notice on a utility bill is no longer accepted as a fair housing activity; however, mailing a DEO-approved fair housing brochure as an insert with utility bills will be accepted as an activity. Placing posters in public buildings does not meet the requirement for a fair housing activity.

The Subrecipient shall document its fair housing activities by keeping photographs, newspaper articles, sign-in sheets and copies of handouts in their CDBG-DR project file and include information about the activities in the comment section of each quarterly report.

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Equal Employment Opportunity

As a condition for the receipt of CDBG-DR funds, the Subrecipient must certify that it and the contractors, subcontractors, subrecipients and consultants that it hires with CDBG-DR funds will abide by the Equal Employment Opportunity (EEO) Laws of the United States. The Subrecipient shall demonstrate its commitment to abide by the laws through the actions listed below.

Each Subrecipient shall:

1) Have in place an equal employment opportunity resolution or ordinance that protects its applicants and employees and the applicants and employees of its contractors, subcontractors, subrecipients and consultants from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral and other aspects of employment, on the basis of race, color, religion, sex, national origin, disability, age or genetics;
2) Designate an employee as the EEO Coordinator who is available during regular business hours to receive EEO calls;
3) Publish the EEO Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask EEO questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website; and
4) Establish a system to record the following for each EEO call:
    a) The nature of the call,
    b) The actions taken in response to the call and
    c) The results of the actions taken;

Each Subrecipient shall maintain a list of certified minority-owned business enterprises (MBE) and women-owned business enterprises (WBE) that operate in its region. The Subrecipient shall use this list to solicit companies to bid on CDBG-DR-funded construction activities and shall provide a copy of the list to the prime contractor(s) to use when it hires subcontractors and consultants. The Department of Management Services maintains a list of certified minority- and women-owned businesses that can be used to develop a local MBE/WBE list at the following website: https://osd.dms.myflorida.com/directories.

Section 504 and the Americans with Disabilities Act (ADA)

As a condition for the receipt of CDBG-DR funds, the Subrecipient must certify that it provides access to all federally funded activities to all individuals, regardless of handicap. The Subrecipient shall demonstrate its commitment to abide by the laws through the actions listed below.

The Subrecipient shall:

1) Have in place a resolution or ordinance that is designed to eliminate discrimination against any person who:
    a) Has a physical or mental impairment which substantially limits one or more major life activities,
    b) Has a record of such an impairment, or
    c) Is regarded as having such an impairment;
2) Designate an employee as the Section 504/ADA Coordinator who is available during regular business hours to receive Section 504/ADA calls;
3) Publish the Section 504/ADA Coordinator's contact information quarterly in a newspaper of general circulation in the Subrecipient's jurisdiction so that people know who to call to ask Section 504/ADA questions or register a complaint. Alternatively, the Subrecipient can post the coordinator's contact information throughout the quarter on the home page of its website; and
4) Establish a system to record the following for each Section 504/ADA call:
    a) The nature of the call,
    b) The actions taken in response to the call and

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c) The results of the actions taken.

Section 504 prohibitions against discrimination (see 45 C.F.R. part 84) apply to service availability, accessibility, delivery, employment and the administrative activities and responsibilities of organizations receiving Federal financial assistance. A Subrecipient of Federal financial assistance may not, on the basis of disability:

- Deny qualified individuals the opportunity to participate in or benefit from Federally funded programs, services or other benefits,
- Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers, or
- Deny employment opportunities, including hiring, promotion, training and fringe benefits, for which they are otherwise entitled or qualified.

The ADA regulations (Title II, 28 C.F.R. part 35, and Title III, 28 C.F.R. part 36) prohibit discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability.

Title II covers all activities of state and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting and town meetings). State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision or speech disabilities.

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation and commercial facilities. Public accommodations are private entities who own, lease, lease to or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by Title III.

Section 3 - Economic Opportunities for Low- and Very Low-Income Persons

The Subrecipient shall encourage its contractors to hire qualified low- and moderate-income residents for any job openings that exist on CDBG-DR-funded projects in the community. The Subrecipient and its contractors shall keep records to document the number of low- and moderate-income people who are hired to work on CDBG-DR-funded projects. The number of low- and moderate-income residents who are hired to work of the project shall be reported in the comment section of the quarterly report.

The following clause from 24 C.F.R. § 135.38 is required to be included in CDBG-DR-funded contracts of $100,000 or more.

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Section 3 Clause

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are Subrecipients of HUD assistance for housing.

B. The Parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

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Civil Rights Regulations

As a condition for the receipt of CDBG-DR funds, each Subrecipient must certify that it will abide by the following Federal laws and regulations:

1. Title VI of the Civil Rights Act of 1964 – Prohibits discrimination by government agencies that receive Federal funding;
2. Title VII of the Civil Rights Act of 1964 – prohibits employment discrimination on the basis of race, color, religion, sex or national origin;
3. Title VIII of the Civil Rights Act of 1968 – as amended (the Fair Housing Act of 1988);
4. 24 C.F.R. § 570.487(b) – Affirmatively Furthering Fair Housing;
5. 24 C.F.R. § 570.490(b) – Unit of general local government's record;
6. 24 C.F.R. § 570.606(b) – Relocation assistance for displaced persons at URA levels;
7. Age Discrimination Act of 1975;
8. Executive Order 12892 – Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing;
9. Section 109 of the Housing and Community Development Act of 1974 – No person shall be excluded from participation in, denied benefits of or subjected to discrimination under any program or activity receiving CDBG-DR funds because of race, color, religion, sex or national origin;
10. Section 504 of the Rehabilitation Act of 1973 and 24 C.F.R. part 8, which prohibits discrimination against people with disabilities;
11. Executive Order 11063 – Equal Opportunity in Housing;
12. Executive Order 11246 – Equal Employment Opportunity; and
13. Section 3 of the Housing and Urban Development Act of 1968, as amended – Employment/Training of Lower Income Residents and Local Business Contracting.

I hereby certify that ~~the City of Bonita Springs~~ shall comply with all of the provisions and Federal regulations listed in this attachment.

By:  Date: 04-02-20

Name: Peter Simmons

Title: Mayor

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Attachment G – Reports

The following reports must be completed and submitted to DEO in the time frame indicated below. Failure to timely file these reports constitutes an Event of Default, as defined in Paragraph (10) Default, of this Agreement.

1. A **Monthly Progress Report** must be submitted to DEO on forms to be provided by DEO ten (10) calendar days after the end of each month.

2. A **Quarterly Progress Report,** must be submitted to DEO on forms to be provided by DEO no later than the tenth day of every April, July, October, and January.

3. A **Contract and Subcontract Activity** form, Form HUD-2516, currently available at http://www.flrules.org/Gateway/reference.asp?No=Ref-05360; which is incorporated herein by reference, must be submitted by April 15 and October 15 each year through the DEO's SERA reporting system. The form must reflect all contractual activity for the period, including Minority Business Enterprise and Woman Business Enterprise participation. If no activity has taken place during the reporting period, the form must indicate "no activity".

The Subrecipient shall closeout its use of the CDBG-DR funds and its obligations under this Agreement by complying with the closeout procedures in 2 CFR § 200.343. Activities during this close-out period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances and accounts receivable to DEO) and determining the custodianship of records.

Notwithstanding the terms of 2 CFR 200.343, upon the expiration of this Agreement, the Subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Further, any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the Subrecipient in the form of a loan) shall be treated in accordance with 24 CFR 570.503(b)(7).

4. In accordance with 2 C.F.R. part 200, should the Subrecipient meet the threshold for submission of a single or program specific audit, the audit must be conducted in accordance with 2 C.F.R. part 200 and submitted to DEO no later than nine months from the end of the Subrecipient's fiscal year. If the Subrecipient did not meet the audit threshold, an **Audit Certification Memo** must be provided to DEO no later than nine months from the end of the Subrecipient's fiscal year.

5. A copy of the **Audit Compliance Certification** form, Attachment K, must be emailed to audit@deo.myflorida.com within sixty (60) calendar days of the end of each fiscal year in which this subgrant was open.

6. The **Section 3 Summary Report**, form HUD-60002, must be completed and submitted through DEO's SERA reporting system by July 31, annually. The form must be used to report annual accomplishments regarding employment and other economic opportunities provided to persons and businesses that meet Section 3 requirements.

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7. Request for Funds must be submitted as required by DEO and in accordance with the ***Project Description and Deliverables; Project Narrative***, ***Project Budget Detail and Activity Work Plan.***

8. All forms referenced herein are available online or upon request from DEO's grant manager for this Agreement.

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Attachment H – Warranties and Representations

Financial Management

The Subrecipient's financial management system must comply with the provisions of 2 C.F.R. part 200 (and particularly 2 C.F.R 200.302 titled "Financial Management"), Section 218.33, F.S., and include the following:

(1) Accurate, current and complete disclosure of the financial results of this project or program.

(2) Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. The Subrecipient shall safeguard all assets and assure that they are used solely for authorized purposes.

(4) Comparison of expenditures with budget amounts for each Request for Funds (RFF). Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to determine whether costs are allowed and reasonable under the provisions of the 2 C.F.R. part 200 (and particularly 2 C.F.R. 200 Subpart E titled "Costs Principles") and the terms and conditions of this Agreement.

(6) Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions must follow the provisions of 2 C.F.R. §§ 200.318-200.326 and be conducted in a manner providing full and open competition. The Subrecipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals shall be excluded from competing for such procurements. Awards must be made to the responsible and responsive bidder or offeror whose proposal is most advantageous to the program, considering the price, quality and other factors. Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Subrecipient. Any and all bids or offers may be rejected if there is a sound, documented reason.

Codes of Conduct

The Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent shall participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in a tangible personal benefit from a firm considered for a contract. The officers, employees and agents of the Subrecipient shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts. The standards of conduct must provide for disciplinary actions to be applied for violations of the standards by officers, employees or agents of the Subrecipient. (*See* 2 C.F.R. § 200.318(c)(1).)

Business Hours

The Subrecipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site at all reasonable times for business. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

Licensing and Permitting

All contractors or employees hired by the Subrecipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Subrecipient.

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Attachment I – Audit Requirements

The administration of resources awarded by DEO to the Subrecipient may be subject to audits and/or monitoring by DEO as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 200 Subpart F (Audit Requirements) and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by 2 CFR part 200, as revised, and/or other procedures. By entering into this Agreement, the Subrecipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by DEO. In the event DEO determines that a limited scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by DEO staff to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the Subrecipient is a State or local government or a non-profit organization as defined in 2 CFR 200, as revised.

1. In the event that the Subrecipient expends $750,000 or more in federal awards in its fiscal year, the Subrecipient must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200 Subpart F (Audit Requirements), as revised. In determining the federal awards expended in its fiscal year, the Subrecipient shall consider all sources of federal awards, including federal resources received from DEO. The determination of amounts of federal awards expended should be in accordance with the guidelines established by 2 CFR 200 Subpart F (Audit Requirements), as revised. An audit of the Subrecipient conducted by the Auditor General in accordance with the provisions of 2 CFR 200 Subpart F (Audit Requirements), as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in Part I, paragraph 1, the Subrecipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200 Subpart F (Audit Requirements), as revised.

3. If the Subrecipient expends less than $750,000 in federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR 200 Subpart F (Audit Requirements), as revised, is not required. In the event that the Subrecipient expends less than $750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200 Subpart F (Audit Requirements), as revised, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from Subrecipient resources obtained from other than federal entities).

4. Although 2 CFR 200 Subpart F (Audit Requirements) does not apply to commercial (for-profit) organizations, the pass-through entity has an obligation to ensure that for-profit subrecipients that

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expend $750,000 or more in federal awards must comply with federal awards guidelines (see 2 CFR 200.501(h)). Additionally, for-profit entities may be subject to certain specific audit requirements of individual federal grantor agencies.

Additional Federal Single Audit Act resources can be found at:

https://harvester.census.gov/facweb/Resources.aspx

PART II: STATE FUNDED

This part is applicable if the Subrecipient is a non-state entity as defined by Section 215.97(2), F.S.

1. In the event that the Subrecipient expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such Subrecipient, the Subrecipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the Subrecipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the Subrecipient shall ensure that the audit complies with the requirements of Section 215.97(8), F.S. This includes submission of a financial reporting package as defined by Section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the Subrecipient expends less than $750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, F.S., is not required. In the event that the Subrecipient expends less than $750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, F.S., the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the Subrecipient's resources obtained from other than State entities).

Additional information regarding the Florida Single Audit Act can be found at:

https://apps.fldfs.com/fsaa/

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), F.S., State agencies may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, F.S. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

N/A

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PART IV: REPORT SUBMISSION

1. Copies of reporting packages, to include any management letter issued by the auditor, for audits conducted in accordance with 2 CFR 200 Subpart F (Audit Requirements), as revised, and required by PART I of this Exhibit Agreement shall be submitted by or on behalf of the Subrecipient directly to each of the following at the address indicated:

   A. Department of Economic Opportunity
   Financial Monitoring and Accountability (FMA)
   The copy submitted to the FMA section should be sent via email to: FMA-RWB@deo.myflorida.com

   B. The Federal Audit Clearinghouse designated in 2 CFR 200 Subpart F (Audit Requirements), as revised, electronically at: https://harvester.census.gov/facweb/

2. Copies of audit reports for audits conducted in accordance with 2 CFR 200 Subpart F (Audit Requirements), as revised, and required by Part I (in correspondence accompanying the audit report, indicate the date that the Subrecipient received the audit report); copies of the reporting package described in Section .512(c), 2 CFR 200 Subpart F (Audit Requirements), as revised, and any management letters issued by the auditor; copies of reports required by Part II of this Exhibit must be sent to DEO at the addresses listed in paragraph three (3) below.

3. Copies of financial reporting packages required by PART II of this Agreement shall be submitted by or on behalf of the Subrecipient directly to each of the following:

   A. DEO at the following address:

   Electronic copies: Audit@deo.myflorida.com

   B. The Auditor General's Office at the following address:

   Auditor General
   Local Government Audits/342
   Claude Pepper Building, Room 401
   111 West Madison Street
   Tallahassee, FL 32399-1450

   Email Address: flaudgen_localgovt@aud.state.fl.us

4. Any reports, management letter or other information required to be submitted to DEO pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200 Subpart F, 215.97 F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

5. Recipients and subrecipients, when submitting financial reporting packages to DEO for audits done in accordance with Chapter 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit

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organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient/subrecipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The Subrecipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of six (6) years from the date the audit report is issued, or five (5) state fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DEO, or its designee, the Chief Financial Officer (CFO) or Auditor General access to such records upon request. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer. The Subrecipient shall ensure that audit working papers are made available to DEO, or its designee, CFO or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by DEO.

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Exhibit 1 to Attachment I – Funding Sources

Federal Resources Awarded to the Subrecipient Pursuant to this Agreement Consist of the Following:

Federal Awarding Agency:	U.S. Department of Housing and Urban Development
Federal Funds Obligated to Subrecipient:	$5,000,000.00
Catalog of Federal Domestic Assistance Title:	Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii
Catalog of Federal Domestic Assistance Number:	14.228
Project Description: *This is not a research and development award.*	The purpose of Rebuild Florida's CDBG-DR Voluntary Home Buyout Program is to acquire properties that are in a Special Flood Hazard Area (SFHA), and in high-risk flood areas to help reduce the impact of future disasters, and to assist property owners to relocate outside the threat of flooding.

Compliance Requirements Applicable to the Federal Resources Awarded Pursuant to this Agreement are as Follows:
Federal Program

1. The Subrecipient shall perform its obligations in accordance with Sections 290.0401- 290.048, F.S.
2. The Subrecipient shall perform its obligations in accordance with 24 C.F.R. §§ 570.480 – 570.497.
3. The Subrecipient shall perform the obligations as set forth in this Agreement, including any attachments or exhibits thereto.
4. The Subrecipient shall perform the obligations in accordance with chapter 73C-23.0051(1) and (3), F.A.C.
5. The Subrecipient shall be governed by all applicable laws, rules and regulations, including, but not necessarily limited to, those identified in Award Terms & Conditions and Other Instructions of the Subrecipient's Notice of Subgrant Award/Fund Availability (NFA).

State Resources Awarded to the Subrecipient Pursuant to this Agreement Consist of the Following:
N/A

Matching Resources for Federal Programs: *N/A*

Subject to Section 215.97, Florida Statutes: *N/A*

Compliance Requirements Applicable to State Resources Awarded Pursuant to this Agreement are as Follows: *N/A*

NOTE: Title 2 C.F.R. § 200.331 and Section 215.97(5), F.S., require that the information about Federal Programs and State Projects included in Exhibit 1 and the Notice of Subgrant Award/Fund Availability be provided to the Subrecipient.

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Attachment J – Audit Compliance Certification

Email a copy of this form within 60 days of the end of each fiscal year in which this subgrant was open to audit@deo.myflorida.com.	
Subrecipient:	
FEIN:	Subrecipient's Fiscal Year:
Contact Name:	Contact's Phone:
Contact's Email:	

1. Did the Subrecipient expend state financial assistance, during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Subrecipient and the Department of Economic Opportunity (DEO)? ☐ Yes ☐ No

   If the above answer is yes, answer the following before proceeding to item 2.

   Did the Subrecipient expend $750,000 or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year? ☐ Yes ☐ No

   If yes, the Subrecipient certifies that it will timely comply with all applicable State single or project-specific audit requirements of Section 215.97, Florida Statutes and the applicable rules of the Department of Financial Services and the Auditor General.

2. Did the Subrecipient expend federal awards during its fiscal year that it received under any agreement (e.g., contract, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between the Subrecipient and DEO? ☐ Yes ☐ No

   If the above answer is yes, also answer the following before proceeding to execution of this certification:

   Did the Subrecipient expend $750,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year? ☐ Yes ☐ No

   If yes, the Subrecipient certifies that it will timely comply with all applicable single or program-specific audit requirements of 2 C.F.R. part 200, subpart F, as revised.

By signing below, I certify, on behalf of the Subrecipient, that the above representations for items 1 and 2 are true and correct.

Signature of Authorized Representative	Date
Printed Name of Authorized Representative	Title of Authorized Representative

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Attachment K – Subrecipient Enterprise Resource Application (SERA) Form

Current SERA Form will be provided under separate cover.

Attachment L
2 CFR Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

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 $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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.

(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 affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C.

3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all 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). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding $100,000 must 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 must 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 non-Federal award.

(J) See § 200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

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Attachment M

State of Florida
Department of Economic Opportunity

Federally-Funded
Community Development Block Grant
Disaster Recovery (CDBG-DR) Subrogation Agreement

This Subrogation and Assignment Agreement ("Agreement") is made and entered into on this 2nd day of April, 2020, by and between the City of Bonita Springs, aFlorida municipal corporation in the State of Florida (hereinafter referred to as "Subrecipient") and the State of Florida, Department of Economic Opportunity (hereinafter referred to as "DEO").

In consideration of Subrecipient's receipt of funds or the commitment by DEO to evaluate Subrecipient's application for the receipt of funds (collectively, the "Grant Proceeds") under the DEO Community Development Block Grant-Disaster Recovery Program (the "CDBG-DR Program") administered by DEO, Subrecipient hereby assigns to DEO all of Subrecipient's future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit or insurance policies of any type or coverage or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("FEMA") or the Small Business Administration ("SBA") (singularly, a "Disaster Program" and collectively, the "Disaster Programs") that was the basis of the calculation of Grant Proceeds paid or to be paid to Subrecipient under the CDBG-DR Program and that are determined in the sole discretion of DEO to be a duplication of benefits ("DOB") as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA or the SBA or any other source, and whether or not such amounts are a DOB, shall be referred to herein as "Proceeds," and any Proceeds that are a DOB shall be referred to herein as "DOB Proceeds." Upon receiving any Proceeds, Subrecipient agrees to immediately notify DEO who will determine in its sole discretion if such additional amounts constitute a DOB. If some or all of the Proceeds are determined to be a DOB, the portion that is a DOB shall be paid to DEO, to be retained and/or disbursed as provided in this Agreement. The amount of DOB determined to be paid to DEO shall not exceed the amount received from the CDBG-DR Program.

Subrecipient agrees to assist and cooperate with DEO to pursue any of the claims Subrecipient has against the insurers for reimbursement of DOB Proceeds under any such policies. Subrecipient's assistance and cooperation shall include but shall not be limited to allowing suit to be brought in Subrecipient's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing record and other evidence, testifying at trial and any other form of assistance and cooperation reasonably requested by DEO. Subrecipient further agrees to assist

and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

If requested by DEO, Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to DEO, to the extent of the Grant Proceeds paid to Subrecipient under the CDBG-DR Program, the Policies, any amounts received under the Disaster Programs that are DOB Proceeds and/or any rights thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by DEO to consummate and make effective the purposes of this Agreement.

Subrecipient explicitly allows DEO to request of any company with which Subrecipient held insurance policies, or FEMA or the SBA or any other entity from which Subrecipient has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by DEO to monitor/enforce its interest in the rights assigned to it under this Agreement and give Subrecipient's consent to such company to release said information to DEO.

If Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, Subrecipient agrees to promptly pay such amounts to DEO, if Subrecipient received Grant Proceeds under the CDBG-DR Program in an amount greater than the amount Subrecipient would have received if such DOB Proceeds had been considered in the calculation of Subrecipient's award.

In the event that the Subrecipient receives or is scheduled to receive any subsequent Proceeds, Subrecipient shall pay such subsequent Proceeds directly to DEO, and DEO will determine the amount, if any, of such subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of Subsequent DOB Proceeds shall be returned to the Subrecipient. Subsequent DOB Proceeds shall be disbursed as follows:

1. If the Subrecipient has received full payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be retained by DEO.
2. If the Subrecipient has received no payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be used by DEO to reduce payments of the Grant Proceeds to the Subrecipient, and all Subsequent DOB Proceeds shall be returned to the Subrecipient.
3. If the Subrecipient has received a portion of the Grant Proceeds, any Subsequent DOB Proceeds shall be used, retained and/or disbursed in the following order: (A) Subsequent DOB Proceeds shall first be used to reduce the remaining payments of the Grant Proceeds, and Subsequent DOB Proceeds in such amount shall be returned to the Subrecipient; and (B) any remaining Subsequent DOB Proceeds shall be retained by DEO.
4. If DEO makes the determination that the Subrecipient does not qualify to participate in the CDBG-DR Program or the Subrecipient determines not to participate in the CDBG-DR Program, the Subsequent DOB Proceeds shall be returned to the Subrecipient, and this Agreement shall terminate.

Once DEO has recovered an amount equal to the Grant Proceeds paid to Subrecipient, DEO will reassign to Subrecipient any rights assigned to DEO pursuant to this Agreement.

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Subrecipient represents that all statements and representations made by Subrecipient regarding Proceeds received by Subrecipient shall be true and correct as of the date of the signing of this Agreement.

Warning: Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

The person executing this Agreement on behalf of the Subrecipient hereby represents that he\she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by Subrecipient.

In any proceeding to enforce this Agreement, DEO shall be entitled to recover all costs of enforcement, including actual attorney's fees.

SUBRECIPIENT

[*insert Subrecipient name*]

By:_____
Name: Peter Simmons
Title: Mayor

DEO:

[*insert name of administrative entity*]

By:_____
Name: Executive Director
Title: Ken Lawson

CITY COUNCIL
CITY OF BONITA SPRINGS
WEDNESDAY, JANUARY 20, 2021
9:00 A.M.
BONITA SPRINGS RECREATION CENTER
26740 PINE AVENUE
BONITA SPRINGS, FLORIDA 34135
MINUTES

DRAFT

1. Call to order

   Mayor Rick Steinmeyer called the meeting to order at 9:00 A.M.

2. Invocation

   Reverend Susan Fannon, with the Springs Church, furnished the invocation.

3. Pledge of Allegiance

   At the request of Mayor Steinmeyer, Council Member Mike Gibson led in the Pledge of Allegiance.

4. Roll Call

   Mayor Steinmeyer and all Council Members were in attendance.

5. Approval of Agenda

6. Mayor's Welcome

7. Public Comment on Agenda Items

Dwight Esmon addressed the Food Truck Park and feels that the hours of operation to allow the park to be open to 11:00 P.M. will result in noise. He is also concerned that in allowing an 11:30 P.M. closing time, the city will have a difficult time in mandating an earlier closing time.

8. Zoning and Land Use items:

   A. Public Hearing of the following Zoning Resolution: A Zoning Resolution of the City of Bonita Springs requesting a Variance from LDC 6-113(4), which allows two wall signs on a double frontage lot, to allow two additional wall signs on a proposed medical building on a through Lot at 28120 S. Tamiami Trail; and, providing for an effective date. (Greensheet No. 21-01-015)

Mary Zizzo, Community Development Staff, was in attendance to present the Staff Report via a PowerPoint presentation (copy in Clerk's file). She clarified that the Applicant is permitted two signs, but has reqeuested four signs.

Council Member Mike Gibson motioned to deny; Council Member Jesse Purdon seconded.

No public comments were made.

At the request of Council Member Amy Quaremba, Ms. Zizzo addressed the Staff and Zoning Board recommendations.

Ms. Zizzo explained this is the minimum request; they are requesting signage beyond what staff finds to be the minimum. Staff does not see this to be a hardship. She further addressed, stating that the Zoning Board also found lack of a hardship.

Council Member Laura Carr stated that they want to place a sign on their own building, and that it can be tricky to get to the site. If they have a sign on their building they will maintain it, and she feels they should have the right to do it. It doesn't affect safety or the neighborhood. Say you can get this but no more signage on Beaumont.

Motion to deny passed 6-1 (Council Member Carr opposed)

RESULT: Motion to deny passed 6-1
MOTION BY: Council Member Gibson
SECONDED BY: Council Member Purdon
AYES (to deny): Mayor Steinmeyer and Council Members Quaremba, Purdon, Corrie, Gibson and Forbes
NAYS: Council Member Carr

9. Consent Agenda: (Note: Items on the Consent Agenda will be considered as one unless a specific item is removed by a Council Member for separate discussion.)

Council Member Quaremba motioned to approve the Consent Agenda; Council Member Laura Carr seconded; and the motion carried unanimously.

A. Approve Resolution accepting Mettauer Environmental as the lowest responsive and responsible bid for Ditch Maintenance RFB 20-20 in the Annual Maintenance amount of $233,826.88 pending approval of bid submittal documentation. (Greensheet No. 21-01-012) **ADOPTED RESOLUTION NO. 21-07**

B. Review of October 2020 and November 2020 Monthly Financial Reports. (Greensheet No. 21-01-016)

C. Approve a sub-recipient agreement between Lee County and City of Bonita Springs for FY2020-2021 Community Development Block Grant (CDBG) Entitlement Funds. (Greensheet No. 21-01-014)

D. Approve a Resolution appointing two new board members to the Art in Public Places Board. (Quaremba; Greensheet No. 21-01-018) **ADOPTED RESOLUTION NO. 21-08**

E. Approve a Resolution for a Budget Transfer to use unspent loan proceeds from the 2020 land acquisition to go towards the first debt payment. (Greensheet No. 21-01-023)

RESULT: UNANIMOUS
MOTION BY: Council Member Quaremba
SECONDED BY: Council Member Carr
AYES: Mayor Steinmeyer and Council Members Quaremba, Purdon, Carr, Corrie, Gibson and Forbes

- OPPORTUNITY FOR CITY COUNCIL COMMENTS ON CONSENT AGENDA ITEMS

Council Member Carr addressed Item C. of the Consent Agenda and asked who did all the reporting that is required, to which Assistant City Manager Matt Feeney responded that Elly McKuen in Public Works, who handles the grants.

DRAFT

10. Proclamations and Presentations:

A. Presentation of Certificates of Recognition to Council Member Amy Quaremba, Shari Mink, Paula Corrie, Sheila Morales, Linda Schwartz and Ann Grandell for their efforts in coordinating and implementing the Mask Project. (Amy Quaremba)

Council Member Quaremba introduced this item and thanked all who participated in the mask project. Letters were also sent to all those who participated and sewed and masks were provided to those communities that were hard hit. Sheila Morales also addressed Council and provided an overview of the project.

B. Presentation on code enforcement statistics from 2020 and updates on Emergency Management. (Greensheet No. 21-01-020)

Tony Backhurst, Neighborhood Services, and Lora Taylor, Communications Director, were in attendance to provide a PowerPoint presentation (copy in Clerk's file) on Emergency Management.

Council Member Quaremba and several Council Members thanked Neighborhood Services Staff for all they do.

11. Mayor and Council Member Items:

A. Discussion regarding mural located in City Council chambers and direction to staff. (Carr; Greensheet No. 21-01-017)

Council Member Carr addressed this agenda item, explaining she would like to continue with country, community and family, and would like the Art in Public Places Board to consider this, and if they want to keep it the same as it is, she is okay with that.

Council Member Quaremba stated she attended the Art in Public Places Board meeting the previous day, and they provided the history of those art pieces. They explained that it was commissioned by the Board, the Art League and the Historical Society. They would be happy to meet with Council Members to give them their points of view. They are still open to discussion, but very supportive of this mural. They would be supportive of maintaining it. There are opportunities for other murals in other places.

Council Member Purdon stated he was in agreement with Council Member Carr, as he likes it, but feels a facelift is appropriate. It can be placed at the Liles Hotel. He feels that there is nothing to loose on looking at potential options.

Council Member Mike Gibson likes the current mural is a good anchor in looking at our small town past. He would be open to looking at other options, but it would be hard for him to choose something else.

Council Member Fred Forbes stated he likes the idea of developing something that updates it, but feels it should not be on that mural; maybe a smaller mural on that wall. Maybe take some other areas in other areas and put a larger mural on it, which the public will see more.

Mayor Steinmeyer stated that he would prefer to keep the history so we know where we were, and know where we're going. There are two sidewalls at City Hall that can be used for a modern mural. He would prefer to keep the current mural.

DRAFT

Council Member Quaremba suggested that at the next meeting of the Art in Public Places Board, she will ask them to offer some suggestions for a significant piece of art mural in some significant place in Bonita Springs that will reflect where we are going. She will bring back to the Art in Public Places Board their thoughts on how we can show where we're going and not forget where we've been. Council Member Carr will be attending that meeting. City Manager Hunter stated Staff will notice the meeting to reflect more than one Council Member will be attending.

12. Public Hearing:

A. First Reading of the following Ordinance: An Ordinance of the City of Bonita Springs; Authorizing the sale of Real Property known as the Levin Lot in the Old 41 Downtown to Rooftop at Riverside, LLC; and providing for an effective date. (Greensheet No. 21-01-022)

City Attorney Rooney read the title block of the Ordinance into the record.

Council Member Gibson motioned to move to second reading; Council Member Corrie seconded; and the motion carried unanimously.

RESULT: UNANIMOUS
MOTION BY: Council Member Gibson
SECONDED BY: Council Member Corrie
AYES: Mayor Steinmeyer and Council Members Quaremba, Purdon, Carr, Corrie, Gibson and Forbes

13. City Attorney's Items

A. Approve a Purchase and Sale Agreement and review draft Development Agreement with Rooftop at Riverside, LLC, respondent to Levin Lot RFP 20-02. (Greensheet No. 21-01-021)

City Attorney Rooney furnished an overview. Council discussion followed on hours of operation, noise, liquor license, parking, etc.

10:28 A.M.

Council Member Gibson motioned to approve the Purchase and Sale Agreement; Council Member Chris Corrie seconded; and the motion carried unanimously.

RESULT: UNANIMOUS
MOTION BY: Council Member Gibson
SECONDED BY: Council Member Corrie
AYES: Mayor Steinmeyer and Council Members Quaremba, Purdon, Carr, Corrie, Gibson and Forbes

14. City Manager's Items

A. Discussion regarding the monthly rental fees of the Riverside Park Artist Cottage tenants. (Greensheet No. 21-01-019)

Nicole Perino, Parks and Recreation Director, furnished overview. In April rental payments were put on hold for all artist cottages, and at that time it was indicated that once the park is ready for events, staff would bring this back. The Art in Public Places Board is in favor of reinstating the rent.

Council Member Purdon motioned to reinstate rental fees; Council Member Quaremba seconded; and the motion carried unanimously.

RESULT: UNANIMOUS

DRAFT

MOTION BY: Council Member Purdon
SECONDED BY: Council Member Quaremba
AYES: Mayor Steinmeyer and Council Members Quaremba, Purdon, Carr, Corrie, Gibson and Forbes

Council Member Corrie requested that, in the future, Council be provided with copies of PowerPoint presentations so they can follow along. Council Member Quaremba suggested that at the workshop they can talk about a process for Council to comment.

B. COVID-19 update.

10:37 A.M.

City Manager Hunter next provided an update on COVID-19, informing Council that Staff is communicating messages from Lee County. Also, 888-499-0851 is the help number from the State, which Staff will publish on the City's website. She also updated Council on appointments being made available at Publix. Four locations in Bonita Springs will be offering the vaccine, via appointments on the on-line portal, which will be posted on the City's website as well. People can also dial 211. She also reported on a detour this week near Corkscrew Road, which will affect Imperial Parkway in the evenings. Staff will be coming back with rescheduling Council's March 17th to the 24th.

15. Mayor and Council Member Reports

Council Member Quaremba reported on the Big Carlos Bridge replacement project, which she explained that she was tasked to follow up on. She spoke with Mayor Ray Murphy and Arleen spoke to the Town Manager of Fort Myers Beach. They haven't been able to complete the contact with the Friends of Lover's Key. Mayor Murphy is in favor of having some kind of communication to the Board of Commissions from Bonita Springs and the Town of Fort Myers Beach stating that they are not in favor of the recommended alternative – the 60-foot fixed span bridge. She addressed meetings held, and requested direction from Council to collaborate on the theme of what they want to say and agree that's what Council wants to do, and prepare a draft letter for the Mayor to sign. City Manager Hunter also addressed. The motion would be to authorize Council Member Quaremba to initiate a draft letter and authorize the Mayor to sign the letter on behalf of City Council.

Council Member Quaremba stated she did speak with Commissioner Sandelli who was very receptive in the sense that he said he was willing to listen to us. She wrote down a few points which she addressed she would like to include in the letter relating to the concerns. Staff would circulate the draft letter to Council and Council Members would contact Staff. Council Member Purdon said he likes doing in conjunction with the Town of Fort Myers Beach, but is this letter going to be the same letter they will be sending. Council Member Quaremba stated that because of timing we're each going to do a letter, but we're going to ensure that a letter is going out by both – we don't want to do it alone and they don't want to do it alone. And if it is the fact that we're not sending a letter, then neither of us are sending a letter. Council discussion followed. Council Member Forbes clarified that it is to be a two-lane bridge with bike lanes.

Council Member Forbes reported that currently there are only about 400 bills filed in Tallahassee the beginning of the session. Last year there was 3,500 bills filed, of which only 250 bills passed. In those 250 bills a number of them were invasive of local home rule rights. We need to have to eblast to citizens so they can write emails to legislative body. There will be a lot of hot topics – short term vacation rentals, anti-gun laws. He reiterated the need to put out information to the public.

Council Member Purdon gave a shout out to Love Inc, and the City Manager, as there was a great family in District 2 in need of help and the City Manager helped along with Love Inc., and Pastor Winn of the Springs. He thanked all. He also asked for prayers for Mayor Coviello and for Sheriff Marcino on the passing of his grandmother. .

Council Member Carr thanked President Trump and his family for the last four years.

16. Approval of Minutes: 12/16/2020 and 1/6/2021

Council Member Corrie motioned approval of the Minutes; Council Member Forbes seconded. Council Member Carr addressed a revision that needed to be made to the minutes of January 6, 2021.

The motion carried unanimously to approve the January 6, 2021 Minutes, as revised by Council Member Carr.

Council Member Forbes stated he felt the need for an Ordinance or something, to indicate that the video/tape is the record.

17. Public Comment No. public comments were made.

18. Adjournment

There being no further items to address, the meeting adjourned at 11:02

Respectfully submitted,

_____
Debra Filipek, City Clerk

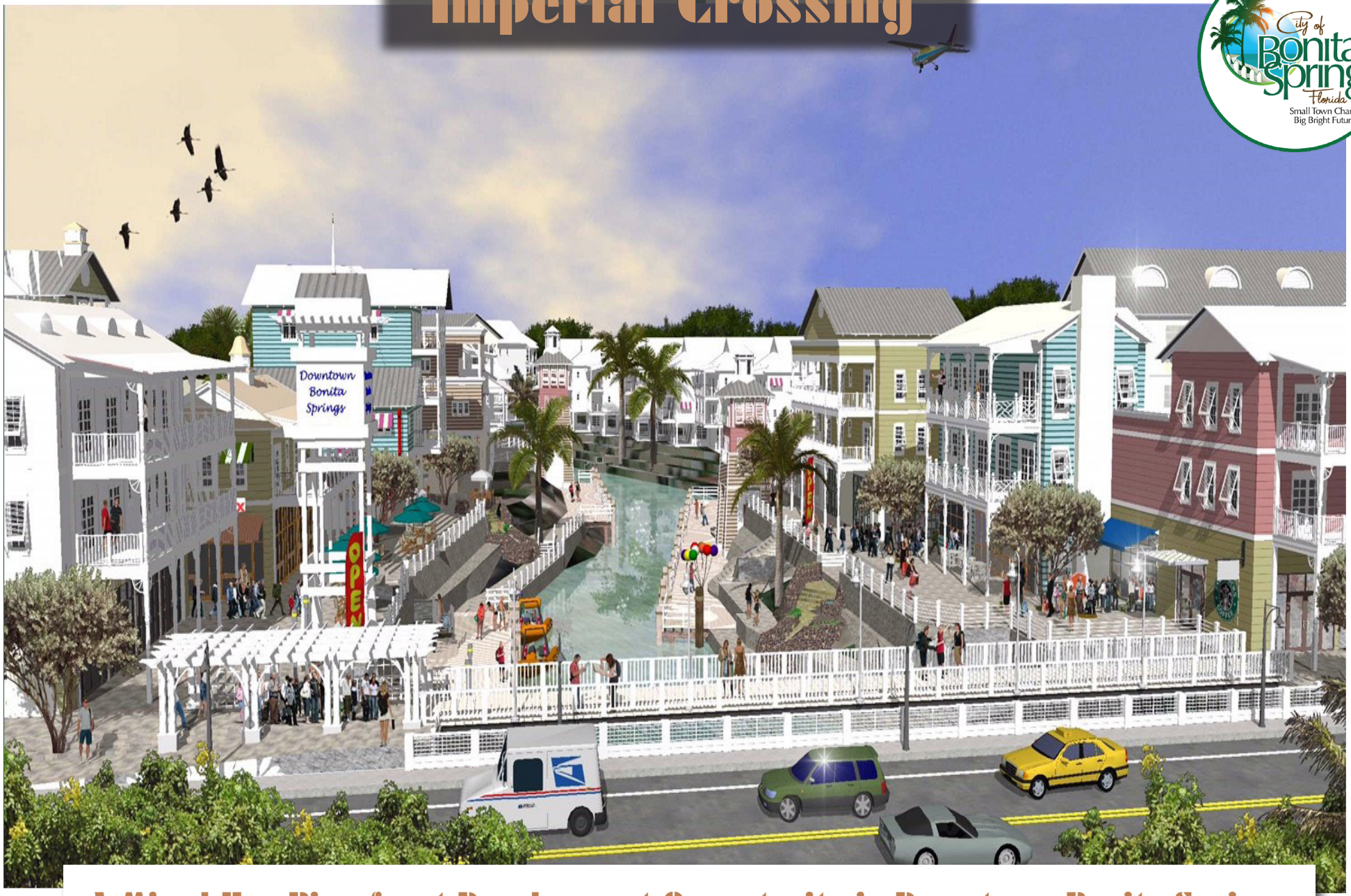
APPROVED:
CITY COUNCIL

Date: _____
AUTHENTICATED:

_____
Rick Steinmeyer, Mayor

DRAFT

Imperial Crossing



A Mixed Use Riverfront Development Opportunity in Downtown Bonita Springs

RFP #20-02

458/522

CBRE

Bonita Springs



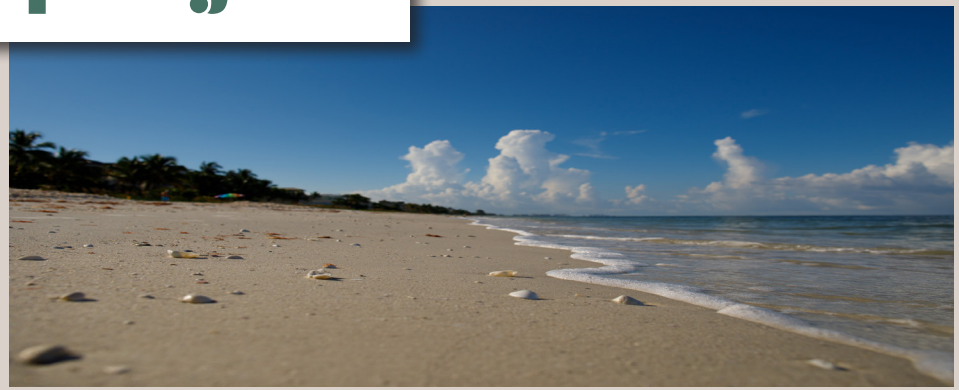












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04 | Development Guidelines

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06 | RFP Evaluation Criteria & Submission Requirements

07 | RFP Submittal Instructions

08 | Important Information

09 | Appendices

**** ALL COURIER DELIVERED PROPOSALS MUST HAVE THE RFP NUMBER 20-02 AND TITLE ON THE OUTSIDE OF THE COURIER PACKET****

EXCLUSIVE MARKET CONTACTS

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+1 239 330 7665
jeffrey.gage@cbre.com

LEE ANN KORST
First Vice President & SE Regional Manager
+1 850 251 9319
leeann.korst@cbre.com

01 EXECUTIVE SUMMARY

01 EXECUTIVE SUMMARY

The City of Bonita Springs (the "City") is offering a rare and unique mixed-use development opportunity on ±5.97 acres of land, including river frontage, in downtown Bonita Springs off historic "Old 41 Road". Known as the Imperial Crossing Sites (the "Sites"), the primary parcel is located at 10580 Goodwin Street and is divided by the Imperial River, offering frontage on both the North and South sides of the river. Two other parcels are being offered as part of the overall development potential or can be bid on individually. They are as follows:

ADDRESS	ACREAGE	PARCEL ID
Imperial Crossing 10580 Goodwin Street Bonita Springs, FL 34135	5.3 acres	#35-47-25-B2-003J0.0000 Lat 26.3432600 Lon -81.7783730
27400 Old 41 Road Bonita Springs, FL 34135	.23 acres	#35-47-25-B1-00203.0010 Lat 26.3394050 Lon -81.7792100
27333 Old 41 Road Bonita Springs, FL 34135	.04 acres .40 acres	#35-47-25-B2-00309.007B "Corner Lot" #35-47-25-B2-00309.007A Lat 26.3409755 Lon -81.7787866

While Bonita Springs is known for its world-class beaches, one of the City's hidden gems is its historic downtown. The downtown is lined with quaint shops, the meandering Imperial River, Old 41 Road and vibrant "old Florida" aesthetics. The collection of these attributes offers a unique sense of place and a charming location that draws a bustling crowd. Redeveloping the Sites provides an opportunity to expound on that culture and live the City's tag line, "Small Town Charm. Big Bright Future."

The Sites are located close to Bonita Springs beaches, arts and culture, and Riverside Park with excellent access to nearby highways and SW Florida International Airport (RSW). Imperial Crossing is the gateway to downtown Bonita Springs and a key piece of real estate related to the continued progress and history of downtown.

The City seeks to unlock the development potential of the Sites by creating a mixed-use district which promotes an active downtown, and enhances the quality of life, civic use and riverfront activation while developing the properties into their highest and best use. To deliver the vision and to generate both upfront and long-term tax revenue streams, the City seeks a developer to design, build, finance and deliver the project (s). The City has engaged the services of CBRE, Inc. (CBRE) to represent it in this solicitation and selection process. Respondents are encouraged to understand the Bonita Springs downtown culture, and City's goals for the Sites development as outlined in the RFP.



02 RFP GOALS

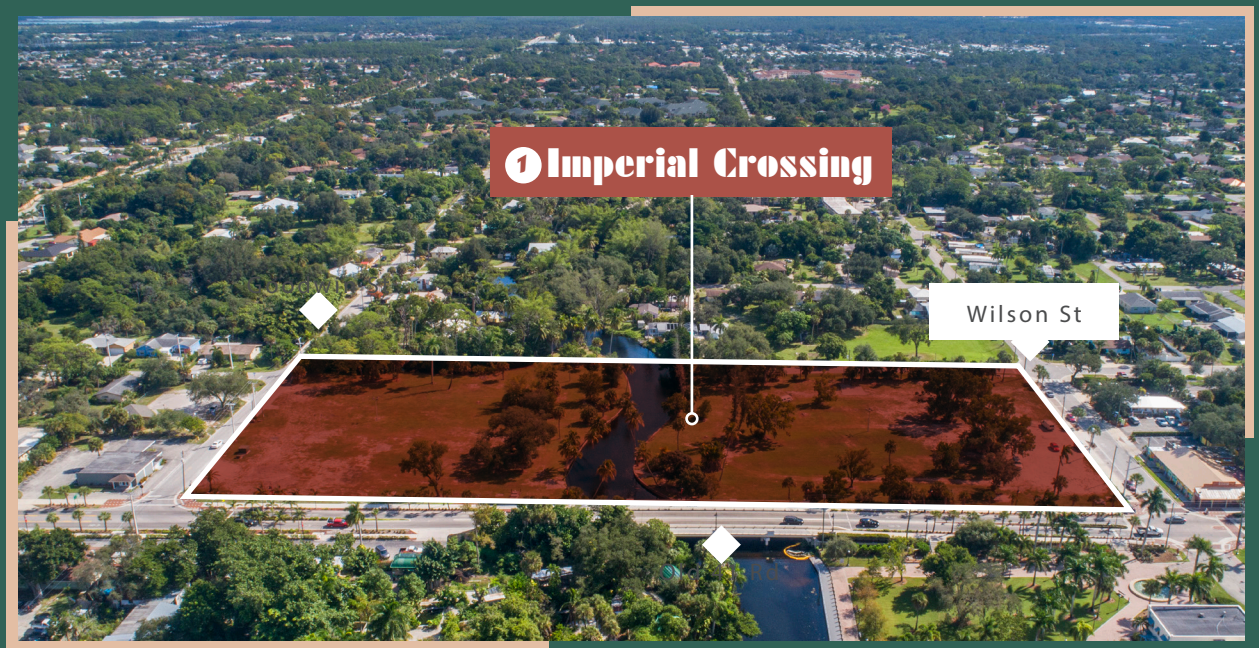
RFP GOAL

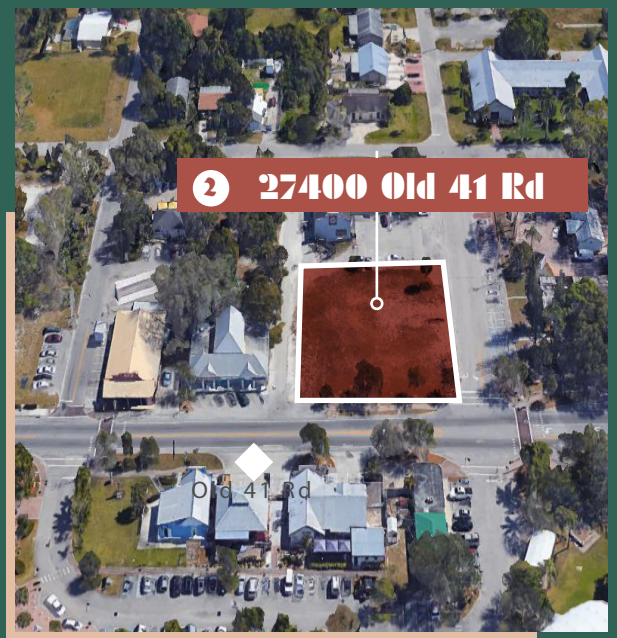
The City is seeking proposals from developers to create a mixed-use destination in downtown Bonita Springs, FL related to the project defined in the following pages. The City intends to short-list qualified developers for this project as a result of this RFP and request oral presentations. Of particular interest to the City are:

- Proposals on site 1, 2, 3 or any combination thereof
- Understanding of the firm, individuals, and team proposing to develop the project
- Comparable experience on similar developments – both square footage and development budget
- Demonstrated ability to finance, build and develop the proposed project
- Descriptions of developer preferences regarding the sale or ground lease of the property

Respondents whose Proposals and experience are acceptable to the City will be short-listed. Those short-listed respondents will be invited to present their Proposal in an oral interview with the City and its real estate advisor. Respondents will have ninety (90) days to respond to this RFP. RFP requirements will include the Respondents' proposed mix of uses, density uses, site plan and design concepts, as well as financial proposal and proformas. CBRE will assist the City in evaluating the RFP responses and an award will be made to the most qualified Respondent who offers the most advantageous development to the City. City Council will have final approval of the negotiated agreement.

03 SITE DETAILS







INVESTMENT FACTS

SITE ADDRESSES
1. 10580 Goodwin Street
2. 27400 Old 41 Rd &
3. 27333 Old 41 Rd
Bonita Springs, FL

LAND SIZE
1. ±5.3 acres
2. ±.23 acres
3. ±.44 acres
Total -±5.97 acres

ZONING
Sub Area 6B Mixed Use of the Old U.S. 41 Corridor Redevelopment Master plan


NORTH
FORT MYERS
INTERSTATE
75
Imperial Crossing
BIG HICKORY ISLAND
HWY 41
OLD 41 RD
W TERRY ST
LITTLE HICKORY ISLAND
BONITA BEACH RD SW
IMPERIAL PKWY
Gulf of Mexico
NORTH NAPLES

04 DEVELOPMENT GUIDELINES



04 DEVELOPMENT GUIDELINES

The goals for redevelopment reflect the City's vision for increased activation of the downtown through thoughtful design and mixed complimentary uses that will serve to draw new residents and visitors and expand the workforce in downtown Bonita Springs.

The Site's development should consider a mix of residential (apartments and/or town houses) and retail uses, but it could also include office or hospitality as the market can support. City leaders have recently stressed the desirability of civic and community components such as outdoor dining, courtyards and decks, as well as open areas and green space.

Redevelopment concepts must include interaction with the Imperial River. A critical component of any development proposal will be the activation of the river and pedestrian corridor on the river to allow for public access to, and interaction with, the waterfront. All development proposals should seek to provide opportunities for residents and visitors alike to interact with the water through waterfront retail, cafes, parks, walkways, attractions or points of interest.

Redevelopment should be guided by existing zoning as well as the City's adoption of the new form- based code, which is expected to be finalized in Spring 2020. Consideration should be given to the uses and scale of development located at the edges of the Site, as well as to compliment the historic downtown and surrounding neighborhoods.

The City's beginnings date back to the 1870s when government surveyors camped near a medicinal spring. Reflecting this legacy, Bonita Springs was originally named Survey and the Imperial River named Surveyor's Creek. Adjacent to the Imperial Crossing Site, the historic Shangri-La Springs provides an important connection to the springs after which the City of Bonita Springs was renamed. Further, the Liles Hotel & Cottages, the Wonder Gardens, the Banyan Tree and the Goodbread Grocery are all important historic elements that create a unique downtown Bonita Springs. Development proposals are encouraged to incorporate consistency with the "old Florida" aesthetics, history and truly make Imperial Crossing the cornerstone of Old 41 Road.

04 DEVELOPMENT GUIDELINES

Redevelopment of the Site should create a 24/7 destination that draws people from other parts of the County and the entire southwest Florida region. The development should be a catalyst that will spur additional downtown development creating a vibrant and thriving downtown; expanding on the current mix of retail uses, Everglades Wonder Gardens and Shangri-La Springs.

To support this vision, the City of Bonita Springs has invested over $20 million for significant investments including on-street parking, the installation of underground electricity, storm water improvements allowing for greater flexibility in the development of downtown properties, and a partnership with Lee County to open a new public library in the downtown area. Both the streetscape improvements and the progressive conservation efforts demonstrate the City's commitment to its residents and the community's long-term success.

Stakeholder input suggests that preferred development solutions will address the following goals:

- Accomplish a development that is the gateway to downtown and cornerstone of Old 41 Road
- Create a riverfront focus on the Site by incorporating public interaction with this dynamic space
- Integrate retail, cafes, attractions, and points of interest along Old 41 Road as well as along the Imperial River
- Contain a mix of residential housing including apartments and town homes
- Embrace the history of the Site and integrate references to the historic railroad, Tamiami Trail, and Imperial River at this location and spawned early development such as the Shangri La and Liles Hotel and Cottages







04 DEVELOPMENT GUIDELINES

The "go to market" name "Imperial Crossing" was chosen given the Site's history. Early development in Bonita Springs began in the 1920s. This was the result of the railroad being extended south from Fort Myers and completion of the Tamiami Trail which connected Tampa to Miami through downtown Bonita Springs. The Liles Hotel was a unique location because it could be reached by the river, the railroad and the Tamiami Trail. For these reasons, Imperial Crossing was chosen as a tribute to that historic access. While it is Respondents' prerogative to choose the development's name, the City believes the history of the Site is important and should spur creative development ideas and proposals.

The City has undertaken an architectural study to understand conceptual uses and densities that are achievable on the Site in accordance with the City's adoption of its new form-based code. In September 2019, Bonita Springs City Council received the Conceptual Design Schemes completed by DPZ CoDESIGN ("DPZ"). A few conceptual designs are included below. To view the full DPZ document, which includes three schemes with varying uses and densities, please visit the project website at www.bonitaspringsimperialcrossing.com.

The Conceptual Design Schemes are not exhaustive. The City welcomes creative developer ideas for the Site and will consider any plan that develops the Site to its highest and best use as supported by the SW Florida market and are in keeping with the development goals. The City further encourages green space and thoughtful public uses throughout the mixed-use development, particularly along the riverfront with complimentary retail and community access.

This ±5.30-acre property is a key Site within downtown Bonita Springs; an area in SW Florida that has been exploding with growth in recent years. Bonita Springs offers residents an unparalleled quality of life due to its low cost of living, beautiful beaches and waterways, culture and arts, casual lifestyle, sense of community and environmentally conscious, progressive leadership. The Site is a gateway to the unique old Florida downtown and is uniquely positioned along the Imperial River with significant river frontage. The Site represents a unique opportunity for place-making on acreage that will forever be a part of the City's downtown.





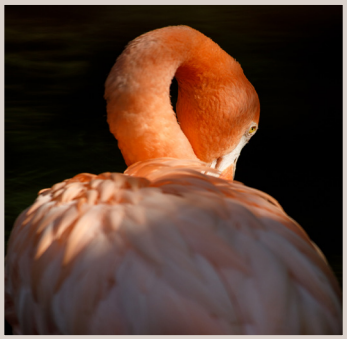
05 WHY BONITA SPRINGS / LOCAL MARKET INFORMATION

05 WHY BONITA SPRINGS | LOCAL MARKET INFORMATION











The City of Bonita Springs is an attractive, affluent area with beautiful beaches, fine restaurants, excellent recreational facilities, and beautiful homes.

* Small Town Charm. Big Bright Future
* One of the most beautiful coastlines in the US
* Part of one of the fastest growing economies in the country
* Proud and unique sense of community
* Progress towards a Complete Streets initiative, together with kayaking/paddle boarding on the river and the bay, is conducive to the healthy outdoorsy lifestyle
* Centrally located to all the benefits of the region (airport, universities, shopping, beaches, everglades, etc.) while still unique as a community

MAJOR EMPLOYERS

Southwest Florida provides a positive environment to start and expand your business. Here are just a few reasons businesses are flocking to this region:

1. Florida has no personal income tax. In 2018, the Tax Foundation ranked the state No. 4 on its State Tax Climate Index.
2. Location, location, location. Lee County is well located for convenient business travel. The area is located along I-75, putting it within just a few hours of Miami, Orlando and Tampa. Southwest Florida International Airport (RSW) served more than 8.8 million passengers in 2017, and is one of the top 50 airports in the country for passenger traffic. Lee County is also home to Page Field, a business and general aviation airport.
3. Southwest Florida is home to a growing talent base. Home to several universities, colleges and technical schools, Southwest Florida is rapidly producing a young and well-educated workforce. Ample career opportunities for emerging professionals, as well as beautiful weather that allows year-round outdoor activities are encouraging more and more professionals to migrate to and stay in the region.

MAJOR EMPLOYERS OF THE SOUTHWEST FLORIDA REGION

	COMPANY
1	Lee Health
2	Naples Community Health
3	Hertz
4	Gartner
5	Arthrex

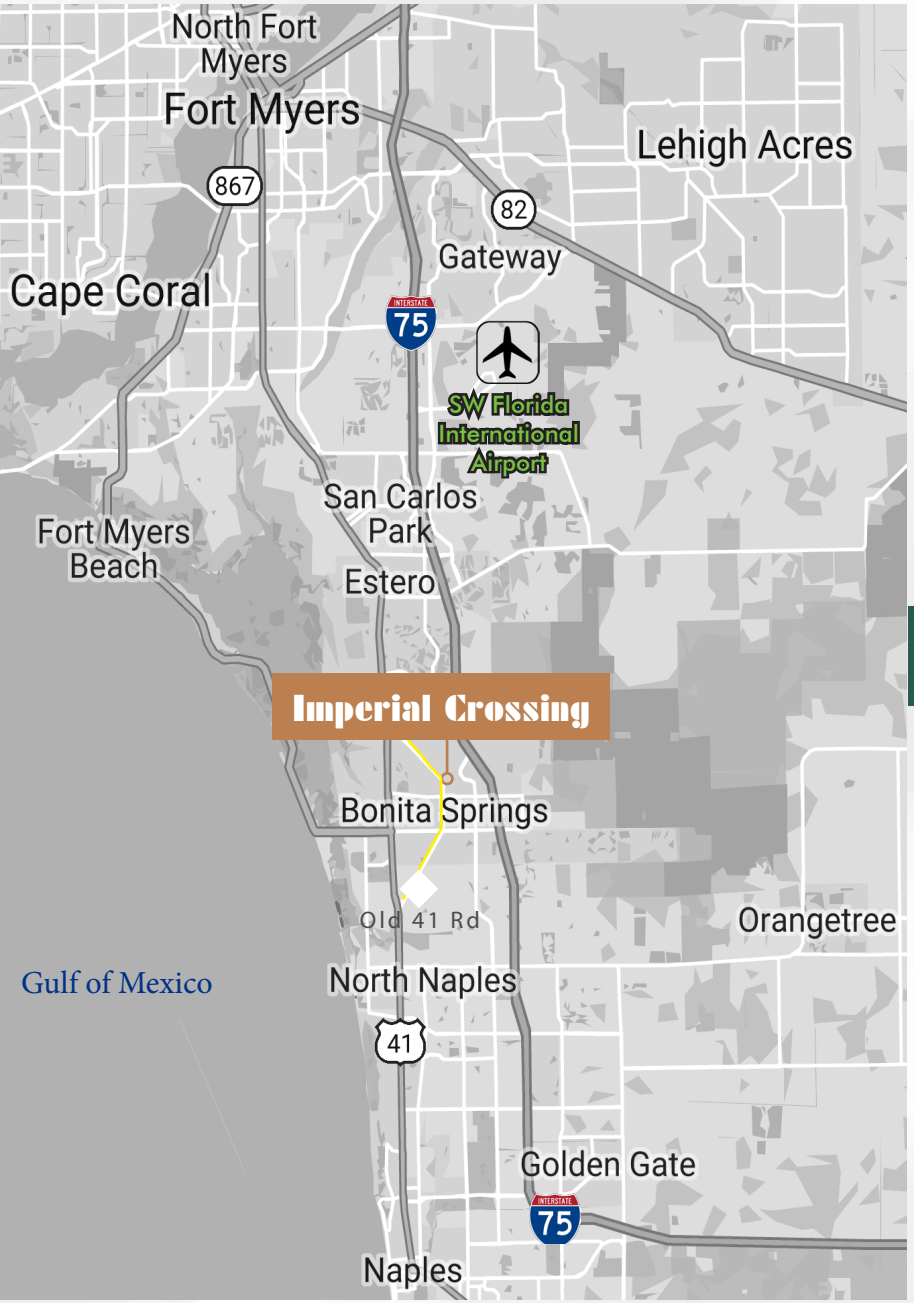
The South Lee EDC works to ensure the growth and prosperity of the community for local business through:

- Serving as the resource for South Lee County-based businesses to retain employees and grow.
- Promoting smart, sustainable growth to create high-wage jobs while protecting and improving the quality of life.
- Collaborating with the Southwest Florida Economic Development Alliance to attract new businesses to the region through national and international marketing campaigns.

DEMOGRAPHICS

As of the most recent census in 2017 the population of Bonita Springs was recorded at 56,088. Between 2015 and 2016 it was the eighth fastest growing city in the United States according to Statistica.com and the US Census. In 2017, the U.S. Census Bureau listed Bonita Springs and nearby Fort Myers as two of the fifteen fastest-growing cities in the country.

05 WHY BONITA SPRINGS | LOCAL MARKET INFORMATION



The City of Bonita Springs is approximately 41 square miles – 35.3 square miles of land with 5.7 square miles of water – located in the southwest portion of Lee County along the southwest coast of Florida. It is bordered by the Village of Estero to the north, unincorporated Lee County to the east, unincorporated Collier County to the south, and the Gulf of Mexico to the west.

It's location provides a tropical climate zone and a beautiful coastline on the Gulf of Mexico making Bonita Springs an attractive destination to people all around the world. Barefoot Beach, the Estero Bay, and the Imperial River allow residents and visitors to enjoy a multitude of outdoor recreational activities, such as boating, kayaking, paddle boarding, fishing, or simply relaxing on the beach. The City has also made great strides towards it's Complete Streets initiative by constructing multi-use pathways to allow pedestrians and bicyclists to safely navigate the City. The aesthetics, the climate, and the lifestyle are only a few of the traits that make Bonita Springs such an enjoyable place to live.

Major Highways

The Southwest Florida Expressway Authority is an 8-person body including transportation officials from Lee and Collier Counties, the role of which is to raise toll revenue to widen and improve major arteries throughout both counties.

Interstate 75 North and South is the county's only fully-controlled-access freeway, and has nine interchanges within Lee County, linking the area to Naples, Fort Lauderdale and Miami to the south and east; and Sarasota and Tampa to the north.

U.S. Highway 41 North/South or East to Miami runs the length of Lee County, and is the county's main north-south arterial highway. It is a major commercial corridor, running as an elevated highway through the center of downtown Fort Myers, continuing south as a multi-lane divided surface highway through the communities of South Fort Myers, San Carlos Park, Estero, and Bonita Springs. From north-to-south, the highway's name starts as "North Tamiami Trail", changes to "Cleveland Avenue" through the incorporated limits of the City of Fort Myers, then changes to "South Tamiami Trail until the border with Collier County.

06 RFP SUBMISSION REQUIREMENTS & EVALUATION CRITERIA

PROPOSAL SUBMISSION REQUIREMENTS

Respondents are required to provide a detailed and comprehensive proposal. The City reserves the right to request additional information during the evaluation of submitted proposals, to disqualify any proposal that fails to respond to any requirements outlined in the RFP, and in its sole discretion to accept or reject any proposal with or without cause. Submission of a proposal indicates acceptance of the terms and conditions of the RFP unless clearly and specifically noted in the proposal submitted.

The proposals shall be organized and divided into the sections indicated herein. The information is required for each of the 3 parcels proposed or any combination thereof.

TABLE OF CONTENTS

The table of contents should outline in sequential order the major areas of the submittal, including attachments. All pages should be consecutively numbered and correspond to the Table of Contents.

EXECUTIVE SUMMARY

Each Respondent must submit an executive summary that identifies the business entity, its background, main office(s), and office location that will service this project. Identify the key individual(s) who will be directly involved with the work and their locations. The executive summary should also summarize the key financial elements of the proposal and development overview.

RESPONDENT'S ORGANIZATION CHART

The Respondent must provide an organization chart and detailed information about the Respondent, the firm's history, related entities, and members of its operations and management team who will manage and operate the development ("Operations Team"). Additionally, the Respondent must provide its complete team of architects, engineers, general contractors and/or subcontractors who shall develop the property ("Development Team"). Provide resumes for all project team members and identify their specific role on the team. The resumes should provide sufficient detail so the City can understand the team members' suitability for their role.

The organizational chart shall graphically depict the Respondent's relationship with any parent organization(s) and/or affiliate organizations, as well as the respective operations, management and construction roles (e.g. architect, engineer, general contractor) played by each team member or entity.

PROJECT CONCEPT

Provide in concise narrative form your understanding of the City's needs, goals and objectives, as they relate to the Project, as well as your firm's overall approach to accomplishing the Project, including:

- General description of the vision and proposed Project concept for the property to incorporate the Development and Design guidelines
- Breakdown of the property's various concepts and uses
- Civic uses and community benefits
- Outline of economic incentives, which the Respondent

expects to apply for, if any. Respondents must provide a complete outline of justifications related to its future application.
- Proposed development schedule through final Certificate of Occupancy, including phasing
- Economic impact of development (including job creation and city tax revenues)
- Community engagement and relations plan

PHYSICAL DETAILS

Provide a description of all intended uses, renovations and newly proposed facilities. Include applicable drawings that demonstrate plans to develop the site, depending upon the Respondent's intention.

- Total square footage broken down by types of uses and associated square footage (both GSF and RSF) for each use type, if proposed:
  - Square footage of retail space
  - Square footage of office space
  - Number and type of residential units (studios, 1BR, 2BR, etc.) and type of ownership structure (condominiums or apartments)
  - Number of hotel rooms and type of hotel, including flag
  - Square footage and types of all other uses
- Amount and type of green and open spaces
- Resiliency and/or sustainable development features
- Provide architectural renderings, conceptual design plans and a site plan
- Provide a description of the site build-out, phasing, and detailed redevelopment time-line
- Proposed management and operations post completion

PARKING

- Total number of parking spaces required in the parking garage and surface parking on the property and located in surrounding area in accordance with proposed uses and density
- Specific parking plan for all proposed uses, including the need to accommodate any proposed public uses

FINANCIAL PROPOSAL DETAILS

FINANCIAL FEASIBILITY AND CASH FLOW ANALYSIS

- Respondents shall include a detailed financial feasibility and cash flow analysis of the project. The financial feasibility of the project shall be presented in a manner to enable a clear understanding of the proposed phasing, financial inflows and outflows of the project revenues, and any other financial returns over a projected thirty-year period. Please also provide this information as an excel spreadsheet with formulas included and not hard-coded or overwritten and provide an assumptions page

FINANCIAL AND NON-FINANCIAL RETURNS TO THE CITY

Proposals shall include a stated commitment of payment(s) to the City in the form of minimum guaranteed base revenue plus percentage(s) of gross revenues (if any) and any other proposed revenue payments as well as a stated commitment to adhere to compensation equal to fair market value.
Please include for each proposed use type:

- Pricing per square foot of office space
- Pricing per square foot of retail space
- Pricing per square foot of residential space
- Pricing per square foot of hotel/hospitality space
- Pricing per square foot for any other proposed uses

Respondents may propose either a fee simple sale of the property and/or long-term ground lease. Alternate proposals, if proposed, must include their own financial feasibility and cash flow analysis.
Additional required elements of the financial Proposal include:

- Source(s) of equity and required approvals
- Percentage of total Project costs to be funded with equity
- External equity partner(s) and development experience
- Source of debt funding and details
- Details of debt structure (term assumptions)
- Total Project cost (including all Respondent costs and 3rd party fees)
- Respondent's fee (included in Total Project Cost)
- Total cost of funds
- Financing of structured parking
- Outline of development terms
- Provide proforma submitted for other similar projects including projections in the Proposer's RFP response and actual results after the redevelopment was completed and stabilized

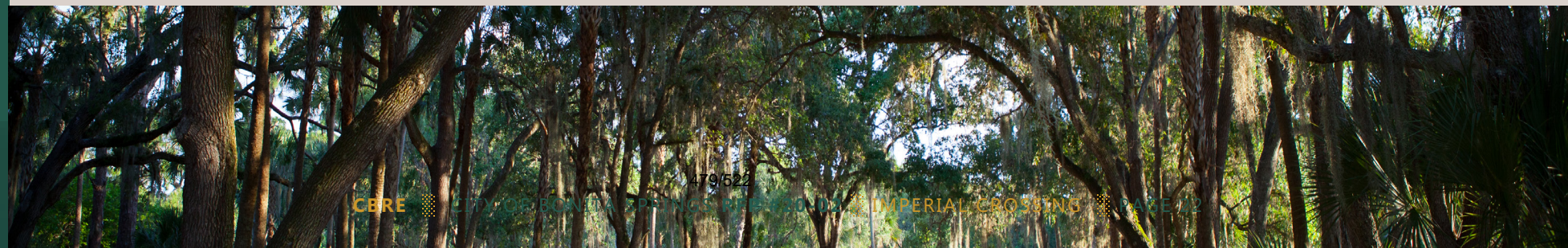
POST SELECTION PROCESS AND REQUIREMENTS

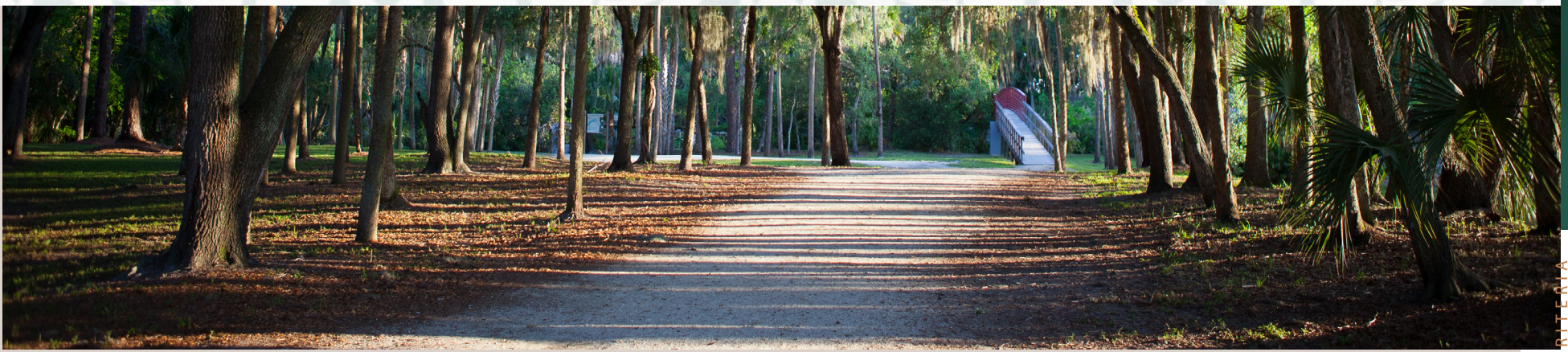
Following selection, the City and selected Respondent shall negotiate on a good faith basis to complete a Letter of Intent which outlines primary business terms within thirty (30) days from notification of selection. Parties will then negotiate a detailed development agreement within one hundred twenty (120) days.

EVALUATION CRITERIA

The City seeks a qualified, experienced partner to redevelop the site, and anticipates and encourages a team approach to achieve the City's development vision. The RFP process is intended to allow all interested and qualified development teams to participate and respond. Qualification packages should include and will be evaluated on the following items and requirements. Please structure responses in the below order:

- Cover letter summarizing development team's Proposals and interest in the site, signed by a principal or otherwise authorized member of the lead firm.
- Overview of the firms included in the development team including in house capabilities (i.e., design, construction management, equity position, etc.) organizational structures, legal names, principals, and brief history and overview of the firms. Include number of employees in each firm and each firm's departments.
- Conceptual narrative describing interest in development option(s), or alternative approach and plan for implementing preferred development option(s). Include preference regarding sale versus ground lease of the site.
- Proposed approach to site build-out, uses and delivery timing.





PAST PERFORMANCE

- Demonstrated history of successfully developing and owning/operating mixed use, multi-phase projects of comparable size in terms of square footage and number of units. Development budgets should be included for each example.
- Experience with developing publicly owned or controlled land, preferably in some form of partnership with a City.
- Total number of comparable projects within the past ten years; include case studies with type/nature of project and principal client contact on the project. Include notable developments in South Florida if available.
- Case studies should include projects with community engagement and consensus building, economic development, phased development, and timely project delivery.
- Proposals and experience of key professionals assigned to and responsible for the project (include project organizational chart and resumes).
- Overview of team's financial strength which will be relied upon for completion of this project.Overview of team's financial strength which will be relied upon for completion of this project. Include the financial structures you typically use and the partners/investors/ financiers you typically work with on these developments. Provide financial statements for your firm.
- Description of any litigation, administrative, or regulatory proceedings pending and within the past five years where the firm or any of the professional team were named a party.
- Three reference letters for comparable size mixed-use development projects. References should be from government entities if on government land as well as from lenders and major equity investors. Please provide contact information.

EQUAL OPPORTUNITY

The City of Bonita Springs encourages and supports the utilization of disadvantaged, minority, and locally-owned businesses and asks that the Proposing Teams make every reasonable effort to ensure that such businesses have the maximum opportunity to participate in the redevelopment process.

Proposing Teams shall comply with all Federal, State and local laws concerning non-discrimination and shall not permit any person or business to be excluded from participation in, denied the benefits of, or to be otherwise discriminated against in connection with the award and performance of any contract because of sex, race, religion, or national origin.

EVALUATION CRITERIA MATRIX

	MAX SCORE
Experience and Qualifications	**15**
Experience developing mixed-use projects of comparable size in a downtown setting	8
Financial Strength of Development Team	7
Active litigation, judgment liens and outstanding payments	0 to minus 10
Financial Proposal	**19**
Defined source and percentage of debt and equity	7
Financial feasibility and cash flow analysis	12
Economic Benefit	**20**
Acquisition price	8
Financial return to the City (ROI), Economic impact (e.g. job creation, tax revenues	12
Project Development and Design	**40**
Project's ability to activate downtown Bonita Springs	9
Design (Mixed use, Residential Density, "Old Florida" Culture & Parking)	9
Development timeline (e.g. construction commencement and delivery timing	6
Activation of the riverfront and connection of the river to the development to include Civic and community benefits	9
Quality of Design, Construction, Resiliency & Environmental Impact	7
Oral Presentations	**10**

07 RFP SUBMITTAL INSTRUCTIONS

07 RFP SUBMITTAL INSTRUCTIONS

Respondents should carefully review the full RFP document and the submission requirements and terms therein. Proposal submissions must include fifteen (15) hard copies and a flash-drive delivered to the City and one (1) hard copy and a flash-drive delivered to CBRE no later than 5:00 PM EST 04/14/2020.

**** ALL COURIER DELIVERED PROPOSALS MUST HAVE THE RFP NUMBER 20-02 AND TITLE ON THE OUTSIDE OF THE COURIER PACKET****

SUBMIT PROPOSALS TO:

CITY OF BONITA SPRINGS
9101 Bonita Beach Road, SE
Bonita Springs, FL 34134
Attn: Debra Filipek

CBRE, INC.
527 Henley Drive
Naples, FL 34104
Attn: Jeffrey Gage

TIMELINE - PROPOSED	DATES
ISSUE RFP	JANUARY 16, 2020
PRE-PROPOSAL CONFERENCE	FEBRUARY 5, 2020
WRITTEN QUESTIONS DUE	FEBRUARY 14, 2020
WRITTEN ANSWERS DUE	FEBRUARY 28, 2020
BIDS DUE	APRIL 14, 2020
ORAL PRESENTATIONS FOR SHORT LISTED RESPONDENTS	APRIL 28, 2020
CITY COUNCIL APPROVAL	TBD
AWARDS POSTED	TBD

The City and CBRE will not be liable to any Respondent for any unforeseen circumstances or delivery delays. Each Respondent is responsible for submission of their proposal. Proposals submitted past the deadline will not be accepted or considered. Proposals that are incomplete on receipt may be disqualified.

08 IMPORTANT INFORMATION

CITY'S REAL ESTATE DEVELOPMENT ADVISOR / BROKER

The City has engaged the services of CBRE, a real estate development advisor/broker for this assignment. CBRE shall represent the City in all negotiations concerning this project and the fiduciary responsibilities of CBRE exist only to and on behalf of the City. CBRE shall be entitled to a commission. The terms and conditions of said commission or success fee have been agreed to by the City in advance.

The contract between the City and CBRE requires that, following the RFP process, the selected Respondent compensate CBRE a Project fee. The Developer shall pay the fee within thirty (30) days of execution of all development agreements between the City and Developer.

SUCCESS FEE	TOTAL PROJECT VALUE TRANCHE
3.50%	$0-$10 M
3.00%	$10 M - $20 M
2.50%	$20 M - $30 M
2.00%	$30 M - $50 M
1.75%	$50 M - $100 M
1.50%	$100 M or greater

Commissions are calculated on a cumulative basis. By way of example, the following illustration would be applicable assuming a $21,000,000 Total Value of the Project:

a. A percentage of three and one-half percent (3.50%) of the Project Value up to $10,000,000; PLUS
b. Three percent (3.00%) of the portion of the Project Value greater than $10,000,000 up to $20,000,000; PLUS
c. Two and one half percent (2.50%) of the portion of the Project Value greater than $20,000,000.

Resulting commission: $350,000 + $300,000 $25,000 = $675,000

Terms and conditions of the fee are outlined in a Commission Agreement provided with this RFP. An executed Commission Agreement will be required with the Respondent's proposal response. Such cost should be included in Respondent's financial proposal. The City shall make all decisions concerning the selection of Respondents. These fees reflect fees payable to CBRE only. Any outside brokers/buyers representatives will be responsible for seeking commissions from their principals.

COMMUNICATION RESTRICTIONS

Except for the submittal of questions as described herein, effective upon the issuance of this RFP, Respondents are prohibited from contacting, engaging, or speaking directly to employees, officials, agents, or representatives of the City regarding this RFP and Project. This communication restriction is effective until the City announces its decision. Any unauthorized communications may result in the disqualification of Respondents.

Any questions about these requirements should be addressed in writing to Jeff Gage and Lee Ann Korst by Friday, February 14, 2020.

08 IMPORTANT INFORMATION

FLORIDA PUBLIC RECORDS LAW

All proposals will become the property of the City. The Proposer's response to the RFP is a public record pursuant to Florida law, which is subject to disclosure by the City under the State of Florida Public Records Law, Florida Statutes Section 119.07 ("Public Records Law"). The City shall permit public access to all documents, papers, letters or other material submitted in connection with this RFP and the Contract to be executed for this RFP after bid closing and evaluation, subject to the provision of Section 119.07, Florida Statutes. Any language contained in the Proposer's response to the RFP purporting to require confidentiality of any portion of the Proposer's response to the RFP, except to the extent that certain information is in the City's opinion is a Trade Secret pursuant of Florida law, shall be void. If a Proposer submits any documents or other information to which the Proposer claims is Trade Secret information and exempt from Florida Statutes Section 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the documents or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the RFP constitutes a Trade Secret. The City's determination of whether an exemption applies shall be final, and the proposer agrees to defend, indemnify, and hold harmless the city and the city's officer, employees and agent.

ADDITIONAL PROVISIONS

01

No obligation to proceed – The City is under no obligation to proceed with this Project, or any subsequent Project, and may cancel this RFP at any time without the substitution of another, if such cancellation is deemed in the best interest of the City. Furthermore, the City may reject any and all proposals, waive any irregularities or informalities in a proposal, and issue a new or modified RFP, if it is found to be in the best interest of the City.

02

Withdrawal and modification – The City may allow a Respondent representative bearing proper authorization and identification to sign for, receive, and withdraw the Respondent's unopened proposal prior to submission deadline. A Respondent wishing to modify its proposal may do so by withdrawing the initial submission and then submitting a modified proposal prior to the submission deadline.

03

Licenses and permits –The successful Respondent shall furnish the City upon request all documentation regarding necessary licenses, permits, certifications, and/or registrations required by the laws or rules and regulations of the City of Bonita Springs, Lee County, other units of local government, the State of Florida and the United States. The Respondent certifies that it is now and will remain in good standing with such governmental agencies and that it will keep its licenses, permits, certifications, and/or registrations in force during the term of the agreement.

04

Errors in proposals – Respondents will not be allowed to change or alter their proposals after the deadline for proposal submission. The City reserves the right, however, to correct obvious errors. This type of correction may only be allowed for "obvious" errors such as arithmetic, typographical, or transposition errors. Any such corrections must be approved by the City of Bonita Springs and countersigned by the Respondent. Respondents are advised to make sure that their proposals are true and correct when submitted.

08 IMPORTANT INFORMATION

05

Respondent expenses – By submitting a response to this RFP, or participating in the process, each Respondent agrees that all of its related expenses are its sole responsibility. The City will not be responsible for any costs whatsoever incurred by the Respondent in connection with, or resulting from the RFP process, including but not limited to costs for preparation/submission of proposals, travel & per diem, attending interviews, providing presentations or demonstrations, and participating in contract negotiation sessions.

06

Proposal life - Respondents must hold their proposals open and pricing firm for one hundred eighty (180) calendar days from the proposal submission deadline. Any proposal accepted by the City for the purpose of contract negotiations shall remain valid until superseded by an executed contract or until rejected by the City.

07

Revision to the RFP - The City may modify or amend this RFP at any time. If it becomes necessary for the City to revise any part of this RFP, the revision(s) will be posted on CBRE's Project website (www.bonitaspringsimperialcrossing.com). In such an event, the submission deadline may be extended, at the option of the City, to allow Respondents the opportunity to revise their proposals accordingly.

08

All information in a Respondent's proposal is subject to disclosure under the provisions of the State of Florida's public record laws, unless marked as "confidential" as per the provisions on page 29 of this document. Proposal responses received and opened will not be available to the public until after negotiation and award of the contract to the selected Respondent, or the final cancellation of the RFP/procurement.

09

All questions or requests for clarifications shall be submitted as specified in this RFP. Written responses will be provided as an official addendum to the RFP in accordance with the submittal time line. Respondents shall note that the official addendum represents the City's official position and supersedes any oral responses to inquiries or written responses by the City or CBRE other than by official addendum. The official addendum will be posted on CBRE's Project website (www.bonitaspringsimperialcrossing.com). All questions or requests for clarification are due by Friday, February 14, 2020.



09 APPENDICES

09 Appendices

ATTACHMENT A - INSURANCE REQUIREMENTS

ATTACHMENT B - E-VERIFY

ATTACHMENT C - SOLICITATION RESPONSE FORM

ATTACHMENT D - CONFLICT OF INTEREST

ATTACHMENT E - SCRUTINIZED COMPANY STATEMENT

PLEASE COMPLETE AND SUBMIT ALL FORMS WITH RFP

>>>>Failure to submit the above forms with your RFP response may disqualify your submittal. <<<<

FORMS CAN BE FOUND ON WWW.BONITASPRINGSIMPERIALCROSSING.COM

Imperial Crossing







AFFILIATED BUSINESS DISCLOSURE

CBRE, Inc. operates within a global family of companies with many subsidiaries and related entities (each an "Affiliate") engaging in a broad range of commercial real estate businesses including, but not limited to, brokerage services, property and facilities management, valuation, investment fund management and development. At times different Affiliates, including CBRE Global Investors, Inc. or Trammell Crow Company, may have or represent clients who have competing interests in the same transaction. For example, Affiliates or their clients may have or express an interest in the property described in this Request for Proposal (the "Property"), and may be the successful bidder for the Property. Your receipt of this Request for Proposal constitutes your acknowledgment of that possibility and your agreement that neither CBRE, Inc. nor any Affiliate has an obligation to disclose to you such Affiliates' interest or involvement in the sale or purchase of the Property. In all instances, however, CBRE, Inc. and its Affiliates will act in the best interest of their respective client(s), at arms' length, not in concert, or in a manner detrimental to any third party. CBRE, Inc. and its Affiliates will conduct their respective businesses in a manner consistent with the law and all fiduciary duties owed to their respective client(s).

Your receipt of this Request for Proposal constitutes your acknowledgment that (i) it is a confidential Proposal solely for your limited use and benefit in determining whether you desire to express further interest in the acquisition of the Property, (ii) you will hold it in the strictest confidence, (iii) you will not disclose it or its contents to any third party without the prior written authorization of the owner of the Property ("Owner") or CBRE, Inc., and (iv) you will not use any part of this Request for Proposal in any manner detrimental to the Owner or CBRE, Inc.

If after reviewing this Request for Proposal, you have no further interest in purchasing the Property, kindly return it to CBRE, Inc.

This Request for Proposal contains select information pertaining to the Property and the Owner, and does not purport to be all-inclusive or contain all or part of the information which prospective investors may require to evaluate a purchase of the Property. The information contained in this Request for Proposal has been obtained from sources believed to be reliable, but has not been verified for accuracy, completeness, or fitness for any particular purpose. All information is presented "as is" without representation or warranty of any kind. Such information includes estimates based on forward-looking assumptions relating to the general economy, market conditions, competition and other factors which are subject to uncertainty and may not represent the current or future performance of the Property. All references to acreages, square footages, and other measurements are approximations. This Request for Proposal describes certain documents, including leases and other materials, in summary form. These summaries may not be complete nor accurate descriptions of the full agreements referenced. Additional information and an opportunity to inspect the Property may be made available to qualified prospective purchasers. You are advised to independently verify the accuracy and completeness of all summaries and information contained herein, to consult with independent legal and financial advisors, and carefully investigate the economics of this transaction and Property's suitability for your needs. ANY RELIANCE ON THE CONTENT OF THIS REQUEST FOR PROPOSAL IS SOLELY AT YOUR OWN RISK.

The Owner expressly reserves the right, at its sole discretion, to reject any or all expressions of interest or offers to purchase the Property, and/or to terminate discussions at any time with or without notice to you. All offers, counteroffers, and negotiations shall be non-binding and neither CBRE, Inc. nor the Owner shall have any legal commitment or obligation except as set forth in a fully executed, definitive purchase and sale agreement delivered by the Owner.

DISCLAIMER

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Imperial Crossing

10580 Goodwin Street
27400 Old 41 Road
27333 Old 41 Road
Bonita Springs, FL



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CBRE, INC.
527 Henley Drive
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CBRE

A ±5.97 Acre Opportunity

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WORKSHOP AGENDA ITEM 5

CONFIRM VISION, MISSION, AND VALUES

CITY OF BONITA SPRINGS COMPREHENSIVE PLAN

BONITA SPRINGS TOMORROW: THE VISION

There is great diversity in the backgrounds, ages, economic status, ethnic origins, and life styles of the citizens who live and work together while making Bonita Springs their home. Few of today's Bonita Springs residents were born here. The great majority made a deliberate and life altering choice to relocate here, in most cases because of very specific things they liked about the community when they came and, perhaps even more importantly, because of what they saw and hoped Bonita Springs would continue to be or would change into in the future. Since being the case, Bonita Springs is blessed with a very high percentage of citizens who hold strong and clear beliefs about what the future of our City should be.

Over the course of several public workshops and community visioning sessions, a broad cross-section of this diverse population was given the opportunity to share and support their individual points of view. Certain paramount themes emerged as having a strong majority support among the groups. On these important issues and goals for the future, personal differences of circumstance amongst the participants was not as significant a force as the commonality of what brought each of them to this uniquely pleasant location in the first place.

A very substantial majority of the citizens of today's Bonita Springs are in strong, basic agreement with regard to several important goals for the Bonita Springs of tomorrow.

Their vision and sentiment are that the future City of Bonita Springs should be:

1. A community of human scale, one in which we can afford to live and with which we can identify as individuals.

2. A community that actively practices its appreciation of the great natural environment that has been given to us and educates new arrivals and the young about the stewardship it requires. It should be a "green" City because of its protection of the natural systems, pristine beaches and greenways through environmental consciousness, stringent pollution controls, and recycling. Bonita Springs should be a Florida leader in the area of municipal protection of the environment.

3. A "walkable" community that is pedestrian friendly, with interconnecting sidewalks, pathways, and publicly available transit systems accessing all neighborhoods. Vehicular traffic should move easily through a continuous, attractive street system with planted medians, featuring flowering indigenous landscape and strategically placed statuary. Welcoming features should clearly announce to travelers the location of the City limits.

U.S. 41 and Bonita Beach Road should be beautiful commercial parkways to be enjoyed by Bonita Springs residents as well as those traveling through the City.

4. A community with outstanding parks and recreational facilities. Parks and natural resources should be easily accessed through a continuous system of safe, shaded walkways and bicycle paths which connect homes, shopping, and workplaces. Public access to vistas of the estuary, river, and creeks should be preserved and linear parks should wind through the natural and developed areas of the City.

5. A community with a "heart", a social center. The redevelopment of Old U.S. 41 into a vibrant "Old Town" hopefully will exceed all current expectations, The area, including Depot Park Square, can be a focus for both daytime and evening activity and a meeting place for families, teens, singles, and senior citizens. At this cent of Bonita Spring's historic origin, there should be a unique mix of restaurants, retail shops and services, publicly sponsored activities, and entertainment, all complemented by the ambiance of the surrounding neighborhoods and the Imperial River.

Source: City of Bonita Springs Comprehensive Plan

City of Bonita Springs Florida
Small Town Charm.
Big Bright Future.

WORKSHOP AGENDA ITEM 6

STRATEGIC PRIORITIES

1) **Improve Storm Water Management**
   - Develop strategy
   - Schedule for implementation
   - Financing
   - Storm Water Utility
   - Review/ inspection of neighborhood management systems and maintenance

2) **Transportation:**
   - Multimodal
   - Complete Streets
   - BB Rd Vision
   - Quadrant Plan
   - Sun Trail (Railroad and Hickory Blvd)
   - Logan Boulevard
   - South Forest Mere ROW
   - Traffic light traffic delays
   - Organize participation from other entities
   - Funding strategy

3) **Strengthen/Enhance City Finances**
   - Long term strategic financial evaluation and cash flow constraints effect on objectives
   - Improve grant strategy and process
   - Review franchise rates
     - Communications Services Fee
     - Electric Franchise Fee
   - Establish Storm Water Utility Fee

City of Bonita Springs Florida
Small Town Charm.
Big Bright Future.

4) **Environmental Protection**
   - DRGR Protection: preserve large northern DRGR tracts
   - Storm water management and conservation; Florida Forever and 20/20 Programs
   - Beach and river water access preservation

5) **Community Aesthetics: Develop and implement Urban Design**
   - Improve look of the city
   - Parks: Develop and implement urban design standards in light of available funds
   - Review of city physical assets identify responsible parties, program to improve
   - Establish city icon
   - Inventory areas to see what can be done

6) **Strengthen/Enhance Council Relations**
   - Message coordination
   - Activism strategy
   - Improve and strengthen relationships with other government jurisdictions
     - State of Florida
     - Lee County
     - SFWMD
     - Recognize process imposed by others
     - Quadrant Plan
     - Landscaping on Bonita Beach Road
     - Lee County bridge proposal
     - Lee Tran
     - Beach parking
     - FEMA grant (LMS)
     - Federal Delegation
     - FEMA & transportation opportunities

- SFWMD
- State of Florida funding

7) **Government Transparency: Increase Outreach/ Accessibility to Citizens**
   - Put on action list completion of Neighborhood/HOA contact; list used for emergency response and activate it
   - Establish quarterly contact with contact list
   - Outreach committee mission
   - Improve communication, website, social media etc.
   - Increase outreach accessibility to citizens
   - Community contacts to incorporate into Emergency Plan

8) **Economic Development: Attract highest quality economic development through City's vision of high urban design standards, multimodal and downtown revitalization and vision.**
   - High urban standard
   - Multimodal
   - Downtown Revitalization:
     - Consider next steps to development projects for downtown
     - Stabilize Wonder Gardens
     - Completion of library
     - Dixie Moon
     - Unified signage plan
     - Implement visions

WORKSHOP AGENDA ITEM 7

CITY OF BONITA SPRINGS, FLORIDA
RESOLUTION NO. 10-057

A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CREATING THE ADMINISTRATIVE CODE FOR RULES OF CONDUCT FOR THE BONITA SPRINGS CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Bonita Springs City Council, as the duly elected governing body for the City of Bonita Springs; and

WHEREAS, the City Charter establishes that the Bonita Springs City Council shall determine its own rules and order of business, with section 22 specifying that City Council may set additional written standards of conduct for its members beyond those specified in this charter and may provide for such penalties as it deems appropriate, including forfeiture of office.

WHEREAS, City Council desires to create an Administrative Code to establish a Code of Conduct for its elected officials.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Bonita Springs, Lee County, Florida:

1. The City Council declares that the procedures set forth, attached hereto, and incorporated by reference herein by "Exhibit A", as amended, is applicable to Bonita Springs City Council.

2. This Resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Florida this 15th day of September, 2010.

AUTHENTICATION:

Mayor

City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

Nelson	Aye	Spear	Aye
McIntosh	Aye	Simons	Aye
Martin	Aye	Lonkart	Aye
Slachta	Aye		

Date Filed With City Clerk: 9-16-10

CITY OF BONITA SPRINGS CODE OF CONDUCT FOR ELECTED OFFICIALS

The Three Rs of Bonita Springs Government Leadership: Roles, Responsibilities and Respect

The City Charter provides information on the roles and responsibilities of Councilmembers, the Deputy Mayor and the Mayor. The Florida Code of Ethics for Public Officers and Employees provides guidance on ethical issues to ensure that City Council conducts themselves independently and impartially, not using their office for private gain. There is also an Administrative Code for conducting meetings, but until now, what has not been clearly written down is a Code of Conduct for Bonita Springs City Councilmembers.

The Code of Conduct is designed to describe the manner in which Councilmembers should treat one another, city staff, constituents, and others with whom they come into contact with while representing the City of Bonita Springs. It reflects the work of the City Council with defining more clearly the behavior, manners, and courtesies that are suitable for various occasions. The City Council also considered a wide variety of policy changes and clarifications designed to make public meetings and the process of governance run more smoothly.

The contents of this Code of Conduct includes:	Page
A. Overview of Roles and Responsibilities	2
B. Policies and Protocol Related to Conduct	4
C. Council Conduct with One Another	5
D. Council Conduct with City Staff	6
E. Council Conduct with the Public	8
F. Council Conduct with Other Public Agencies	9
G. Council Conduct with Advisory Boards	10
H. Council Conduct with the Media	11
I. Sanctions	12

The constant and consistent themes through all of the conduct guidelines are dignity and respect. Councilmembers experience stress in making decisions that impact the lives of the citizens. At times, the impacts of the entire community must be weighed against the impact of only a few. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide Councilmembers to do the right thing in even the most difficult situations.

A. Overview of Roles and Responsibilities

Other resources that are helpful in defining the roles and responsibilities of elected officials can be found in the Bonita Springs City Charter, Ordinances and Administrative Code and in the Handbook for Municipal Elected Officials, published by the Florida League of Cities.

MAYOR (City Charter §18)

- Elected "at-large" for a four-year term
- Recognized as head of the City Government for all ceremonial purposes
- Preside over meetings of the City Council
- Has same speaking and voting rights as any other member
- Shall in no case have the power to veto
- Executes and authenticates legal instruments requiring signature
- Leads the Council into an effective, cohesive working team

DEPUTY MAYOR (City Charter §18 And 21)

- Elected by the City Council at the first meeting following a new election.
- Performs the duties of the Mayor if the Mayor is absent, unable to fulfill duties, ceases to be qualified or is removed from office.
- Relinquishes City Council seat when serving as Mayor, assuming the duties of Mayor, unless more than 180 days from next election (then a Special Election).

ALL COUNCILMEMBERS (City Charter §12)

All members of the City Council, including the Mayor and Deputy Mayor, have equal votes. No Councilmember has more power than any other Councilmember, and all should be treated with equal respect.

All Councilmembers should:

- Fully participate in City Council meetings and other duly advertised public meetings while demonstrating dignity, respect, kindness, consideration, and courtesy to all.
- Prepare in advance of meetings and be familiar with issues on the agenda. Address clarifications prior to meeting with applicable staff.
- Be respectful of other people's time. Stay focused and act efficiently during Council meetings or other City related meetings.
- Serve as a model of leadership and civility to the community.
- Inspire public confidence in Bonita Spring's government.
- Provide contact information with the City Clerk in case of an emergency or an urgent situation arises while the Councilmember is otherwise not available.
- Demonstrate honesty and integrity in every action and statement.

- Follow Federal, State and Municipal Laws guiding public officials, including, but not limited to, Honest Services Act, State Ethics, Sunshine and Public Records Law, Administrative Code for City Council meetings, Communications Policy, etc.

B. Policies and Protocol Related to Conduct

1. Ceremonial Events – City Charter §18 designates the Mayor to serve as the designated City representative. If the Mayor is unavailable, then City staff will determine if the event organizers would like another representative from the Council.

2. Correspondence Signatures - Councilmembers do not need to acknowledge the receipt of correspondence, or copies of correspondence, during Council meetings (exception: zoning ex parte contact). City staff will prepare official letters in response to public inquiries and concerns. These letters will carry the signature of the Mayor or the appropriate City staff.

3. Endorsements of Candidates - Councilmembers have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention endorsements during Council meetings or other official City meetings or functions.

4. Intergovernmental Relations – Generally, City Charter §18 designates the Mayor to represent the City in intergovernmental relationships (the exception are designated liaisons). The Council values intergovernmental relations with neighboring communities and other entities. As a result, Councilmembers should make a concerted effort to attend scheduled meetings with other entities to further promote intergovernmental relations.

5. Legislative Process - The City generally follows Roberts Rule of Order for meeting management. See the Administrative Code for City Council meetings.

6. Public Meeting Hearing Protocol - The Mayor will open the public meetings, following the Rules of Procedure for City Council meetings. The Mayor has the responsibility to run an efficient public meeting and has the discretion to modify the public hearing process in order to make the meeting run smoothly. Councilmembers should withhold comment during the public hearing portion of the meeting until the conclusion of the public's portion of the hearing. Councilmembers should refrain from arguing or debating with the public during a public hearing and shall always show respect for different points of view.

7. Travel Expenses (City Charter §19, Bonita Springs Ordinance No. 00-12) - May receive reimbursement of actual expenses while performing their official duties. Councilmembers who travel on official City Business either in-state or out-of-state. Such travel shall include attendance at conferences, seminars, and training sessions on behalf of the City. The City shall pay reasonable expenses for registration fees, lodging, meals, transportation, and allowable miscellaneous expenses for the Councilmember only. (City Council are responsible for spouse or others travelling with the Council member). All travel expenses will be handled in the same manner and consistent with the provisions of state law and ordinances.

C. Council Conduct with One Another

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve, protect and enhance the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may "agree to disagree" on contentious issues.

IN PUBLIC MEETINGS –

1. Practice civility, professionalism and decorum in discussions and debate - Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, Councilmembers to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated. Councilmembers should conduct themselves in a professional manner at all times, including physical appearance.

2. Honor the role of the Mayor in maintaining order - It is the responsibility of the Mayor to keep the comments of all persons, including but not limited to, the Councilmembers on track during public meetings. Councilmembers should honor efforts by the Mayor to focus discussions on current agenda items. If there is disagreement about the agenda or the Mayor's actions in refraining staff, public or Councilmembers from speaking, those objections should be voiced politely and with reason.

3. Avoid personal comments that could offend other Councilmembers - If a Councilmember is personally offended by the remarks of another Councilmember, the offended Councilmember should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Councilmember to justify or apologize for the language used. The Mayor will maintain order of this discussion.

4. **Demonstrate effective problem-solving approaches -** Councilmembers have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

5. **Be punctual and keep comments relative to topics discussed -** Councilmembers have made a commitment to attend meetings and partake in discussions. Therefore, it is important that Councilmembers be punctual and that meetings start on time. It is equally important that discussions on issues be relative to the topic at hand to allow adequate time to fully discussed scheduled issues. If a Councilmember has an item requested to be on the agenda, it is important they set the example by providing timely written materials.

IN PRIVATE ENCOUNTERS

1. **Continue respectful behavior in private -** The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

2. **Be aware of the insecurity of written notes, voice and text messages, and e-mail -** Technology allows words written or said without much forethought to be distributed wide and far. The Public Records Law mandates that any material made or received by an agency in connection with official business be used to perpetuate, communicate or formalize knowledge is a public record, and unless exempt, must be turned over to someone requesting to see that material. Before you create a document, ask yourself: Would you feel comfortable to have this note faxed or PDF'd to others? How would you feel if this voicemail message was played on a speaker phone in a full office? What would happen if this email message was forwarded to others? Written notes, voicemail messages and email related to City business are public communication subject to disclosure.

3. **Even private conversations can have a public presence -** Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted.

D. Council Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and City staff members, who implement and administer the Council

policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

1. Treat all staff as professionals - Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

2. Limit contact to specific City staff - Questions of City staff and/or requests for additional background information should be directed to the City Manager, City Attorney, or Department Heads. The City Manager should be copied on or informed of any request.

Requests for follow-up or directions to staff should be made only through the City Manager or the City Attorney when appropriate. When in doubt about what staff contact is appropriate, Councilmembers should ask the City Manager for direction. Materials supplied to a Councilmember in response to a request will be made available to all members of the Council so that all have equal access to information.

3. Do not disrupt City staff from their jobs – Staff wants to be accessible for City Council, but Councilmembers should avoid disrupting City staff while they are in meetings, on the phone, or engrossed in performing their job functions.

4. Never publicly criticize an individual employee - Council should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager.

5. Do not get involved in administrative functions - Councilmembers must not attempt to influence City Staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits. The City Charter, Section 20 also contains information about the prohibition of Council interference in administrative functions.

6. Check with City staff on correspondence before taking action - Before sending correspondence, Councilmembers should check with City staff to see if an official City response has already been sent or is in progress.

7. Do not attend staff meetings (with or without public) unless requested by staff or City Council - Even if the Councilmember does not say anything, the Councilmembers presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their job objectively.

8. Limit requests for staff support - Even in high priority or emergency situations, requests for additional staff support should be made to the City

Manager who is responsible for allocating City resources in order to maintain a professional, well-run City government and following City Council direction.

9. Do not solicit political support from staff - Councilmembers should not solicit any type of political support (financial contributions, display of poster or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

E. Council Conduct with the Public

1. IN PUBLIC MEETINGS

Making the public feel welcome is an important part of the democratic process. No signs of partiality prejudice or disrespect should be evident on the part of individual Councilmembers toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

a. Be welcoming to speakers and treat them with care and gentleness - Speaking in front of Council can be a difficult experience for some people. Some issues the Council undertakes may affect people's daily lives and homes. Some decisions are emotional. The way that Council treats people during public hearings can do a lot to make them relax or to push their emotions to a higher level of intensity.

b. Be fair and equitable in allocating public hearing time to individual speakers - The Mayor, in accordance with the Administrative Code for City Council meetings, will determine and announce limits on speakers at the start of the public hearing process. Generally, each speaker will be allocated four minutes with applicants and appellants or their designated representatives allowed more time. If many speakers are anticipated, the Mayor may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers. No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public comment unless the Council requests additional clarification. After the close of any public comment portion, no more public testimony will be accepted unless the Mayor reopens the public hearing for a limited and specific purpose.

c. Give the appearance of active listening - It is disconcerting to speakers to have Councilmembers not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time, gazing around the room or getting up from your seat gives the appearance of disinterest. Be aware of facial expressions and body language (e.g., head and

arm movements), especially those that could be interpreted as "smirking", disbelief, anger or boredom.

d. Ask for clarification, but avoid debate and argument with the public - Only the Mayor – not individual Councilmembers – can interrupt a speaker during a presentation. However, a Councilmember can ask the Mayor for a point of order if the speaker is off the topic or exhibiting behavior or language the Councilmember finds disturbing. If speakers become flustered or defensive, it is the responsibility of the Mayor to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Councilmembers to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker.

e. No personal attacks of any kind, under any circumstance!

f. Follow parliamentary procedure in conducting public meetings - The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. Final rulings on parliamentary procedure are made by the Mayor, subject to the appeal of the full Council.

2. IN UNOFFICIAL SETTINGS

a. Make no promise on behalf of the Council - Councilmembers will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).

b. Make no personal comments about other Councilmembers - It is acceptable to disagree publicly about an issue, but it is unacceptable to make derogatory comments about other Councilmembers, their opinions and actions.

c. Remember that despite its impressive size, Bonita Springs is a small community at heart – Councilmembers are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City of Bonita Springs. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Councilmembers, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

F. Council Conduct with Other Public Agencies

a. Be clear about representing the City or personal interests - If a Councilmember appears before another governmental agency or organization to give a statement on an issue, the Councilmember must clearly state:

(i) if his or her statement reflects personal opinion or is the official stance of the City;

(ii) whether this is the majority or minority opinion of the Council. Even if the Council member is representing his or her own personal opinions, remember that this still may reflect upon the City as an organization.

(iii) If the Council member is representing the City, the Council member must support and advocate the official City position on an issue, not a personal viewpoint.

(iv) If the Council member is representing another organization whose position is different from the City, the Council member should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Councilmembers should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

b. **Correspondence also should be equally clear about representation -** City letterhead may be used when the Council member is representing the City and the City's official position. A copy of official correspondence should be given to the City Clerk to be filed as part of the permanent public record. To avoid confusion regarding City Council's position, it is best that City letterhead not be used for correspondence of Councilmembers representing a personal point of view, or a dissenting point of view from an official Council position.

G. Council Conduct with Advisory Boards

The City has established several advisory boards as a means of gathering more community input. Citizens who serve on advisory boards become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

a. **If attending an advisory boards meeting, and you are not the liaison, be careful to only express personal opinions -** Councilmembers may attend any advisory board meeting, which are always open to any member of the public. However, if the advisory board is conducting a public hearing, the Council member shall refrain from attending. Councilmembers should be sensitive to the way their participation could be viewed as unfairly affecting the process. Any

public comments by a Council member at an advisory board meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council. Also be cognizant of the Sunshine Law, precluding discussion (outside of meeting advertised for City Council) by two or more members of City Council on any item that may take action upon. A council member's presence may affect the conduct of the advisory boards and limit their role and function.

b. **Limit contact with advisory boards members** - It is inappropriate, and at times illegal, for a Council member to contact an advisory board member to lobby on behalf of an individual, business, or developer. Councilmembers should contact staff in order to clarify a position taken by the advisory boards.

c. **Remember that advisory boards serve City Council, not individual Councilmembers** - City Council appoints individuals to serve on Advisory boards, and it is the responsibility of advisory boards to follow policy established by the Council. But advisory board members do not report to individual Councilmembers, nor should Councilmembers feel they have the power or right to threaten advisory board members with removal if they disagree about an issue. Appointment and re-appointment to an advisory boards should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. An advisory board's appointment should not be used as a political "reward".

d. **Be respectful of diverse opinions** - A primary role of advisory boards is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers must be fair and respectful of any citizens serving on advisory boards.

e. **Keep election issues away from public forums and advisory board meetings** – Section 14 of the City Charter calls for nonpartisan elections. While Councilmembers are free to participate in politics when not conducting official business, they should refrain from campaigning for office or providing political support or non-support for those who are running for any elected office (national, state or local) while conducting official duties or when attending advisory meetings.

f. **Inappropriate behavior can lead to removal** - Inappropriate behavior by an advisory board member should be brought to the attention of City Council, and with the assistance of the City Attorney in preparing the greensheet, the individual may be subject to removal from the advisory board or if the advisory board is not operating in accordance with City Council's direction, dissolution of the advisory board.

H. Council Conduct with the Media

Councilmembers may be contacted by the media for background and quotes.

a. **The best advice for dealing with the media is to avoid going "off the record"** - Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

b. **Choose words carefully and cautiously** - Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

I. Sanctions

Councilmembers Behavior and Conduct (City Charter §22) - City Councilmembers who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council. Serious infractions of this Code of Conduct could lead to other sanctions as deemed appropriate by Council, including forfeiture of office. It is the responsibility of City Council to initiate action if a Council member's behavior may warrant sanction due to a breach of these written standards of conduct. Any action taken on the alleged violation(s) must be brought up with the City Council in a public meeting.

If the violation of the Code of Ethics or Code of Conduct is outside of the observed behaviors by the Mayor or Councilmembers, the complaining party should bring to the attention to City Council, with City Council voting whether the City Manager, the City Attorney and/or outside investigator should investigate the allegation and report the findings to City Council. If necessary, City Council can under §23 of the City Charter subpoena witnesses, administer oaths and require the production of evidence, in order to make their decisions in accordance with §22 of the City Charter.

Upon adoption of this Code of Conduct, following election to office and once a year thereafter, each elected officer will confirm that they have received a copy of this Code of Conduct for their review and use.

_____ _____

Signature **Date**

CITY OF BONITA SPRINGS, FLORIDA
RESOLUTION NO. 13-51

A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; AMENDING THE ADMINISTRATIVE CODE FOR RULES OF PROCEDURE FOR THE BONITA SPRINGS CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Bonita Springs City Council, as the duly elected governing body for the City of Bonita Springs holds regular scheduled public meetings to discuss, review and act upon items of concern which affect the residents of the City; and

WHEREAS, Section 25 of the City Charter establishes that the Bonita Springs City Council shall determine its own rules and order of business; and

WHEREAS, the City has adopted an Administrative code for rules to establish a method of conduct to govern all meetings of the Bonita Springs City Council; and

WHEREAS, City Council desires to amend its Administrative Code as a result of Florida Statutes §286.0114 going into effect on October 1, 2013.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Bonita Springs, Lee County, Florida:

1. The City Council declares that the procedures set forth, attached hereto, and incorporated by reference herein by "Exhibit A", as amended, is applicable to all meetings by the Bonita Springs City Council.

2. This Resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Florida this 18th day of September, 2013.

AUTHENTICATION:

Mayor

City Clerk

APPROVED AS TO FORM:

City Attorney

Vote:

Nelson	Aye	Simmons	Aye
McIntosh	Aye	Simons	Aye
Martin	Aye	Lonkart	Aye
Slachta	Aye		

Date Filed With City Clerk: 9-19-13

EXHIBIT "A"

ADMINISTRATIVE CODE
RULES OF PROCEDURE FOR COUNCIL MEETINGS
CITY OF BONITA SPRINGS

CODE NUMBER:	AC-1-2
TITLE:	Rules of Procedure for City Council Meetings
ADOPTED:	November 5, 2003 / Amended September 7, 2005; April 2, 2008; September 2, 2009; September 18, 2013
ORIGINATING DEPARTMENT:	City Attorney
PURPOSE/SCOPE:	Setting forth the Rules of Procedure for City Council.

RULES OF PROCEDURE

The following Rules of Procedure shall govern all meetings of the City Council, namely:

RULE 1.01 – GOVERNING RULE

Except as may be provided by these rules of law, questions of order, the methods or organization and the conduct of business of the Council shall be governed by Robert's Rules of Order in all cases to which they are applicable.

Rules basically are:
Courtesy to all
Justice to all
The rule of the majority
The rights of the minority
Partiality to none

RULE 1.02 – REGULAR MEETINGS

The City Council will hold regular meetings on the first Wednesday of each month at 5:30 p.m. and the third Wednesday of each month at 9:00 a.m.; however, City Council may by vote, subject to the City Charter minimum meeting requirements, cancel a regular meeting and reschedule the meeting at a time fixed by the majority.

Every regular meeting will have a scheduled time frame for public discussion on pending items scheduled for that meeting. When the day fixed for any such regular meeting falls on a day designated by law or policy as a legal, national or religious holiday, such meeting may be held on the next succeeding day not a holiday or such meeting may be canceled, at the discretion of the City Council. Regular meetings may be otherwise postponed or canceled by a motion adopted at a regular meeting by a majority of the City Council members present. Notice of the postponement or cancellation of any regular meeting shall be posted at City Hall, and on the City's website and the government access channel (Bonita TV12). All regular meetings shall be held at a place as approved by resolution or motion by a majority of City Council members present, unless determined by the City Clerk that the meeting location must be moved due to scheduling conflicts or space needs, and shall be open to the public and all news media. ***[Amended April 2, 2008]***

RULE 1.03 – SPECIAL MEETINGS: EMERGENCY MEETINGS:

A. A special meeting of the City Council may be called by the Mayor or by consent of the majority of the members of the City Council. Whenever a special meeting is called, the Manager will give notice to the Clerk. The City Clerk will give notice (verbal or written) to each member of the City Council stating the date, hour and place of the meeting and the purpose for which such meeting is called. At least twelve (12) hours must elapse between the time the Clerk sends notice in writing and the time the meeting is to be held, except, if a determination to hold a special meeting is reflected upon the record of any City Council meeting, no additional notice is necessary.

B. An emergency meeting of the City Council may be called by the Mayor or by consent of the majority of the members of the City Council whenever an emergency exists, which requires immediate action by the City Council. Whenever such emergency meeting is called, the Manager shall notify the Clerk and serve either verbal or written notice upon each member of the City Council, stating the date; hour and place of the meeting and the purpose for which it is called. Sufficient time shall elapse between the time the Clerk receives notice to properly notify the news media.

C. If after reasonable diligence, it was impossible to give notice to each Council Member, such failure shall not affect the legality of the meeting if a quorum were in attendance. Unless otherwise prohibited by law, all special or emergency meetings shall be open to the public and shall be held at a place as approved by resolution or motion by a majority of City Council members present, unless determined by the City Clerk that the meeting location must be moved due to scheduling conflicts or space needs. The Clerk shall keep minutes.

D. Notice of any special or emergency meeting of the City Council may be waived by not less than a majority of the entire membership of the Council. No

special or emergency meeting shall be held unless notice hereof shall be given in compliance with the provisions of this section or notice thereof is waived by a majority of the entire membership of the City Council. Notice in compliance with the "Sunshine Law" must be given and in no event may be waived.

RULE 1.04 – AGENDAS

There shall be an official agenda for every regular meeting of the City Council, which shall determine the order of business conducted at the meeting. The official Agenda shall consist in general, of the public discussions on scheduled Consent, City Attorney and City Manager items, scheduled Public Hearings, the Public Presentation of Matters by Citizens and others, as scheduled, Appeals, and any other item as directed by the Council. The Agenda is to be posted at City Hall, and on the City's website and the government access channel (Bonita TV12). The City Council shall not take action upon any matter, proposal, or item of business which is not listed in the official Agenda except as otherwise provided for in Rule 1.07 (c), unless the majority of the entire Council shall have first consented to the presentation thereof for consideration and action, except for emergency or other matters presented during the Public Presentation of Matters by Citizens. ***[Amended April 2, 2008]***

All requests to be included on the scheduled Agendas, including the agenda scheduling document ("green sheet") and applicable back-up, should be submitted to the City Clerk no later than 5:00 P.M. on the Wednesday prior to the Council meeting at which the item will be considered. ***[Amended September 2, 2009]***

The City Clerk, or designee, shall have the responsibility for delivering the Agenda kits to the City Council at City Hall no later than 12:00 P.M. on the Friday preceding the meeting date. ***[Amended September 2, 2009]***

Notwithstanding any prior practice, tradition or informal City Council policy, Council members may not request or obtain, through any means, an automatic continuance of any agenda item or public hearing. All requests for continuance of an agenda item, specifically including matters previously advertised for a public hearing, require Council approval to become effective. As a result, no person is entitled to rely, for any reason, upon any assurances made by City Staff or a Council member that an agenda item or public hearing will not be continued.

RULE 1.05 – MAYOR PRESIDING OFFICER DUTIES

The Mayor shall preside at all meetings at which he is present. In the absence of the Mayor, the Deputy Mayor shall preside. The presiding officer shall preserve strict order and decorum at all meetings of the City Council. The presiding officer may vote on all questions. The Clerk shall certify all ordinances and resolutions adopted by the City Council.

RULE 1.06 – AUTHORITY OF THE MAYOR

A. May call a member to order if his or her remarks are not relevant to the subject under discussion or are otherwise inappropriate.

B. Is obligated to vote on each motion in which he or she has no personal interest. No abstentions.

C. May discuss a motion as any other City Council member without relinquishing the Chair.

D. May call for a reading of the motion after discussion, but before voting.

E. In the event of a tie vote, shall rule the motion failed.

F. Shall recognize City Council members in the order of their request to speak, except the maker of the motion may be the first speaker.

G. May call a recess for a definite period if no objection is raised. If there is objection, he or she is obliged to call for a motion, which must be seconded to determine the result by a majority vote of the entire Council. This is not debatable, but is amendable as to time.

H. May refer the subject to the next regular meeting, if no objection is raised. If there is objection he or she is obligated to call for a motion, which must be seconded to determine the result by a majority vote. This is debatable and amendable.

I. If no motion is pending, may ask, "Is there any further business?" Hearing no response, the Mayor may then state, "Since there is no further business, the meeting is adjourned." If there is objection, he or she is obliged to call for a motion, which must be seconded to determine the result by a majority vote. This is neither debatable nor amendable.

RULE 1.07 – AUTHORITY OF THE CITY COUNCIL

A. Must vote on every motion in which he or she has no personal interest. No abstentions except when permitted by law.

B. May, only after recognition by the Mayor, introduce motions, discuss subject and vote.

C. May discuss any subject informally during the "Mayor and Council members items and reports", but unless a majority of City Council finds good cause, City Council should refrain from voting on any items brought up during

this informal discussion. Remaining items from informal discussion should be scheduled for the next meeting.

D. May appeal a decision of the Mayor without a second. This is debatable if the question was debatable, is not amendable and is decided by a majority vote.

E. May move to recess, stating a definite time. This takes a second and is decided by a majority vote of the entire Council. It is not debatable, but the time is amendable.

F. May move to refer the subject to the next regular meeting. This is seconded, decided by a majority vote of the entire Council, is debatable and amendable.

G. If no motion is pending, may move to adjourn. Upon the incompletion of the Agenda, an adjourned meeting may be "moved" by specifying time and date before or on the date of the next regular meeting. These motions are seconded and decided by a majority vote. They are not debatable, but are amendable as to time.

H. All City Council members including the Mayor, may second motions.

RULE 1.08 – PARLIAMENTARIAN

The City Attorney or designee in the City Attorney's absence, shall act as Parliamentarian, and shall advise and assist the presiding officer in matters of parliamentary law.

RULE 1.09 – CITY ATTORNEY

The City Attorney or designee shall attend all meetings and be available to the City Council at all meetings. The City Attorney shall act in a manner consistent with the Bonita Springs Charter.

RULE 1.10 – CITY MANAGER

The City Manager or designee shall attend all meetings of the City Council. The City Manager shall participate in all discussions at the meeting, but shall not vote. The City Manager shall act in a manner consistent with the Bonita Springs Charter. The City Manager or designee shall behave in the same manner and decorum as City Council members.

RULE 1.11 – CALL TO ORDER

The Mayor shall take the chair at the hour appointed for the meeting, and shall call the City Council to order. In the absence of the Mayor and the Deputy Mayor, the Clerk shall determine whether a quorum is present and in that event shall call for the election of a pro tem Mayor.

Upon the arrival of the Mayor or the Deputy Mayor, the Mayor pro tem shall relinquish the chair upon the conclusion of the business immediately before the City Council.

RULE 1.12 – QUORUM

A majority of the whole number of members of the City Council shall constitute a quorum. No ordinance, resolution or motion shall be adopted by the City Council without the affirmative vote of at least four (4) members present. Pursuant to AGO's 2002-82 and 2003-41, a City Council member may participate and vote on matters by electronic means, including by telephone (or through the Internet) amplified through the meeting room and able to be heard by the Recording Secretary, when there is a finding by City Council of extraordinary circumstances and if they are unable to attend a public meeting so long as a quorum of the members of the board is physically present at the meeting site.

Should no quorum attend within thirty minutes after the hour appointed for the meeting of the City Council:

1. For land use matters, the City Attorney will announce that the hearing is canceled for lack of a quorum and the hearing shall be rescheduled and readvertised following the procedures set forth in Florida Statutes §166.041 and Chapter 163, Florida Statutes;

2. For all other matters, the Clerk or designee may reschedule the meeting until the next day, unless by unanimous agreement of those members present select another hour or day. The Clerk shall record the names of the members present.

3. The room will be posted in the event a meeting is cancelled with the new date and time of the meeting.

RULE 1.13 – ORDER OF BUSINESS

All meetings of the City Council shall be open to the public. Promptly at the hour set for each meeting, the members of the City Council, the City Attorney, the City Manager, and the Clerk shall take their regular stations in the designated location and the business of the City Council shall be taken up for consideration and disposition in accordance with the agenda for the meeting.

RULE 1.14 – RULES OF DEBATE

A. QUESTION UNDER CONSIDERATION

When a motion is presented and seconded, it will then be under discussion of City Council. The motion is under consideration and no other motion shall be received thereafter, except to adjourn, to lay on the table, to postpone, to substitute, or to amend until the question is decided.

B. GETTING THE FLOOR, IMPROPER REFERENCES TO BE AVOIDED

Every member desiring to speak for any purpose shall address the presiding officer, and upon recognition, shall confine himself or herself to the question under debate; avoiding all comments of a personal or indecorous nature.

C. INTERRUPTION

A member, once recognized, shall not be interrupted when speaking, unless it is to call him to order or as herein otherwise provided. If a member while speaking is called to order, he or she shall cease speaking until the presiding officer determines the question of order, and if in order, he may be permitted to proceed. Any member may appeal to the City Council from the decision of the Mayor upon a question or order, when without debate, the Mayor shall submit to the Council the question, "Shall the decision of the chair be sustained?" and the Council shall decide by a majority vote.

D. PRIVILEGE OF CLOSING DEBATE

The Mayor shall have the privilege of closing the debate, after ample time for discussion.

E. VOTING

Upon any roll call required or by voice vote, there shall be no discussion by any member voting and he shall vote aye or nay or abstain. Any member, upon voting, may give a brief statement to explain his vote. A member shall have the privilege of filing with the Clerk a written explanation of his vote. A member of the City Council may abstain from voting on any matter in accordance with state law.

F. RECONSIDERATION

Action of the City Council may be reconsidered at a future meeting within a reasonable time frame by the City Council sitting in the same capacity or a like capacity when the principal action was taken, only upon motion by a

member who voted on the prevailing side of the question and with the concurrence of a majority of those present on the date that the reconsideration was requested; provided, however, that a motion for reconsideration may not be entertained at a subsequent meeting in the event of an affirmative vote, whose provisions have been partly carried out; an affirmative vote in the nature of a contract when the party to the contract has been notified of the outcome; any vote which has caused something to be done that it is impossible to undo; an affirmative vote upon which reliance was had and either monies expended or a change of position was made; or when practically the same result as desired can be obtained by some other parliamentary motion. Adoption of a motion to reconsider shall rescind the action reconsidered.

A motion to reconsider, whenever made, shall not be considered unless at least the same number of members are present as participated in the vote under consideration or upon affirmative vote of the majority of the City Council.

H. VOTE CHANGE

Any City Council member may change his or her vote before the next item is called for consideration, or before a recess or adjournment is called, whichever occurs first.

RULE 1.15 – READING MINUTES

Unless a reading of the minutes of a meeting is requested by a majority of the Council, such minutes, when approved by the City Council and signed by the Mayor and the Clerk, shall be considered approved without reading; provided, that the Clerk deliver a copy thereof to each member of the City Council and to the City Attorney at least two full working days preceding the meeting. The minutes of prior meetings may be approved by a majority of the members present, and upon such approval, shall become the official minutes.

The sound recordings and audiotapes of a meeting are public records pursuant to §119.011(1), Florida Statutes. The City Clerk will retain custody of any such recordings made by City staff and may dispose of them only in accordance with the State of Florida's policy for retention of disposal of records. However, the approved written minutes will be the official minutes of any action taken by City Council.

RULE 1.16 – METHOD OF VOTING

Upon every required roll call vote, the names of the City Council shall be called by districts, except that the Districts seats shall be rotated after each roll call vote, so that the Council members who voted first on a preceding roll call

shall vote last upon the next subsequent matter; provided, the Clerk shall call the roll, tabulate the votes, and announce the results.

RULE 1.17 – ADDRESSING THE CITY COUNCIL

A. AGENDA ITEMS

1. All proceedings and the order of business at all meetings of the City Council shall be conducted in accordance with the official Agenda.

2. Any departure from the order of business set forth in the official Agenda shall be made only upon a concurrence of the members of the City Council present at the meeting.

3. Public Comment:

   a. Except when limited pursuant to Florida Statutes §286.0114(3), ~~Citizens are entitled~~ members of the public have the reasonable opportunity to be heard at Regular Meetings on the Agenda during (a) public comment on agenda, (b) public comment held after Mayor and Council Member Items and Reports, and (c) public comment prior to adjournment.
   b. The speaker may discuss any matter within the scope of the jurisdiction of the City Council, i.e., agenda items during the first time allotment and any city subject during the second and third public comment period.
   c. Speakers wishing to address the City Council during the times set aside for public comment shall fill out a speaker form and will keep the presentation to four (4) minutes or less. One form per meeting is sufficient for the Recording Secretary to have the information for taking minutes of the meeting. The form will be used to inform City Council of a desire to be heard; to indicate an individual's support, opposition, or neutrality on a proposition; and to indicate an individual's designation of a representative to speak on their behalf on a proposition if he or she so chooses.

4. Public Hearings: In addition to public comment, speakers are entitled to speak on matters scheduled on the official Agenda under the section entitled "Public Hearings," except for first readings of ordinances where no public comment is permitted.

5. Presentations: The purpose of a presentation is to provide City Council with information necessary to formulate City Council policy and conduct business. Generally, the presentation portion of the Agenda is to schedule presentations by other governmental agencies or from professional consultants working on city projects.

A primary reason for having the presentations early in the Agenda is to reduce the time for consultants and employees from other agencies to be delayed while City Council is discussing regular city business. When a presentation is requested by a person or group, other than other governmental agencies or from professional consultants working on city projects, one member of City Council (or the City Manager) must act as sponsor to that presenter, notifying the City Manager or City Clerk that they are granting permission for that presenter to be placed on that portion of the Agenda (with the Agenda specifying which Councilmember is the sponsor with an explanation from the Sponsor why the presentation is necessary for Bonita Springs public health, safety and welfare). Presentations to City Council are to be no longer than ten (10) minutes, unless additional time is requested by the presenter and granted additional time by the Mayor. The City Manager shall notify presenters of the time limitations so that they may schedule their presentation efficiently. Unless circumstances do not permit the additional two week time delay, whenever feasible, presentations should be placed on the morning meeting agenda.

6. Appeals and Bid Protests: Appeals and bid protests shall be placed on the City Council's Agenda only when the applicable ordinance permits such appeals or bid protest. Since time limits for appeals or bid processes may differ because of differences of process or due to the complexity, the City Attorney will provide a memorandum as to whom may speak on the record for that item (public other than the participants may address City Council during the Public Comment period), time allocations, and other procedural matters to assist City Council in conducting the appeal or bid protest.

[Amended September 7, 2005; September 2, 2009 and September 18, 2013]

B. NON-AGENDA MATTERS

No citizen, shall be permitted to address the City Council on any matter not appearing on the official Agenda, unless it is presented under, the section entitled "Public Comment Matters by Citizens Not on the Agenda" (item XIII), or unless the City Council shall first grant permission to be heard by a majority vote of the entire City Council; provided, however, that such permission may not be granted in the case of appeals where the privilege of addressing the City Council is controlled by ordinance or other administrative codes.

C. PUBLIC DISCUSSION ON AGENDA ITEMS

No citizen shall be entitled, as a matter or right, to address the City Council on any item listed on the official Agenda which is not scheduled for public hearing, discussion or debate, unless same is addressed during the public comment on the Agenda item schedule or the "Public Presentation of Matters by Citizens" time as scheduled.

Citizens shall not be permitted to speak on any matters listed on the official Agenda other than those appearing under the sections entitled "Public Hearings", "Public Presentation of Matters by Citizens", and the public discussion time for items specifically appearing on that meeting's Agenda, unless City Council shall first grant permission to be heard by a majority vote of the Council members present at the meeting; provided, however, that such permission may not be granted where the privilege of addressing City Council is controlled by ordinance or other administrative codes.

RULE 1.18 – ADDRESSING CITY COUNCIL MANNER, TIME

Each member of the public addressing the City Council shall complete the form explained in Rule 1.17 (A)(3)(c) and submit to the Recording Secretary at the beginning of the meeting (but no later than commencing speaking), step up to the podium, shall give his or her name and address in an audible tone of voice for the City Clerk, and shall limit his or her remarks to four (4) minutes, unless granted additional time by the Mayor. All remarks shall be addressed to the Council as a body and not to any member thereof. No person, other than City Council and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Mayor or the presiding officer. All questions shall be directed to the Mayor or the presiding officer. ***[Amended September 18, 2013]***
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RULE 1.19 – DECORUM

ORDER MUST BE PRESERVED. – No person shall by speech or otherwise, delay or interrupt the proceedings or the peace of the Council or disturb any person having the floor. No person shall refuse to obey the orders of the Mayor or the Council. Any person making irrelevant, impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall not be considered orderly or decorous. Demonstrations such as clapping, booing, jeering, gesturing or cheering discourage other speakers thereby impeding the meeting process and will not be allowed. Any person who becomes disorderly or who fails to confine remarks to the identified subject or business at hand shall be cautioned by the Mayor and given the opportunity to conclude remarks on the subject in a decorous manner and within the designated time limit. Any person failing to comply as cautioned shall not be allowed to

continue speaking unless permission to continue or again address the City Council is granted by the majority vote of the Council members present.

Upon failure of the Mayor to maintain decorum, a call for "Point of Order" by a Council Member shall require business proceedings to cease until decorum is restored.

RULE 1.20 – PERSONS AUTHORIZED BEYOND THE PODIUM

No person, except City officers or their representatives shall be permitted beyond the podium in front of the City Council, and no person shall be permitted to disturb any Councilman while on the floor during any meeting without the express permission of the City Council.

Any handouts or materials to City Council shall be submitted to the City Clerk who will distribute the handouts or materials to the City Council, and applicable staff, retaining a copy for the record. Any handouts or materials will be retained by the City Clerk and incorporated into the meeting minutes, as a public record.

RULE 1.21- BAILIFF

The City Manager or Mayor will determine whether a bailiff is necessary to ensure the public health, safety and morals to be present at any meeting.