



Advertise Date: **Monday, July 17, 2023**

**City of Fort Myers
Procurement Services**

RFP – Request for Proposals		
Solicitation No.:	RFP #0065-23	
Solicitation Name:	Comprehensive Plan Update	
Pre-Submittal Meeting:		
Type:	Non-Mandatory Virtual Meeting	
	Join Zoom Meeting https://cityftmyers.zoom.us/j/89469302488 Meeting ID: 894 6930 2488 One tap mobile +13052241968,89469302488# US +13126266799,89469302488# US (Chicago)	
Location:		
Date:	Monday, July 24, 2023	Time: 9:00 a.m.
Question Deadline:		
Location:	https://pbsystem.planetbids.com/portal/31333/portal-home	
Date:	Monday, July 31, 2023	Time: 10:00 a.m.
Submittal Deadline:		
Location:	https://pbsystem.planetbids.com/portal/31333/portal-home	
Date:	Wednesday, August 16, 2023	Time: 2:00 PM
Procurement Contact:	Debra Kearns, CPPB	Title: Senior Procurement Specialist
Phone:	239-231-7238	Email: dkearns@cityftmyers.com
Requesting Department:	Community Development	

All solicitation documents are available for download at Planet Bids @
<https://www.planetbids.com/portal/portal.cfm?CompanyID=31333>

Updated 06/30/2023.

TABLE OF CONTENTS

	<u>Page</u>
Part A – Advertisement	3
Part B – Preparation and Submission of Proposals	4
Part C – Evaluation	8
Part D – Contract Award.....	11
Part E – Post Award.....	13
Part F – Other.....	14
Part G – Scope of Work and Requirements.....	17
Exhibit 1 Draft of Professional Services Agreement	33

**PART A
ADVERTISEMENT
REQUEST FOR PROPOSALS
CITY OF FORT MYERS**

RFP #0065-23 Comprehensive Plan Update

The City of Fort Myers is seeking proposals for RFP #0065-23 Comprehensive Plan Update which will be submitted electronically on or before Wednesday, August 16, 2023, at 2:00 PM. Interested participants are encouraged to download the solicitation documents. For more details visit <https://pbsystem.planetbids.com/portal/31333/portal-home>

CITY OF FORT MYERS

Marty K. Lawing, City Manager
Gwen Carlisle, City Clerk

Legal Ad: News-Press/PlanetBids
RUN DATES: Monday, July 17, 2023

PART B

PREPARATION AND SUBMISSION OF PROPOSALS

1. Introduction

The City of Fort Myers, Florida is requesting Electronic Qualification Proposals for **RFP 0065-23, Comprehensive Plan Update**.

The City of Fort Myers is soliciting qualified consulting firms to submit a proposal to prepare a Comprehensive Plan for the city. The most recent comprehensive plan was adopted in 2003. The city is therefore seeking a new update to the Comprehensive Plan which will state the community's goals and policies regarding its future in terms of residential and multifamily housing, open space, coastal management, and infrastructure. Particular attention shall be paid to affordable housing needs and infrastructure demands due to the population growth the city has experienced over the last decade. The Plan should serve as a guide for orderly growth and change and provide a rational basis for future planning and zoning decisions.

The city is looking for an experienced firm willing to incorporate new and innovative methods to development of the Comprehensive Plan. Demonstrated use of technology to outreach and regularly communicate with the community is extremely important. The final Comprehensive Plan should include a phased and prioritized implementation strategy.

To be entitled for consideration, electronic proposals shall be submitted in accordance with the instructions of this solicitation within the time stated. Submission of **ELECTRONIC** Proposals:

1.1 One (1) electronic proposal submitted via Planet Bids Portal must be:

- a) Signed in blue
- b) Scanned in color
- c) One single continuous bookmarked PDF file

The portal will keep all files locked until the Request for Proposal officially closes.

The City of Fort Myers reserves the right to accept or reject any or all the proposals and to waive minor irregularities and technicalities. The City of Fort Myers such matters is final.

2. Request for Proposals Process

This solicitation is a Request for Proposal (RFP). In using this method for solicitation, the City of Fort Myers is asking the marketplace for its best effort in seeking a "best value" solution to the requirements. The proposals will be evaluated by an evaluation committee. Proposers should make their best effort to satisfy the requirements as a contract may be awarded based on the initial evaluation. Often however, it will be necessary to hold presentations with Proposers about their proposals. This will be done after the initial evaluation.

3. RFP Timeline Schedule

Below please find a proposed schedule. Dates are subject to change.

Event	Date
RFP Advertise and Release	Monday, July 17, 2023
Non-Mandatory Virtual Pre-Submittal Meeting	Monday, July 24, 2023, 9:00 a.m. Join Zoom Meeting https://cityftmyers.zoom.us/j/89469302488 Meeting ID: 894 6930 2488 One tap mobile +13052241968,89469302488# US +13126266799,89469302488# US (Chicago)
Question Deadline (Electronically)	Monday, July 31, 2023, 10:00 a.m.
Submittals Due (Electronically)	Wednesday, August 16, 2023 @2:00 PM
Selection Committee Meeting	Tuesday, August 29, 2023
Presentations Meeting (if applicable)	Tuesday, September 12, 2023
City Council for Approval – Proposed	September – October 2023

4. Proposal Preparation

4.1 Proposers are responsible for examining the complete Request for Proposal and all Addenda and cautioned to carefully read and follow the procedures required by this Request for Proposal, as any deviation from these requirements may be cause for rejection.

4.2 It is the intent and purpose of the City that this Request for Proposal promotes open competition. It shall be the Proposer's responsibility to advise Procurement Services if any language, requirements, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this Request for Proposal to a single source.

Such notification must be submitted in writing and must be received by Procurement Services no later than ten (10) days prior to the proposal closing date.

4.3 Time of delivery is a part of the solicitation and element of the contract that is to be awarded. If the Proposer cannot meet the required schedule, Proposer may provide alternative schedules and/or delivery dates in their proposal. Time shall be stated in "calendar" days. Failure to deliver in accordance with the contract awarded could result in the Proposer being declared in default.

4.4 The proposer must not submit alternative Offers unless this Solicitation specifically authorizes alternate Offers. If this Solicitation specifically requires the submission of alternate line items, the Bidder must submit the base price and the alternative line-item price(s) in the format provided on the Price Sheet in to be considered Responsive.

5. Taxes

The City of Fort Myers is exempt from all taxes imposed by State and/or Federal Government. An Exemption Certificate will be furnished upon request.

6. Addenda

All questions about the meaning or intent of the solicitation document are to be submitted through the PlanetBids Portal, question and answer tab. Only questions received prior to the date and time specified on the front cover will be considered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Any addenda issued electronically during the time of solicitation shall be included in the Request for Proposals, and each will be incorporated in the subsequent contract.

No oral interpretations will be made to Proposers as to the meaning of proposal documents. **Requests for such interpretations are to be submitted through the PlanetBids Portal, question and answer tab.** Failure on the part of the Proposer to do so shall not relieve them of the obligation to execute such work in accordance with a later interpretation by the City of Fort Myers. All interpretations made to the Proposer shall be made in the form of addenda to the proposal documents and posted to Planet Bids. Proposers are strongly urged to visit and inspect the site prior to proposing if the configuration, structure, condition, etc., of the site will influence the proposal for contract performance.

7. Withdrawal of Proposals

A submittal cannot be withdrawn after it has been uploaded electronically to the City of Fort Myers, unless Proposer makes a request in writing to Procurement Services prior to the time set for receiving the proposals, or unless Procurement Services fails to accept or reject the proposal within one hundred twenty days (120) after the date fixed for receiving proposals.

8. Compliance with rules, regulations laws, ordinances and licenses

All property or services furnished in a contract resulting from this solicitation shall comply with all applicable Federal, State and Local laws, codes and regulations. The selected proposer shall be responsible for obtaining all necessary permits and/or licenses required in order to comply with the executed contract.

9. Minority Business Enterprise Program (MBE)

CITY CODE OF THE CITY FORT MYERS, FLORIDA, CHAPTER 38, FINANCE, ARTICLE V. MINORITY BUSINESS ENTERPRISE PROGRAM (MBE): The City of Fort Myers has established an MBE Ordinance for expenditures of construction, professional services, goods and other services. Minority Business Enterprise (MBE) are businesses who are certified by the State of Florida Office of Supplier Diversity and whose principal place of business is located within the boundaries of Lee County.

Minority Business Enterprise for goods and/or services: The City of Fort Myers has established a preference, for vendors, which are Minority Business Enterprises who constitute a present ability to perform the services and/or provide the goods and have been certified by the State of Florida Office of Supplier Diversity and whose principal place of business is located within the boundaries of Lee County. Expenditures under \$25,000 provides for a preference of 7%. Expenditures over \$25,000 provide for a preference of 6% or ten thousand dollars \$10,000 whichever is less. This paragraph may not apply to large construction projects and/or professional services.

10. Protest Procedure

Any contractor/vendor/firm that has submitted a formal bid/quote/proposal to the City of Fort Myers, and who is adversely affected by an intended decision with respect to the award of the formal bid/quote/proposal, shall file with the Owner's Procurement Manager a written notice of intent to file a protest not later than Seventy-two (72) hours (excluding Saturdays, Sundays, and Federal Holidays) after posting of the bid tabulation, or if the bid tabulation is not posted, not later than Seventy-two (72) hours (excluding Saturdays, Sundays and Federal Holidays) after receipt of written notice from the Owner of the Intent to Award. The initial notice of intent to file a protest shall state the basis of the protest and clearly indicate its purpose is to serve as the initial notice of intent to file a bid protest. Failure to so clearly indicate its intent shall constitute a waiver of the right to seek any remedy provided under the bid protest procedures.

For the purposes of computation, the initial notice of intent to file a protest shall be received by the Procurement Manager not later than Four O'clock (4:00) P.M. on the third working day following the day of receipt of notice of the intended decision or the date of posting of bid tabulation.

Any contractor/vendor/firm that has submitted a bid to the City of Fort Myers who is affected adversely by the intended decision with respect to bid award, shall file a formal, written protest within five (5) calendar days after the date of filing of the initial notice of intent to file a protest. Upon filing of the Formal Written Protest, the contractor/vendor/firm shall post a bond, payable to the City of Fort Myers in an amount equal to five percent (5%) of the total bid/quote/proposal or Ten Thousand Dollars (\$10,000.00), whichever is less. Said bond shall be designated and held for the payment of any costs that may be levied against the protesting contractor/vendor/firm by the Owner, as the result of a frivolous Protest. Said security shall be in the form of a cashier's check on a national or state bank, money order, or a protest bond executed by the contractor/vendor/firm and a qualified Surety authorized to do business in the State of Florida, and acceptable to the City of Fort Myers.

Failure to submit a cashier's check on a national or state bank, money order or bond simultaneously with the Formal Written Protest shall invalidate the protest, at which time the Owner may continue its procurement process as if the original "Notice of Intent to File a Protest" had never been filed.

The formal written protest shall contain the following:

10.1 Owner proposal number and title.

10.2 The name and address of the affected party, and the title or position of the person submitting the bid protest.

10.3 A concise statement of the facts alleged and of the rules, regulations, statutes and constitutional provisions entitling the affected party of relief.

10.4 A statement indicating the relief to which the affected party deems themselves entitled.

10.5 Such other information as the affected party deems to be material to the issue.

10.6 A statement of disputed issues of material fact; and

10.7 Bond as required by this document.

Upon receipt of Notice of Protest, timely filed, the Procurement Manager shall abate the bid solicitation process or award of contract until the protest is resolved pursuant to fundamental principles of due process, except and unless the Dispute Committee makes a written determination that the award of a contract without delay is necessary to protect substantial interests in the City of Fort Myers.

The Dispute Committee, shall, through the Procurement Manager meet with the protesting party within ten (10) working days (excluding Saturdays, Sundays and Federal Holidays) of receipt of the formal written protest. The purpose of the meeting of the Dispute Committee, the bid protestor and other affected parties is to provide an opportunity: (1) to review the basis of the bid protest; (2) to evaluate the facts and merits of the bid protest; (3) if possible, to reach a resolution of the bid protest that is acceptable to the affected parties; and (4) if possible, to satisfy the bid protestor to the extent that the bid protest might be withdrawn.

If, and in the event, the dispute cannot be resolved by mutual agreement, and there are disputed issues of material facts, the Dispute Committee shall refer the bid solicitation and protest to the City of Fort Myers Council Members with a recommendation for resolution of the protest.

If the Council decision upholds the recommendation by the Dispute Committee regarding the award, and further finds that the Protest was either frivolous and/or lacked merit, the Council at its discretion, may assess costs, charges, or damages associated with any delay of the award, or any costs incurred with regard to the Protest. These costs, charges or damages may be deducted from the security (bond, cashier's check on a national or state bank, money order) provided by the contractor/vendor/firm. Any costs, charges or damages assessed by the Owner, in excess of the security, shall be paid by the protesting contractor/vendor/firm within thirty (30) calendar days of the Council's final determination concerning the award.

"FAILURE TO FILE THE PROTEST PROCEDURES REQUIREMENTS WITHIN THE TIME FRAMES PRESCRIBED HEREIN AS ESTABLISHED BY THE CITY OF FORT MYERS, FLORIDA, SHALL CONSTITUTE A WAIVER OF YOUR PROTEST AND ANY RESULTING CLAIMS"

11. Procurement Policy

The City of Fort Myers Procurement Policy is incorporated into this solicitation (and, therefore, any contract awarded as the result of this solicitation) by reference. By participation in this solicitation a Proposer, potential Proposer, or Proposer/firm agrees to be bound by the City of Fort Myers Procurement Policy in any issue or action related to this solicitation or subsequent contract resulting from this solicitation.

12. Suspension and Debarment

By submitting a proposal in response to this solicitation the Proposer certifies no principal (which includes officers, directors, or executives) is presently suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in this solicitation by any Federal Department or Agency.

13. Exceptions

The Proposer must **IDENTIFY** any variances from the Request for Proposal **NO MATTER HOW SLIGHT**. Any exceptions to the scope of services must be so noted and explained in detail on a separate sheet and attached to your proposal. If variations are not stated in the proposal, it will be assumed that the specified service fully complies with our RFP.

14. Conflict of Interest

All Proposers must disclose with their proposal, the name of any officer, director, or agent who is also an employee of the City of Fort Myers or any of its agencies. Furthermore, all Proposers must disclose the name of any City employee who owns, directly or indirectly, an interest of ten (10%) or more in the Proposers firm or any of its branches.

15. Modifications

The City of Fort Myers reserves the rights to add, modify, change and/or refine the scope of services indicated herein with the selected entity and negotiates any applicable fees accordingly if appropriate.

16. Liability for errors

While the City of Fort Myers has used considerable efforts to ensure accurate representation of the information of this Request for Proposal, the information contained in this request is supplied solely as a guideline for Proposers. The information is not guaranteed or warranted to be accurate by the City nor is it necessarily comprehensive or exhaustive. Nothing in the Request for Proposal is intended to relieve the Proposers from forming their own opinions and conclusions with respect to the matters addressed in this request.

17. Omission from the RFP

The apparent silence of this RFP and any addendum regarding any details or the omission from the RFP of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of this RFP shall be made upon the basis of this agreement.

18. Price Escalation

18.1 All prices offered herein shall be firm against any increase for three (3) years from the effective date of the contract. Prior to commencement of subsequent renewal terms, the City will entertain a request for escalation in accordance with the current Consumer Price Index at the time of the request or up to a maximum 3% increase on the current pricing, whichever is lower.

18.2 For purposes of this section, "Consumer Price Index" shall mean the Consumer Price Index-All Urban Consumers United States Average-All Items (CPI-U), as published by the United States, Department of Labor, Bureau of Labor Statistics.

18.3 The City reserves the right to accept or reject the request for a price increase within thirty (30) days. If the price increase is approved, the price will remain firm for the renewal period for which it was requested.

19. Mandatory Forms

The following forms must be completed and submitted with your proposal:

19.1 Attachment A - Document Management Form

19.2 Attachment B – Incorporation Affidavit (Notarized)

19.3 Attachment C – Byrd Anti-Lobbying Form

19.4 Attachment D – Affidavit Certification Immigration Laws

19.5 Attachment E – Federal Contract Provisions

19.6 Attachment F - Proposer's Certification: Acknowledge Receipt of Any Addenda

19.7 Attachment G – Professional Services Agreement – Review & Comments

19.8 Copy of Florida License, Copy of Sunbiz webpage, Copy of Certificate of Insurance, Copy of Company's E-Verify Memorandum of Understanding (MOU), certifications, etc.

Failure to submit these forms may result in your proposal being deemed non-responsive, thus ineligible for award.

PART C EVALUATION

1. Evaluation Process

Proposals will be reviewed by a selection committee comprised of City employees. The City staff may or may not initiate discussions with Firms for clarification purposes. Clarification is not an opportunity to change the proposal. Firms shall not initiate discussions with any City employee or official.

2. Criteria for Evaluation and Award

The City will evaluate three (3) categories of information: responsiveness, responsibility, the technical proposal/price. All proposals must meet the following responsiveness and responsibility criteria.

2.1 Responsiveness:

The City will determine whether the proposer complies with the instructions for submitting proposals including completeness of proposal which encompasses the inclusion of all required attachments and submissions. Late proposals will not be accepted. Failure to meet other requirements may result in rejection.

2.2 Responsibility:

The City will determine whether the proposer is one with whom it can or should do business. Factors that the City may evaluate to determine "responsibility" include, but are not limited to: excessively high or low priced proposals, past performance, references (including those found outside the proposal), compliance with applicable laws, proposer's record of performance and integrity – e.g. has the proposer been delinquent or unfaithful to any contract with the City, whether the proposer is qualified legally to contract with the City, financial stability and the perceived ability to perform completely as specified. A proposer must at all times have financial resources sufficient, in the opinion of the City, to ensure performance of the contract and must provide proof upon request. City staff may also use Dun & Bradstreet and /or any generally available industry information. The City reserves the right to inspect and review proposer's facilities, equipment and personnel and those of any identified subcontractors. The City will determine whether any failure to supply information, or the quality of the information, will result in rejection.

2.3 Technical Proposal:

The City will determine how well proposals meet its requirements in terms of the response to the specifications and how well the offer addresses the needs of the project. The City will rank offers using a point ranking system (unless otherwise specified) as an aid in conducting the evaluation.

If less than three (3) responsive proposals are received, at the City's sole discretion, the proposals may be evaluated using simple comparative analysis instead of any announced method of evaluation, subject to meeting administrative and responsibility requirements.

For this RFP, the criteria will be evaluated, and their relative weights are:

Evaluation Criteria No. 1		Points
Scoring of Written Proposals		
Experience of the Firm a) Experience and capabilities to perform the scope of work (5 pts) b) Required experience & capabilities in-house (5 pts) c) Indicate existing workload and ability to meet timeline(s) outlined in the project. (5 pts) d) Sufficient staff with the right skills to back up team members or speed up job if necessary (5 pts) e) Indicates existing workload and ability to meet timeline(s) outlined in the project. (5 pts) f) Provide 2 examples of completed projects with similar scope and budget within the last 5 years. (5 pts each)	35	
Experience/Qualifications of Assigned Personnel a) Academic, training, and licensed credentials of employees as it relates to this project. (20 pts) b) Provide 1 example of a project completed by the project manager with similar scope and budget within the last 5 years. (5 pts)	25	
Approach of Project/Design – Provide a clear description of your firm’s approach and unique abilities to provide the scope of services as described herein. Project Approach should include, but not be limited to: a) How your firm intends to generally approach the scope of services, including a comprehensive representation, demonstrating an understanding and a commitment of how your firm intends to implement and fulfill the requirements of the scope of services (3 pts) b) How your firm will balance staffing needs for this project (3 pts) c) How your firm will facilitate timely completion of the project (3 pts) d) How your firm will incorporate sound principles of urban in-fill, smart growth development and sustainable redevelopment in planning, design and construction for this project (3 pts) e) Describe unique abilities, innovative approaches, and/or special considerations (3 pts)	15	

Compliance with the City's Minority Business Enterprise Policy (0-13) This category is review and score by the Procurement department.	
a) Certified Minority Business with the State of FL Office of Diversity and within Lee County, FL – Up to 13 points - or	13
b) Shows proof that they have applied for Minority Business status and are awaiting confirmation – Up to 8 points – or	
c) Is partnered with a minimum of 2 Minority Businesses – Up to 1.5 pts per MBE up to 3 points total	
Fee Proposal	
a) Fee proposal must be inclusive of all costs associated with the project.	12
TOTAL POINTS	100

3. Short-listing

Proposers to this RFP may be required to provide an oral presentation of their proposal submittal. Date and time determined will be by the City.

During this presentation proposers will be required to answer questions from Selection Committee and other City Staff present for the presentation. The selection committee will be using the oral presentations as a tool in order to evaluate the proposal submitted by the firm.

At any time during the Selection process, the City may reject a proposal if the City concludes the Proposer is not qualified -- i.e., the Proposer does not satisfy the minimum criteria set forth in this RFP.

At any time during the Selection process, the City may conduct any investigations it deems necessary to evaluate the proposals. Each Proposer shall promptly provide the City with any additional information reasonably requested by the City. The City shall have the right to make additional inquiries, interview some or all of the Proposers, visit the facilities of one or more of the Proposers, or take any other action the City deems necessary to fairly evaluate a proposal.

Please note that the Selection Committee may select the Successful Proposer to recommend to City Council without allowing any presentations or interviews by any Proposer. For this reason, each Proposer must ensure that its proposal contains all of the information requested in this RFP.

Evaluation Criteria No. 2	Points
Scoring of Presentations	
Pricing – Best and Final Offer	25
Financial Capacity of Firm – Describe how your firm's independently financially capable of fulfilling the requirements of the solicitation. Provide proof of financial stability including audited financial statements and tax records.	25
Project Approach – Provide a clear description of your firm's approach and unique abilities to provide the scope of services as described herein. Project Approach should include, but not be limited to: a) How your firm intends to generally approach the scope of services, including a b) comprehensive representation, demonstrating an understanding and c) a commitment of how your firm intends to implement and fulfill the d) requirements of the scope of services. e) How your firm will balance staffing needs for this project. f) How your firm will facilitate timely completion of the project. g) How your firm will incorporate sound principles of urban in-fill, smart growth development and sustainable redevelopment in planning, design and construction for this project. h) Describe unique abilities, innovative approaches, and/or special considerations.	25
Qualification and Experience of Key Personnel – The relevant experience, resources and qualification of the advisor and key individuals assigned to perform and/or oversee the work for the City. Provide an organization chart of the proposed project team and clearly indicate the role of each member of the proposed project team.	25
TOTAL POINTS	100

4. Tiebreaker

In the event of a tie, two or more proposers that have the same ranking, the following steps will be taken to determine the highest ranked proposer. This method shall be used for all (RFP's and RFQ's) ties.

Step 1: The proposer that has the highest number of 1st place rankings shall be deemed the first ranked proposer. In the event a tie still exists the proposer with the highest number of 2nd, place rankings shall be the first ranked proposer. Should a tie remain the method used above will continue with each ranking level, 3rd, then 4th, then 5th rank, will be counted until the tie is broken.

Step 2: At the conclusion of step 1 if all is equal, the local proposer shall be deemed the highest ranked proposer over a non-local proposer. Local shall be defined by the City of Fort Myers Ordinances Section 38-71 or current revision thereof.

Step 3: At the conclusion of step 1 and step 2 if all is equal, the proposer having a drug-free workplace program, in accordance with Section 287.087, FL §, shall be deemed the first ranked proposer.

Step 4: At the conclusion of steps 1, 2, 3, if all are equal, the 1st place proposer shall be determined by the flip of a coin.

When the tiebreaker is determined the highest ranked proposer shall be awarded the contract or receive the first opportunity to negotiate, as applicable.

5. Best and Final Offers

The City may request best & final offers, if deemed necessary, and will determine the scope and subject of any best & final request. However, the proposer should not expect that the City will ask for best & finals. Therefore, proposer should submit their best offer based on the terms and conditions set forth in this solicitation.

6. Contract Negotiations and Acceptance

Proposer must be prepared for the City to accept the proposal as submitted. If proposer fails to sign all documents necessary to successfully execute the final contract within a reasonable time as specified, or negotiations do not, result in an acceptable agreement, the City may reject the proposal or revoke the award and may begin negotiations with another proposer. Final contract terms must be approved or signed by the appropriately authorized City official(s). No binding contract will exist between the proposer and the City until the City executes a written contract of purchase order.

7. Notice of Intent to Award

Notices of the City's intent to award a Contract will be emailed to all proposers that submitted to the City upon selection.

PART D CONTRACT AWARD

1. Purchase Order

The purchase order prepared and emailed by the City of Fort Myers, or otherwise furnished, to the selected Proposer within the time for acceptance specified, results in a binding contract without further action by either party. The contract shall consist of this Request for Proposal and any addenda thereto, the Proposer's proposal, and establishing purchase order. If a contract is established, one negotiated by both parties and approved by the City of Fort Myers, this will also become an official part of the contract. Unless specifically deleted in writing by addendum or amendment to one of the beforementioned documents of the contract by the Procurement & Contracts Administration Division all terms and conditions of the City of Fort Myers contract documents shall be in effect and shall govern if in conflict with any term or condition otherwise presented. The contract shall be interpreted, construed, and given effect in all respects according to the laws of the State of Florida.

2. Contract Award

- a) A contract will be awarded to the responsive and responsible Proposer whose proposal is determined to be the most advantageous and is of best value to the City of Fort Myers. Proposals will be evaluated on a combination of factors.
- b) The City of Fort Myers reserves the right to award to a single Proposer or multiple Proposers.

3. Contract Term

The City intends to negotiate a contract for a term of three (3) years, or until the project is complete, whichever comes sooner, upon mutual agreement of both parties. The length of the contract will be contingent upon the proposer's submittal and financial investment and shall be negotiated between the City and the successful proposer.

4. Conflicts in Terms and Conditions

In a conflict between terms and conditions in any document that will be part of the contract, the City of Fort Myers terms and conditions shall govern.

5. Hold Harmless Agreement

The Proposer shall Hold Harmless the City of Fort Myers its directors, employees and assigns, from any and all claims, suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of, or occurring in connection with the performance of this contract. The Proposer's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion of omission from any policy of insurance.

6. Insurance

When the selected Proposer has been identified, he/she will be notified of the necessity to provide required insurance and additional insured endorsement for auto liability coverage and general liability insurance coverage. Proof of insurance and additional insured endorsement shall be provided within ten (10) days of the date of written notification to the Proposer.

6.1 The following general requirements apply to any and all work under this contract by all Proposers.

- a) Any and all insurance required by this contract shall be maintained during the entire length of this contract, including any extensions thereto, and until all work has been completed to the satisfaction of the City. Any and all insurance must be on an occurrence.
No Proposer shall commence any work of any kind under a contract until all insurance requirements contained within the solicitation have been complied with and until evidence of all insurance requirements have been received demonstrating such compliance.
- b) The City of Fort Myers shall be specifically included as an Additional Insured on both the comprehensive general liability, the professional liability and the business auto liability policies. Confirmation of this shall appear on all certificates of insurance and on any and all applicable policies.
- c) The City of Fort Myers shall be given no less than thirty (30) day notice of cancellation. The City of Fort Myers shall be given not less than thirty (30) days prior written notice of material changes of any insurance required under this contract.
- d) Each and every agent shall warrant when signing the certificate of insurance that he/she is acting as an authorized representative on behalf of the companies affording insurance coverage under the contract and that he/she is licensed by the State of Florida to conduct insurance business in the State of Florida and that the companies affording insurance coverage are currently licensed by the State of Florida and are currently in good standing with the Commissioner of Insurance for the State of Florida.
- e) In the event the Proposer neglects, refuses, or fails to provide the insurance required by the Contract Documents, or if such insurance is cancelled for any reason, the City of Fort Myers shall have the right, but not the duty, to procure the same, and the cost thereof shall be paid by Proposer within ten (10) days of presentation of an invoice for same or the City shall have the right to cancel the contract.

- f) The customary form of insurance should be used. Note that under the cancellation clause, the following must be deleted: "endeavor to" and "but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives."

6.2 Worker's Compensation and Employer's Liability Insurance

The Proposer shall procure and maintain Worker's Compensation and Employer's Liability Insurance, meeting statutory limits in compliance with applicable state and federal laws. Such insurance is to cover each and every employee who is or may be engaged in work under the contract.

6.3 Commercial General Liability Insurance

The Proposer shall procure and maintain Commercial General Liability Insurance in an amount not less than \$1,000,000.00 per occurrence, combined single limit for bodily injury liability and property damage; XCU coverage; independent Proposer; products and completed operations and contractual liability.

6.4 Business Automobile Liability Insurance

The Proposer shall procure and maintain Business Automobile Liability Insurance in an amount not less than \$1,000,000.00 per occurrence, combined single limit for bodily injury liability. This shall include owned vehicles, hired and non-owned vehicles.

6.5 Professional Liability

The Proposer shall procure and maintain Professional Liability Insurance in an amount not less than \$1,000,000.00. Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits, or self-insurance program, provide an applicable deductible amount, or other exclusion of limitation, or sovereign immunity as to the amount of coverage to be provided within the minimum coverage limits set forth above, the City shall hold the PROVIDER responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation or amount of sovereign immunity, the PROVIDER shall be required to provide written documentation that is acceptable to the CITY establishing that the PROVIDER has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policies.

7. Indemnification

The Proposer shall indemnify, hold harmless, and defend the City of Fort Myers, and their respective City Council, Mayor, City Manager, their agents and employees, and anyone directly or indirectly employed by either of them, from and against any and all liabilities, losses, claims, damages, demands, expenses, or actions, either at law or in equity, including court costs and attorney's fees, that may hereafter at any time be made or brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any action of fraud or defalcation by the Proposer, or anyone performing any act required of the Proposer in connection with performance of any contract awarded pursuant to this Request for Proposals.

The Proposer shall indemnify and hold harmless, and defend the City of Fort Myers, and their respective City Council, Mayor, City Manager, their agents and employees, and anyone directly or indirectly employed by either of them, from and against all liabilities, damages, claims, demands, or actions at law or in equity, including court costs and attorneys' fees that may hereafter at any time be made or be brought by anyone arising out of any infringement of patent rights or copyrights held by others or for the disclosure or improper utilization of any trade secrets by the Proposer during or after completion of the Work. These obligations shall survive acceptance of any goods, services, and/or performance and payment therefore by the City of Fort Myers.

PART E POST AWARD

1. Assignment

By the submission of this proposal, the Proposer agrees not to assign the contract or purchaser order to others unless specifically authorized in writing by the City of Fort Myers.

2. Payment

All invoices and payments shall be governed by Sect. 218.74(2) Florida State Statutes, the Florida Prompt Payment Act. City of Fort Myers Payment Requirement: E-mail one original invoice in (pdf format) to: apinvoices@cityftmyers.com

3. Termination for default

3.1 In the event any property or service to be furnished by the Proposer under a contract or purchase order should for any reason not conform to the specifications contained herein or to the sample submitted by the firm with their proposal, the City of Fort Myers may reject the property or service and may terminate the contract for default.

Prior to a termination for default, a Proposer will be given the opportunity to respond to a "cure notice" and/or a "show cause notice". In either case, the Proposer will be expected to either correct the offending situation or provide an acceptable plan and time frame for correction within ten (10) days of receipt of either notice. Failure to do so will be cause for termination.

3.2 If the contract is terminated for default, the City of Fort Myers may procure such property or services from other sources and shall have the absolute right to deduct from any monies due the Proposer, or that may thereafter become due to the Proposer, the difference between the contract price and the actual cost of the property or service to be replaced or substituted or pursue any other available legal or equitable remedy.

4. Termination for convenience

The City of Fort Myers reserve the right to terminate for convenience this contract in whole or in part.

5. Permits, Taxes, Licenses, Ordinances and Agreements

The Proposer shall, at his own expense, obtain all necessary permits, give all notices, pay all license fees and taxes, comply with all applicable local, State and Federal laws, ordinances, rules and regulations. The Proposer shall maintain the licenses required in a current status after award and throughout the course of the contract.

6. Non-Appropriation

Notwithstanding any other provision of this agreement, the parties hereto agree that any charges hereunder are payable to the Proposer by the City. In the event such appropriations are determined in the sole discretion of the Deputy Director or Finance Director, no longer to exist or to be insufficient with respect to any charges payable hereunder, this agreement shall terminate without further obligation of the City of Fort Myers at the end of any fiscal period (hereinafter referred to as "Event"). In such Event, the Deputy Director or Finance Director shall certify to the Proposer the occurrence thereof, and such certification shall be inclusive.

7. Progress Report

When requested by the City of Fort Myers, the Proposer shall furnish such reports as required.

PART F OTHER

1. Nondiscrimination

The Proposer, by the submission of a proposal or the acceptance of a purchase order or contract, does agree to provide the goods and services covered under the proposal or contract not to discriminate in any way against any person or refuse employment of any person or persons on account of color, religion, national origin, or sex.

The City of Fort Myers does not discriminate on the basis of race, color, religion, sex, national origin, age, disability, marital status or sexual orientation in any of its employment practices, education programs, services or activities.

2. Prohibition against consideration of social, political or ideological interests in government contracting

An awarding body may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor." Additionally, An awarding body may not give preference to a vendor based on the vendor's social, political or ideological interests. Per F.S. Chapter 287.05701:

Prohibition against considering social, 940 political, or ideological interests in government contracting. —

(1) As used in this section, the term "awarding body" means:

(a) For state contracts, an agency or the department.

(b) For local government contracts, the governing body of a county, a municipality, a special district, or any other political subdivision of the state.

(2)(a) An awarding body may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor.

(b) An awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

(3) Beginning July 1, 2023, any solicitation for the 955 procurement of commodities or contractual services by an awarding body must include a provision notifying vendors of the provisions of this section.

3. Drug-Free Workplace

By submission of a proposal, the Proposer certifies that he/she will not engage in the unlawful manufacture, sale distribution, dispensation, possession, or use of a controlled substance or drug during the performance of the contract and that a drug-free workplace will be provided for the Proposer's employees during the performance of the contract. The Proposer also certifies that he will secure from any subcontractor who works on the contract, written certification of the same drug-free workplace requirements.

4. Certification of Non-Collusion

By submitting a proposal, the Proposer certifies: "that this proposal is made without prior understanding, agreement, or connection with any corporation firm, or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud.

That collusive pricing is understood to be a violation of State and Federal law and can result in fines, prison sentences, and civil damages awards."

5. Authorized Official

It is agreed that all conditions of the proposal shall be abided and that the person signing this proposal is authorized to sign the proposal for the Proposer.

6. Solicitation Termination

In any event in which this solicitation is terminated or cancelled, in whole or in part, or all proposals are rejected, there shall be no liability on the part of the City of Fort Myers for any costs incurred by Proposers or potential Proposers in relation to the solicitation.

7. Right and Remedies

The rights and remedies of the City provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

8. Delivery

Services shall be provided only as authorized by Purchase Orders issued by Procurement Services. Failure of the Proposer to provide commodities as specified or to promptly replace damaged or defective products shall render Proposer liable for all costs in excess of the contract price when alternate procurement is necessary.

9. No Contact

During the entire period of solicitation, proposal and evaluation, all contact/inquiries should be made with Procurement Services. No Proposer shall contact any Council member or employee of the City of Fort Myers concerning this solicitation. Such action may result in the firm being removed from further consideration in this solicitation.

10. Proposals

Proposers are responsible for uploading proposals as directed by Procurement Services.

11. Public Entity Crime

The City of Fort Myers shall conduct business in accordance with Florida Statute 287.133. A Public Entity Crime is Violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

12. Florida Statute Public Record

- 12.1 All persons are advised that under Chapter 119, Florida Statutes all responses are deemed a public record and opened to public scrutiny as provided for in said statute.
- 12.2 Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt until such time as the agency provides notice of a decision or intended decision to the award or within 30 days after the bids, proposals, or final replies, whichever is earlier.
- 12.3 If an agency rejects all bids, proposals or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals or replies remain exempt from s.119.07(1) of the Florida Statutes and s.24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Florida State Statutes related to municipal bid exemptions shall always prevail.
- 12.4 Pursuant to Section 119.0701 of the Florida Statutes, Proposers acting on behalf of the City must comply with the public records laws, specifically:
 - a) Keep and maintain public records required by the City to perform the contracted services
 - 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 Chapter 119 of the Florida Statutes or as otherwise provided by law
 - c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Proposer does not transfer the records to the City
 - d) Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Proposer or keep and maintain public records required by the City to perform the service. If the Proposer transfers all public records to the public agency upon completion of the contract, the Proposer shall destroy any duplicate public records that are exempt or confidential and exempt from the public records disclosure requirements. If the Proposer keeps and maintains public records upon completion of the contract, the Proposer 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.

IF THE PROPOSER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROPOSER'S DUTY TO RETAIN AND PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT (239) 321-7045, E-MAIL TO PUBLICRECORDS@CITYFTMYERS.COM, POST OFFICE BOX 2217, FORT MYERS, FLORIDA, 33902-2217.

Florida Statute, § 119.0701 and House Bill, § 273

13. No Lobbying

All Proposers, firms or individuals are hereby placed on notice that any communication, whether written or oral, with the City of Fort Myers elected officials or any other staff or outside individuals working with the City in respect to this request (with exception of Procurement Services personnel designated to receive requests for interpretation or corrections) is prohibited. These persons shall not be lobbied, either individually or collectively, regarding any request for bid, proposals, qualifications and/or any other solicitations released by the City of Fort Myers. To do so is grounds for immediate disqualification from the selection process.

14. Employment Eligibility Verification System (E-Verify)

Statutes and executive orders require employers to abide by the immigration laws of the United States and to employ in the United States only individuals who are eligible to work in the United States. The E-Verify program provides an Internet-based means of verifying employment eligibility of workers employed in the United States but is not a substitute for any other employment eligibility verification requirements. The program will be used for:

- 14.1 Commercial or noncommercial services or construction
- 14.2 Projects which exceed the City of Fort Myers small dollar threshold.
- 14.3 Work performed in the United States.

Exceptions to the program: Commodity based procurement where no services are provided. In exceptional cases, the City Council may waive the requirement.

Proposers, who are not enrolled in the program at the time of contract award, must enroll and produce a copy of the Memorandum of Understanding prior to execution of the contract. Upon signing up for the program, the Proposer must follow the federal guidelines for verifying all their employees, whether assigned to the contract or not, in accordance with the Verification of Employment Eligibility.

Proposers that are already enrolled in the program must produce a copy of their Memorandum of Understanding prior to execution of the contract. Proposers must follow the federal guidelines for verifying all their employees, whether assigned to the contract or not, in accordance with the Verification of Employment Eligibility.

Subconsultant requirement: Proposers shall require all subcontracted vendors to flow down the requirement to use E-Verify to subconsultants.

It shall be the vendor's responsibility to familiarize themselves with all rules and regulations governing this program. For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>

Proposers shall be required to provide the City of Fort Myers Procurement Services an executed affidavit vowing they shall comply with the E-Verify Program for each service/project.

15. Florida Scrutinized Companies

This requests for proposal shall not include or incorporate the Florida orders on business with Syria, Cuba, Iran, Sudan, and Israel. Any statements found that express the contrary shall be considered void and not applicable to the project described herein.

16. Record Retention

Keep and maintain adequate records and documents applicable to the project at the contracted firm's expense for a minimum of five (5) years from date of final payment, unless the firm is notified in writing by the City of the need to extend the retention period. Books and accounts shall be open to investigation upon request.

PART G

SCOPE OF WORK AND REQUIREMENTS

1. Background

The City of Fort Myers, incorporated on March 24, 1886, is located in Lee County, Florida and has a staff of approximately 1000 employees serving a population of approximately 93,000 permanent residents. The City encompasses approximately 50 square miles. The City functions as a Council / Manager form of government. Thomas Edison was one of Fort Myers' early inhabitants and a formational figure in the City's development. Fort Myers became known as "The City of Palms" as a result of Edison's deep respect for nature. Through his effort and determination, the royal palms lining historic McGregor Boulevard were imported and planted resulting in today's beauty and majesty. His best friend Henry Ford shared Edison's enthusiasm in Fort Myers and became a homeowner and frequent visitor. The history associated with Edison and Ford along with the building boom in the late 1800's and early 1900's left a legacy and history unique to Fort Myers. The cobblestone downtown and historic districts have retained much of their charm and proper preservation measures are in place to ensure that charm will be treasured for generations to come.

2. Minimum Qualifications/Requirements of Respondents

- 2.1 Provide a concise description of your firm's experience with similar projects including history, size, experience, references, resources, etc. that will support the City in the performance and execution of this project.
- 2.2 Financial independence capability for fulfilling the requirements of the solicitation.
- 2.3 Experience key personnel assigned to perform and/or oversee the work for the City.

3. Project Overview

The City of Fort Myers is soliciting qualified consulting firms to submit a proposal to prepare a Comprehensive Plan for the City. The most recent comprehensive plan was adopted in 2003. The city is therefore seeking a new update to the Comprehensive Plan which will state the community's goals and policies regarding its future in terms of residential and multifamily housing, open space, coastal management, and infrastructure. Particular attention shall be paid to affordable housing needs and infrastructure demands due to the population growth the City has experienced over the last decade. The Plan should serve as a guide for orderly growth and change and provide a rational basis for future planning and zoning decisions.

The city is looking for an experienced firm willing to incorporate new and innovative methods to development of the Comprehensive Plan. Demonstrated use of technology to outreach and regularly communicate with the community is extremely important. The final Comprehensive Plan should include a phased and prioritized implementation strategy.

4. About the Community

Fort Myers is located in Lee County, Florida. It is also the county seat. With a 2023 population of approximately 105,260, it is the 22nd largest city in Florida. Fort Myers is currently growing at a rate of 6.82% annually and its population has increased by 21.89% since the most recent census, which recorded a population of 86,354 in 2020. Spanning over 49 miles, Fort Myers has a population density of 2,642 people per square mile.

Originally established as Fort Harvie, Fort Myers began transformation into a farming and cattle community in the late 1860's and 1870's. By the mid 1880's Fort Myers began developing a commercial core and gaining national notoriety for local recreational fishing.

In 1887, Lee County was carved from Monroe County. Following the opening of a rail line connecting Fort Myers to Punta Gorda in 1904, a series of building booms fostered several new residential subdivisions beyond Downtown, including Dean Park, Edison Park, and Seminole Park. Over time the original wooden buildings of downtown were replaced with masonry and brick buildings, many of which still exist today. Fort Myers saw its first "sky scraper" Downtown in 1924 with the seven-story addition to the Franklin Arms Hotel. 1924 also marked the construction of a wooden bridge spanning the Caloosahatchee, aptly named the Edison Bridge, after our most famous winter resident.

Fort Myers has four designated historic districts; Edison Park, Dean Park, Downtown, and Seminole Park, along with nearly 20 designated historic landmarks that have the benefit of being a part of the Historic Preservation program.

5. Scope of Work

The project should include existing conditions analysis; strengths, weaknesses, opportunities and challenges; current plan analysis; visioning sessions; city staff, citizens; An innovative engagement and participation plan; meetings; minimum of 4 community engagement meetings. Coordination with existing city plan's such as the Community Redevelopment Agency Redevelopment Plans, Parks and Recreation Master Plan (currently under development) and complete streets policies; Identify strategies to preserve the character of the City's downtown commercial core; Identify viable redevelopment areas within the City and determine redevelopment strategies to initiate the process; Discuss methods to develop new and preserve existing open spaces; Identify the need for

quality of life "Ward" enhancements such as trees, sidewalks, street lights, public art, and other improvements; Twenty (20) year future period; short and long term goals; An implementation plan; and Code analysis and revision recommendations. City staff will finalize the scope of work with the selected consultant prior to contract authorization. The City is open to suggestions other than those items listed which the consultant believes will be of value.

6. Response Requirements

6.1 Proposal Submission

Interested Proposer(s) should include the following information in their proposal. The following format and sequence should be followed in order to provide consistency in firm's responses and to ensure each proposal receives full consideration. All pages should be consecutively numbered.

Upload proposal (signed in blue) in a bookmarked single continuous PDF.

****REMINDER** Proposals shall become public record upon contract award.**

By F.S. 119.071 (b)2.,

Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

6.2 Proposal Format

The following should be included and referenced section separation.

a) Title Page

RFP Number and Name; the firm's name; the name, address, telephone number and email of the contact person; and the date of the proposal.

b) Table of Contents

Identify material by section and page number

c) Transmittal Letter

Two (2) pages maximum. Summarize the key points of the proposal; understanding of the scope of work; signed by an authorized official of the firm.

d) Experience of the Firm (35 pts)

- Experience and capabilities to perform the scope of work (5 pts)
- Required experience & capabilities in-house (5 pts)
- Indicate existing workload and ability to meet timeline(s) outlined in the project. (5 pts)
- Sufficient staff with the right skills to back up team members or speed up job if necessary (5 pts)
- Indicates existing workload and ability to meet timeline(s) outlined in the project. (5 pts)
- Provide 2 examples of completed projects with similar scope and budget within the last 5 years. (5 pts each)

e) Experience/Qualifications of Assigned Personnel (25 pts)

- Academic, training, and licensed credentials of employees as it relates to this project. (20 pts)
- Provide 1 example of a project completed by the project manager with similar scope and budget within the last 5 years. (5 pts)

f) Approach of Project/Design (15 pts) – Provide a clear description of your firm's approach and unique abilities to provide the scope of services as described herein. Project Approach should include, but not be limited to:

- How your firm intends to generally approach the scope of services, including a comprehensive representation, demonstrating an understanding and a commitment of how your firm intends to implement and fulfill the requirements of the scope of services (3 pts)
- How your firm will balance staffing needs for this project (3 pts)
- How your firm will facilitate timely completion of the project (3 pts)
- How your firm will incorporate sound principles of urban in-fill, smart growth development and sustainable redevelopment in planning, design and construction for this project (3 pts)
- Describe unique abilities, innovative approaches, and/or special considerations (3 pts)

g) Compliance with the City's Minority Business Enterprise Policy (0-13 pts) This category is review and score by the Procurement department.

- Certified Minority Business with the State of FL Office of Diversity and within Lee County, FL – Up to 13 points - or
- Shows proof that they have applied for Minority Business status and are awaiting confirmation – Up to 8 points – or
- Is partnered with a minimum of 2 Minority Businesses – Up to 1.5 pts per MBE up to 3 points total

h) Fee Proposal (12 pts)

Fee proposal must be inclusive of all costs associated with the project.

i) Mandatory Forms

The following forms must be completed and submitted with your proposal:

- Attachment A - Document Management Form
- Attachment B – Incorporation Affidavit (Notarized)
- Attachment C – Byrd Anti-Lobbying Form
- Attachment D – Affidavit Certification Immigration Laws
- Attachment E – Federal Contract Provisions
- Attachment F - Proposer's Certification: Acknowledge Receipt of Any Addenda
- Attachment G – Professional Services Agreement – Review & Comments
- Copy of Florida License, Copy of Sunbiz webpage, Copy of Certificate of Insurance, Copy of Company's E-Verify Memorandum of Understanding (UMO), certifications, etc.

j) Affidavits/Certification/Forms

All affidavits and forms must be acknowledged and completed by an official having legal authorization to contractually bind the Firm. These affidavits and forms represent a binding commitment upon the Firm to provide the goods or services offered to the City. The Firm is required to read, and become informed of the provisions of the following applicable forms:

- Conflict of Interest Disclosure
The award of this contract is subject to the provisions of Chapter 112, Florida Statutes. All Firms must disclose within their responses to the City of Fort Myers the name of any officer, director, or agent who is also an employee of the City of Fort Myers (hereinafter the "City"). Furthermore, all firms must disclose the name of any City employee who owns, directly or indirectly, an interest of more than five percent (5%) in the firm of any of its branches. The purpose of this disclosure is to give the City the information needed to identify potential conflicts of interest for evaluation by the team members and other key personnel involved in the award of this contract. The term "conflict of interest" refers to situations in which financial or other personal consideration may adversely affect, or have the appearance of adversely affecting, an employee's professional judgment in exercising any City duty or responsibility in administration, management, instruction, research, or other professional activities. Please submit to the City all information on any potential conflict of interest related to provision of the goods or services requested in this Solicitation.
- Non-Collusion Affidavit
The firm swears and attests that it is fully informed respecting the preparation and contents of the attached Solicitation, and of all pertinent circumstances respecting the provision of the goods or services to the City of Fort Myers. The offer or submittal being made is genuine and is not collusive or a sham. The firm certifies that all information contained in the submittal is truthful to the best of their knowledge and belief. The firm certifies that they are duly authorized to submit this submittal on behalf of the company as its agent and that the company is ready, willing, and able to perform if awarded a contract. The firm further certifies, under oath, that this submittal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, company or corporation submitting a proposal for the same product or service; no officer, employee or agent of the City of Fort Myers or of any other Company who is interested in said submittal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.
- Drug-Free Workplace Provisions
In accordance with Florida Statue 287.087, firm certifies that:
 1. Publishes a written statement notifying that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace named above and specifying actions that will be taken against violations of such prohibition.
 2. Informs employees about the dangers of drug abuse in the workplace, the firm's policy of maintaining a drug free working environment, and available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug use violations.
 3. Gives each employee engaged in providing commodities or contractual services that are under bid or proposal, a copy of the statement specified above.
 4. Notifies the employees that as a condition of working on the commodities or contractual and will notify the employer of any conviction of, plea of guilty or nolo contendere to, any violation of Chapter 1893, or of any controlled substance law of the State of Florida or the United States, for a violation occurring in the work place, no later than five (5) days after such conviction, and requires employees to sign copies of such written (*) statement to acknowledge their receipt.
 5. Imposes a sanction on, or requires the satisfactory participation in, a drug abuse assistance or

rehabilitation program, if such is available in the employee's community, by any employee who is so convicted.

6. Makes a good faith effort to continue to maintain a drug free workplace through the Implementation of the drug free workplace program.

- **Public Entity Crimes Notification**

The firm understands that a public entity as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or such an agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering conspiracy, or material misrepresentation.

The firm understands that "convicted" or "conviction" is defined by the statute to mean a finding or a conviction of a public entity crime with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July, 1989, as a result of a jury verdict, non-jury trial, or entry plea of guilty or nolo contendere.

The firm understands that "affiliate" is defined by the statute to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.

- **Debarment and Suspension Certification**

The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
2. Have not within a three-year period preceding this application been convicted of had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or Local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

- **Scrutinized Certification**

Bidder/Quoter/Consultants/Firm hereby certifies under penalties of perjury, as of the date of this bid, quote, proposal or request for qualifications to provide goods and services to the City of Fort Myers, that it has not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as defined in Section 287.135, Fla. Stat., is not engaged in business operations in Cuba and Syria; and has not engaged in a boycott of Israel and has not been placed on the Scrutinized Companies that Boycott Israel List created after October 1, 2016 and during the term of any contract awarded under this request for quotes.

Firm further certifies that I am duly authorized to submit this certification on behalf of the company as its agent and that the company is ready, willing, and able to perform if awarded a contract.

FIRM UNDERSTANDS THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT FALSIFICATION OF THIS CERTIFICATION MAY RESULT IN TERMINATION OF THE CONTRACT, DEBARMENT OF THE COMPANY FROM SUBMITTING A BID/QUOTE/PROPOSAL OR QUALIFICATION STATEMENT FOR A PERIOD OF THREE (3) YEARS FROM THE DATE THE CERTIFICATION IS DETERMINED TO BE FALSE, CIVIL PENALTIES, AND THE ASSESSMENT OF ATTORNEY'S FEES AND COSTS AGAINST THE COMPANY. FIRM ALSO UNDERSTANDS THAT THEY ARE REQUIRED TO INFORM

THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

- **No Lobbying**

All consultants, firms or individuals are hereby placed on notice that any communication, whether written or oral, with City of Fort Myers elected officials or any other staff or outside individuals working with the City in respect to this request (with exception of the Procurement Services Division personnel designated to receive requests for interpretation or corrections) is prohibited. These persons shall not be lobbied, either individually or collectively, regarding any request for bid, proposals, qualifications and/or any other solicitations released by the City of Fort Myers. To do so is grounds for immediate disqualification from the selection process. The selection process is not considered final until such time as the City of Fort Myers, Mayor, and City Council have made a final and conclusive determination.

- **Employee Eligibility Verification System (E-Verify)**

Statutes and executive orders require employers to abide by the immigration laws of the United States and to employ, in the United States, only individuals who are eligible to work in the United States. The E-Verify program provides an internet-based means of verifying employment eligibility of workers employed in the United States; it is not a substitute for any other employment eligibility verification requirements. The program will be used for:

1. Commercial or noncommercial services or construction
2. Work performed in the United States.

1. Firms, who are not enrolled in the program at the time the City project is advertised, must enroll, and produce a copy of the Memorandum of Understanding (MOU) with the Firm's submission to the City. Upon signing up for the program, the Firm must follow the federal guidelines for verifying all their employees, whether assigned to the contract or not, are in accordance with the Verification of Employment Eligibility.

Firms that are already enrolled in the program must produce a copy of their MOU with the Firm's submission to the City. Firms must follow the federal guidelines for verifying all their employees, whether assigned to the contract or not, are in accordance with the Verification of Employment Eligibility.

Subcontractor requirement: Firms shall require all subcontracted firms to flow down the requirement to use E-Verify to subcontractors. It shall be the firm's responsibility to familiarize themselves with all rules and regulations governing this program. By providing a submission to the City, the Contractor and any subcontractor(s) are obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of any resulting Contract (including any Purchase Order), or if a subcontractor knowingly violates the statute, the resulting subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If any contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.

For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the E-Verify Website. Firms shall be required to provide the City of Fort Myers Procurement Services an executed affidavit vowing they shall comply with the E-Verify Program for each service/project.

- **Certification of Immigration Laws**

THE CITY WILL NOT INTENTIONALLY AWARD CITY CONTRACTS TO ANY FIRM WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

THE CITY MAY CONSIDER THE EMPLOYMENT BY ANY FIRM OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY THE CITY OF FORT MYERS.

FIRM/BIDDER/PROPOSER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS)

ANY BIDDER, FIRMS OR INDIVIDUAL THAT DOES NOT SUBMIT ALL THE REQUIRED FORMS MAY BE DISQUALIFIED FROM FURTHER CONSIDERATION

Attachment A
Document Management Form

(Page needs to be signed and returned with your submittal)

RFP Number: 0065-23

Project Name: Comprehensive Plan Update

All documents, forms, affidavits and alike must be received fully executed. Any documentation found missing or incomplete by the city may classify the firm as non-responsive and further disqualify the firm from this solicitation. It shall be the firm's responsibility to review this Request for Proposals document in its entirety and notify the City of Fort Myers, Procurement Services no later than five (5) days after receipt of the document if there are any pages or pertinent information missing.

Phone: 239-321-7238

Contact: Debra Kearns, CPPB

I certify that I am authorized to sign this form on behalf of the Firm and acknowledge that the document has been reviewed and is complete.

Firm Name: _____

Signature: _____

Printed Name & Title: _____

Date: _____

It is the requesting firm's responsibility to review the submittal request in its entirety and ensure that all submittal requirements are met and attached to your proposal.

Required Submittal Checklist

Item No.	Location	Description	Firm Check Off
1	Attachment A	Document Management Form	
2	Attachment B	Incorporation Affidavit (Notarized)	
3	Attachment C	Byrd Anti-Lobbying Form	
4	Attachment D	Affidavit Certification Immigration Laws	
5	Attachment E	Federal Contract Provisions	
6	Attachment F	Proposer's Certification: Acknowledge Receipt of Any Addenda	
7	Attachment G	Professional Services Agreement – Review & Comments	
8	Firm to supply	Copy of Florida License, Copy of Sunbiz webpage, Copy of Certificate of Insurance, Copy of Company's E-Verify Memorandum of Understanding (MOU), certifications, etc.	
9	Firm to supply	Minority Business Certificates – if applicable	
10	Firm to supply	Proposal	

I certify that I am authorized to sign this form on behalf of the firm and acknowledge that the document has been reviewed and is complete.

Firm Name: _____ Signature: _____

Printed Name & Title: _____ Date: _____

**Attachment B
Incorporation Affidavit**

RFP Number: 0065-23

RFP Name: Comprehensive Plan Update

State of Florida } SS:
County of Lee }

I, (print name) _____ acknowledge that I have legal authorization to contractually bind (name of firm) _____.

I acknowledge that as part of my response to this Solicitation I have read and reviewed copies of the following documents located at [Documents](#):

- Conflict/Non-Conflict of Interest Statement
- Firms Non-Collusion Certification
- Drug Free Workplace Provisions
- Public Entity Crimes Notification
- Debarment and Suspension Notification
- Scrutinized Companies Notification
- Employment Eligibility Verifications System (E-Verify)
- Immigration Laws Notification

I hereby swear or affirm that I have read and that I understand and accept all the requirements and regulations imposed by the above-referenced documents and that I acknowledge and accept the above-referenced documents and all terms and conditions contained therein are incorporated into the response to this Solicitation.

I make this Affidavit under penalty of perjury.

Firm Name: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Notary Public

The foregoing Affidavit was acknowledged before me this _____ day of _____, 20____

By _____ who is personally known to me or who has produced _____ as identification and who did take an oath.

Signature: _____

Notary Commission Number/Expiration: _____

[Notary Seal]

Attachment C
Byrd Anti-Lobbying Form

To be submitted with each bid or offer exceeding \$100,000.00.

The undersigned, _____ of _____

(the "company") hereby certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have paid or will be paid, by or on behalf of undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Company certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Company Authorized Official

Name and Title of Company Authorized Official

Date

Attachment D
Affidavit Certification Immigration Laws

Solicitation No. 0065-23

Solicitation Name: Comprehensive Plan Update

The City will not intentionally award City Contracts to any firm who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C Section 1324 a(e) {Section 274A(e) of the Immigration and Nationality Act ("INA").

The City may consider the employment by any firm of unauthorized aliens a violation of Sections 274A(e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Contract by the City of Fort Myers.

A public agency must require in any contract that the contractor, and any subcontractor thereof, register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system per F.S. Chapter 448.095

If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract per F.S. Chapter 448.095

Firm/Bidder/Proposer attest that they are fully compliant with all applicable immigration laws (specifically to the 1986 Immigration Act and subsequent amendments).

Company Name _____

_____ Signature	_____ Title	_____ Date
--------------------	----------------	---------------

STATE OF _____

COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____ 20____, by _____ who has produced _____ as identification.
(Print or Type Name) (Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signee of this Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. The City of Fort Myers reserves the right to request supporting documentation, as evidence of services provided, at any time.

Attachment E Federal Contract Provisions

As an applicant for funding from the Federal Emergency Management Agency, the City of Fort Myers ("the City") must include certain provisions in contracts funded in whole or in part with federal financial assistance, as applicable under the relevant regulations and agency guidance.¹ Accordingly, this Addendum is required for all agreements, contracts, purchase orders, work orders, etc. (referred to herein as "Contract(s)") that may be utilized in response to a federally-declared disaster, as such contracts may be funded in whole or in part with Federal Public Assistance funding. This Addendum is specific to the Federal Public Assistance program. Funding provided under other federal programs may require different or additional provisions. By signing this Addendum, the Parties agree to incorporate the following provisions into the Contract(s) as indicated below and to any other Contract(s) to which the Addendum is physically attached or incorporated by reference when executed.

1. TERMINATION FOR CONVENIENCE (applicable to contracts over \$10,000)

This Contract may be terminated, in whole or in part, without cause, in accordance with the terms of the original Contract to which this addendum is made a part; or, if none specified, this Contract may be terminated in whole or in part immediately, without cause, with written notice to Individual/Entity/Contractor/Consultant, if the City determines, in its sole discretion that it is in the best interest of the City to do so. In the event termination is exercised under this provision, Individual/Firm/Contractor/Consultant will be compensated for work performed and accepted and goods accepted by the City as of the termination date. Individual/Firm/Contractor/Consultant will also be compensated for any work performed by subcontractors and goods, or supplies ordered which Individual/Firm/Contractor/Consultant could not reasonably cancel or stop at the time of termination. Individual/Firm/Contractor/Consultant will also be compensated for any demobilization costs to which it is entitled under the Contract.

2. TERMINATION FOR CAUSE (applicable to contracts over \$10,000)

The City reserves the right to terminate this Contract immediately, in whole or in part, with cause, in accordance with the terms of the original Contract to which this addendum is made a part; or, if none specified, this Contract may be terminated with ten days' written notice, if the City determines Contractor breached or defaulted on the Contract. In the event termination is exercised under this provision, Individual/Firm/Contractor/Consultant will be compensated for work performed and accepted and goods accepted by the City as of the termination date.

3. REMEDIES (applicable contracts over the SAT (currently, \$250,000))

If any work performed by the Individual/Firm/Contractor/Consultant fails to meet the requirements of the Contract, any other applicable standards, codes or laws, or otherwise breaches the Contract, the City may exercise any remedies provided in the original Contract to which this addendum is made a part; or, if none specified, the City may in its sole discretion:

- (i) elect to have Individual/Firm/Contractor/Consultant re-perform or cause to be re-performed at Individual/Firm/Contractor/Consultant's sole expense, any of the work which failed to meet the requirements of the Contract;
- (ii) hire another Individual/Firm/Contractor/Consultant to perform the work and deduct any additional costs incurred by the City as a result of substituting contractors from any amounts due to Individual/Firm/Contractor/Consultant; or
- (iii) pursue and obtain any and all other available legal or equitable remedies.

This Section shall in no way be interpreted to limit the City's right to pursue and obtain any and all other available legal or equitable remedies against Contractor.

4. COMPLIANCE WITH CLEAN AIR ACT (applicable to contracts over \$150,000)

- (i) The Individual/Firm/Contractor/Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (ii) The Individual/Firm/Contractor/Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification

¹ See 2 C.F.R. § 200.326; Appendix II to 2 C.F.R. Part 200; Federal Procurement Disaster Assistance Team Contract Provisions Template (Sept. 30, 2019), available at https://www.Federal.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT_Contract_ProvisionsTemplate_9-30-19.pdf; FEDERAL Fact Sheet, *Procurement Under Grants: Under Exigent or Emergency Circumstances* (Mar. 19, 2020), available at <https://www.Federal.gov/news-release/2020/03/20/procurement-under-grants-under-exigent-or-emergency-circumstances>.

to the State Recipient, Federal Emergency Management Agency, and the

- (i) appropriate Environmental Protection Agency Regional Office.
- (ii) The Individual/Firm/Contractor/Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

5. COMPLIANCE WITH CLEAN WATER ACT (applicable to contracts over \$150,000)

- (i) The Individual/Firm/Contractor/Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- (ii) The Individual/Firm/Contractor/Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State Recipient, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (iii) The Individual/Firm/Contractor/Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

6. SUSPENSION AND DEBARMENT (for all contracts)

Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. The Individual/Firm/Contractor/Consultant can verify its

status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

- (i) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Individual/Firm/Contractor/Consultant is required to verify that none of the subcontractors, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (ii) The Individual/Firm/Contractor/Consultant certifies it will comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (iii) This certification is a material representation of fact relied upon by the City. If it is later determined that the Individual/Firm/Contractor/Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State Recipient and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

7. BYRD ANTI-LOBBYING AMENDMENT (applicable to all contracts over \$100,000)

By executing this Addendum, Individual/Firm/Contractor/Consultant makes the certification below, which is found at APPENDIX A, 44 C.F.R. PART 18. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(to be submitted with each bid or offer **exceeding \$100,000**)

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

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

(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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

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

8. CHANGES (for all contracts)

Any changes to the scope of work, price, or schedule shall be done in accordance with the terms of original Contract to which this addendum is made a part.

9. ACCESS TO RECORDS (for all contracts)

The following access to records requirements apply to this Contract:

- (i) The Individual/Firm/Contractor/Consultant agrees to provide the City, the Federal Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (ii) The Individual/Firm/Contractor/Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (iii) The Individual/Firm/Contractor/Consultant agrees to provide the Federal Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract. In compliance with the Disaster Recovery Reform Act of 2018, the City and the Individual/Firm/Contractor/Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal Administrator or the Comptroller General of the United States.

10. DHS SEAL, LOGO AND FLAGS (for all contracts)

The Individual/Firm/Contractor/Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific federal pre-approval.

11. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS (for all contracts)

This is an acknowledgement that federal financial assistance will be used to fund the Contract, in whole or in part. The Individual/Entity/Contractor/Consultant will comply with all applicable federal law, regulations, executive orders, FEDERAL policies, procedures, and directives.

12. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, the Individual/Firm/Contractor/Consultant, or any other party pertaining to any matter resulting from the Contract.

13. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS (for all contracts)

The Individual/Firm/Contractor/Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Individual/Entity/Contractor/Consultant's actions pertaining to this Contract.

**14. EQUAL EMPLOYMENT OPPORTUNITY
(applicable to contracts for "federally assisted
construction contract" as defined in 41 C.F.R. §
60-1.3)**

During the performance of this Contract, the Individual/Firm/Contractor/Consultant agrees as follows:

- (i) The Individual/Firm/Contractor/Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Individual/Firm/Contractor/Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (ii) The Individual/Firm/Contractor/Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Individual/Entity/Contractor/Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (iii) The Individual/Firm/Contractor/Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Individual/Firm/Contractor/Consultant's legal duty to furnish information.

- (iv) The Individual/Firm/Contractor/Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) The Individual/Firm/Contractor/Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) The Individual/Firm/Contractor/Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of the Individual/Firm/Contractor/Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Individual/Firm/Contractor/Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) The Individual/Firm/Contractor/Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.
The Individual/Firm/Contractor/Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work.

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

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

15. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (applicable to construction work over \$100,000 that involves the employment of laborers or mechanics)

(i) Overtime requirements.

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

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

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

(iv) Subcontracts. The Individual/Firm/Contractor/Consultant or subcontractors shall insert in any subcontracts the clauses set forth in paragraph (i) through (iv) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be

responsible for compliance by any subcontractors or lower tier subcontractors with the clauses set forth in paragraphs (i) through (iv) of this section.

16. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS (for all contracts)

If the Individual/Firm/Contractor/Consultant intends to subcontract any portion of the work covered by this Contract, the Firm must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (v) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

17. NOT-TO-EXCEED AMOUNT (applicable to all time and materials or time and equipment contracts)

If the Contract provides that the City will pay for Individual/Firm/Contractor/Consultant's services on an hourly rate basis, Contractor shall not proceed with work under the Contract until the City provides to Individual/Firm/Contractor/Consultant, in writing, a not-to-exceed price ceiling for the scope of work. Such writing shall be agreed and signed by authorized representatives of the Parties. Contractor exceeds the price ceiling at its own risk. Changes to the price ceiling may be made pursuant to Paragraph 8 of this Addendum.

18. DOMESTIC PREFERENCE. As appropriate and to the extent consistent with law, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

19. RECOVERED MATERIALS.

Individual/Firm/Contractor/Consultant must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

20. AGENCY OVERSIGHT. The City will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

21. BUY AMERICA PREFERENCE. By May 14, 2022, agencies must ensure that all applicable programs comply with section 70914 of the Act, including by the incorporation of a Buy America preference in the terms and conditions of each award with an infrastructure project.⁹ The Act requires the following Buy America preference: (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Guidelines to this bill can be found at [M-22-11 \(whitehouse.gov\)](https://www.whitehouse.gov/policy/briefings/2019/04/22/2019-04-22-11)

22. Davis-Bacon Act, as Amended (40 U.S.C. 276A to A-7).

The Individual/Firm/Contractor/Consultant certifies that it is, and will continue for the term of this contract, to be in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by the 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, the Vendor is herein 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, Vendor agrees to pay wages not less than once a week. The Vendor must provide a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. Vendor acknowledges that the decision to award this contract or subcontract is conditioned upon the acceptance of the wage determination which the Vendor accepts. The Vendor agrees to report all suspected or reported violations to the Federal awarding agency and to notify the concurrently. The Vendor certifies that it is, and will continue to be, for the term of this contract in full compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Vendors 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 Vendor or sub recipient 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. <https://www.dol.gov/agencies/whd/government-contracts/construction>

23. Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council.

Contracts for more than the simplified acquisition threshold, 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.

24. 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.

NOW, THEREFORE in consideration of the premises and the mutual covenants herein contained, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree to incorporate this Addendum into the following Contract(s):

Contract Name	Contract No.	Effective Date
_____	_____	_____

INDIVIDUAL/FIRM/CONTRACTOR/CONSULTANT

Company Name: _____

By: _____

Title: _____

Date: _____

Attachment F
Proposer's Certification

I have carefully examined this Request for Proposal (RFP) which includes scope, requirements for submission, general information and the evaluation and award process.

I acknowledge receipt of the following addenda, and the cost, if any, of such revisions has been included in the price of the proposal.

Addendum # _____ Date: _____

Addendum # _____ Date: _____

Addendum # _____ Date: _____

Addendum # _____ Date: _____

I hereby propose to provide the services requested in this proposal. I agree that the City terms and conditions herein shall take precedence over any conflicting terms and conditions submitted with the proposal and agree to abide by all conditions of this document.

I certify that all information contained in the proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the company as its agent and that the company is ready, willing and able to perform if awarded a contract.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, company or corporation submitting a proposal for the same product or service; no officer, employee or agent of the City of Fort Myers or of any other Company who is interested in said proposal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

Name of Business

Mailing Address

Authorized Signature

City, State & Zip Code

Name, Title

Telephone Number/Fax Number

E-mail Address

State of Florida

County of _____

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

Signature of Notary

Attachment G
Professional Services Agreement – Review & Comments

Firm has reviewed the "draft" of the Professional Services Agreement and supporting Exhibits provided and offer the following:

☐

Attached find suggested changes and/or additions for the City's consideration.

Comments: _____

☐

Firm is committed to entering the City's Professional Services Agreement as written.

Firm Name _____

Signature _____

Printed Name & Title _____

Date _____

Exhibit 1
Draft of Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT



THE CITY OF FORT MYERS

And

Firm Name

for the project known as

**RFP #0065-23
Comprehensive Plan Update**

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this _____ day of _____ 20____ between the City of Fort Myers, Florida, a municipal corporation in the STATE OF FLORIDA hereinafter referred to as the "CITY", and Firm Name, Inc. hereinafter referred to as the "CONSULTANT".

This Professional Agreement will be in effect for a term of three (3) years or until project is complete effective, whichever comes sooner: Month, date, year, through Month, date, year, unless article 21 is involved.

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: RFP #0065-23, Comprehensive Plan Update.

WHEREAS, the CONSULTANT hereby certifies that CONSULTANT has been granted and possesses valid, current licenses to do business in the State of Florida, in Lee County, and in the City of Fort Myers, 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 CONSULTANT has reviewed the Professional Services required pursuant to this Agreement and is qualified, willing and able to provide, perform or acquire all such services in accordance with the provisions, conditions and terms hereinafter set forth; 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, Chapter 287.055, Florida Statutes, and in accordance with the provisions of the City of Fort Myers Ordinance and Procurement Policy, as approved and put into effect by the City of Fort Myers City Council, January 6, 2020, and as subsequently revised.

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 EXHIBIT "A" entitled "Scope Of Professional Services", which Exhibit "A" is attached hereto and made a part of this Agreement.

ARTICLE 2.00 - DEFINITIONS

2.01 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 of either a Supplemental Agreement or a Change Order Agreement.

2.02 AMENDMENT

An agreed addition to, deletion from, correction or modification of a document or contract.

2.03 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 Exhibit "A", entitled "Scope of Professional Services", which Exhibit "A" is attached hereto and made a part of this Agreement.

2.04 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 Agreements, or previous Change Orders issued thereto. The Change Order document, which shall be executed on a City of Fort Myers 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 Agreements 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, (1) 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 services required, or (2) in the absence of such an agreement concerning compensation, the unilaterally issued Change Order shall set forth the basis to be used in subsequently considering, and reaching agreement on change(s) in the compensation to be paid the CONSULTANT.

The failure on the part of the CONSULTANT to execute a Change Order issued unilaterally by the CITY, to effect a deletion or decrease in the services required, shall have no effect on, or otherwise prevent the CITY from exercising its right to direct the stated deletion or decrease in the services to be provided or performed by the CONSULTANT.

2.05 CITY

The term CITY shall refer to the City of Fort Myers, Florida, a municipal corporation in 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.

2.06 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 Sub-Contractors, required under the covenants, terms and provisions contained in this Agreement, and any and all Amendments, Supplemental Agreements, or Change Orders thereto.

2.07 CONTRACT ADMINISTRATOR

The term Contract Administrator shall refer to the person employed by the City of Fort Myers to serve and act on the CITY'S behalf as the CITY'S Contract Administrator. The City Manager shall act on behalf of the CITY to execute any and all Supplemental Agreements(S) or Change Order(s) approved by the CITY and issued to the CONSULTANT pursuant to this Agreement. The Contract Administrator, within the authority conferred by the City of Fort Myers, 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; and (4) any Amendment(s) or other change(s) relative to Basic Services and Additional Services pursuant to this Agreement, or Supplemental Agreements (S), or Change Order(s) pertaining thereto. The Contract Administrator 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, or any Amendment(s), Change Order(s) or Supplemental Agreements (S) issued there under.

2.08 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, Exhibit "A", or as may be set forth in subsequent Supplemental Agreements, and/or Change Orders agreed to in writing by both parties to this Agreement.

2.09 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 Agreement Exhibit "A", and any Supplemental Agreements and Change Orders authorized thereto, is established to be made on a Not-To-Exceed (N.T.E.) 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 expended by the CONSULTANT'S professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to Exhibit "B" to the above referenced Agreement and any Supplemental Agreements or Change Orders authorized thereto; and

The actual necessary, required and expended non-personnel reimbursable expenses shall be included in the Professional Services cost(s) for the above referenced Agreement and any Supplemental Agreements or Change Orders authorized thereto; and

With the understanding and agreement that the CITY shall pay the CONSULTANT for all such costs and expenses within the established Not-To-Exceed amount for each Task or Sub-Task subject to the CONSULTANT presenting an itemized and detailed invoice with appropriate supporting documentation, including payrolls, and all SUB-CONSULTANT and SUB-CONTRACTOR fees 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 Not-To-Exceed amounts, shall be subject to the review (including independent audit, if desired), acceptance and approval of the CITY; and

With the understanding and agreement that when the CONSULTANT'S compensation is established on a Not-To-Exceed 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 Sub-Contractor costs for any such specific Task(s) or Sub-Task(s) shall not exceed the amount of the total Not-To-Exceed 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 Not-To-Exceed basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the Not-To-Exceed 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), unless otherwise directed by the City's Project Manager, through an approved Change Order.

2.10 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 Sub-Contractors the CONSULTANT may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.11 PROJECT

The term Project shall refer to such facility, system, program or item as described in the summary statement set forth in the Preamble on Page One (1) of this Agreement.

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 Supplemental Agreement(s) and Change Order(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 of services and work provided and performed, and expense, as provided for in this Agreement and approved Supplemental Agreement(s), Change Order(s), and Amendment(s) thereto.

2.13 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.

2.14 SUB-CONTRACTOR

The term Sub-Contractor shall refer to any individual, company or firm providing other than Professional Services, which is engaged by the CONSULTANT to assist the CONSULTANT in providing and performing 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-Contractor.

2.15 SUPPLEMENTAL AGREEMENT

The term Supplemental Agreement shall refer to a written document executed by both parties to this Agreement setting forth and authorizing professional service tasks, which were not set forth in, and are supplemental to the Scope of Services contained in the initial Professional Services Agreement or other Supplemental Agreements issued thereto. The Supplemental Agreement, which shall be executed on a City of Fort Myers standard form, shall set forth the authorized supplement(s) to the: Scope of the 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, or requirements pertaining thereto. The amount of the change in contract compensation and time set forth in any and all Supplemental Agreements 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 Supplemental Agreements including, but not limited to any costs which may result from or be caused by the Supplemental Agreements 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.

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 and in the City of Fort Myers, 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 MANAGER

The CONSULTANT agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the Consultants Project Manager. The Consultants Project Manager 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 and Amendment(s) thereto. The Consultants Project Manager shall have the full authority to bind and obligate the CONSULTANT on any matter arising under this Agreement and its Amendment(s) unless substitute arrangements have been furnished to the CITY in writing. The CONSULTANT agrees that the Project Manager 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 Consultants Project Manager, shall be subject to the prior approval and acceptance of the CITY.

(3) 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 Consultants Project Manager, or any other personnel employed or retained by the CONSULTANT, or personnel of the Sub-Consultant(s) or Sub-Contractor(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, which request may be made by the CITY with or without cause

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 and any Amendment(s) 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. Failure to complete the work as contained in Exhibit "A" Scope of Services, Exhibit "C" Time and Schedule of Performance, shall be a consideration in determination of CONSULTANT responsibility in any future request for contract services.

3.04 STANDARDS OF PROFESSIONAL SERVICES

The work and/or services to be provided and/or performed by the CONSULTANT and by any Sub-Consultant(s) and/or Sub-Contractor(s) engaged by the CONSULTANT as set forth in the Scope Of Professional Services, Exhibit "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the applicable 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, 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, Exhibit "A", 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 the Agreement, and where applicable, additional compensation.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

(1) RESPONSIBILITY TO CORRECT

In accordance with the generally accepted standards of the engineering profession, 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 the CONSULTANT or by any Sub-Consultant(s) and/or Sub-Contractor(s) retained or engaged by the CONSULTANT pursuant to this Agreement. The CONSULTANT shall, without additional compensation, correct, revise, or have corrected or revised any errors, omissions and other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents, and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of the CONSULTANT or any Sub-Consultant(s) or Sub-Contractor(s) engaged by the CONSULTANT.

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

Neither review, approval, or 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 Sub-Contractor(s) engaged by the CONSULTANT, shall not in any way relieve CONSULTANT of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub-Consultants and/or Sub-Contractors 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.

In the performance of the services to be provided in accordance with Exhibit "A" and as set forth in subsequent Supplemental Agreements and Change Orders, CONSULTANT may be required to rely upon data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or other services, work and materials performed and subsequently provided or furnished to the CONSULTANT by the CITY or others on behalf of the CITY. CONSULTANT shall rely and utilize this information without independent review or verification as to its accuracy and completeness unless otherwise provided for in Exhibit "A" and subsequent Supplemental Agreements, and Change Orders.

3.06 LIABILITY

(1) CONSULTANT TO HOLD CITY HARMLESS

The CONSULTANT, acknowledges through the signing of this document, that they will indemnify and hold harmless the City, and its officers and employees, from penalties, liabilities, damages, losses, and costs, including, but not limited to, all reasonable attorneys' fees and all costs of litigation and judgments, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of this agreement.

The CONSULTANT shall not be liable to, nor be required to indemnify the CITY for any portions of damages arising solely and exclusively from the negligence of the CITY. The foregoing shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28.

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 courts 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 Sub-Contractor(s) pursuant to this Agreement. CONSULTANT shall require all of its employees, Sub-Consultant(s) and Sub-Contractor(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 expense and in a manner acceptable to and approved by the CITY, any property damage arising out of, or caused by, the willful misconduct or negligent acts of the CONSULTANT, or of its Sub-Consultant(s) and/or Sub-Contractor(s). This CONSULTANT'S obligation under this sub-article does not apply to property damage caused in whole or in part 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 his or her experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth herein, or as may be required under the Agreement and shall be held accountable, responsible, and liable for the accuracy, completeness, and correctness of any and all such cost estimates. Because CONSULTANT has no control over the cost of labor and materials or over competitive bidding or market conditions, CONSULTANT cannot and does not guarantee that bids or negotiated prices will not vary from any opinion of probable costs prepared by CONSULTANT. 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 estimate(s) of CONSULTANT or Sub-Consultant(s) engaged by CONSULTANT, for the appraisal or valuation of property or easements, or the estimate(s) of damages or costs associated with the acquisition of property or easements are exempted from the provisions of Article 3.09.
- (3) Estimates for Construction Projects

(A) 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 is considered to be accurate within plus or minus ten percent 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 projects; or establishing the assessment amounts for Special Assessment Districts.

Notwithstanding anything above to the contrary, in that event that all responsive and responsible bids exceed the final opinions of probable construction costs prepared by CONSULTANT by more than ten percent (10%), the CONSULTANT and CITY shall: (1) agree in writing to increase such opinion of probable costs; or (2) authorize negotiating or re-bidding of such work within a reasonable time; or (3) cooperatively review the overall scope of the project, the established guidelines and criteria of the

project, the final plans and specifications of the project, and other construction documents and identify and mutually agree in writing to modify applicable parts of said scope, guidelines and criteria, plans and specifications, or other construction documents accordingly to effect the CITY obtaining a lowest priced bid which does not exceed the above mentioned CONSULTANT'S final of probable construction costs by more than ten percent (10%). If required, opinion compensation for the CONSULTANT'S services specific to action (1), (2), or (3) above shall be included in the compensation amount agreed upon for the final design of the Project. The obligation to provide such services, if required, will be the limit of the CONSULTANT'S responsibility in this regard and CONSULTANT shall be entitled to payment for all other services in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest proposal or bid exceeding the final opinion of probable construction costs. 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 the Agreement or Supplemental Agreement(s) or Change Order(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawings prepared by the CONSULTANT, nor shall such modifications adversely affect the safe use or operation of the constructed project.

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.

3.10 PERMITS

The CONSULTANT will be responsible for preparing all required applications and other supportive information necessary to assist the CITY in submitting for and 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 all required applications and other supportive information necessary to assist the CITY in submitting for and 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 the CITY'S subsequent 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 Exhibit "A", 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 and Amendment(s) thereto.

Additional Services shall be administered and authorized as "Supplemental Agreements" or "Change Orders" under the 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 "Supplemental Agreement" or "Change Order" shall have been agreed to and executed by both parties.

Each such "Supplemental Agreement" or "Change Order" 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 that the CONSULTANT execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as Exhibit "F". 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 non-current wage rates of 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 Agreement Exhibit "A" entitled "Scope Of Professional Services" and Supplemental Agreements and Change Orders authorized. The compensation to be paid the CONSULTANT, as set forth in Agreement EXHIBIT "B", (including Attachment 1), entitled "Compensation and Method of Payment" and Supplemental Agreements and Change Orders authorized thereto, shall be understood and agreed to adequately and completely compensate the CONSULTANT for providing or 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 Agreement Exhibit "A" and Supplemental Agreements and Change Orders authorized thereto as stated above."

3.14 AFFIRMATIVE ACTION BY CONSULTANT WHEN ENGAGING SUB-CONSULTANTS

City of Fort Myers City Code Section 38-125 (Ordinance No. 3126) sets a goal of Fifteen (15%) percent of the monies actually spent for contractual services for the purpose of entering into contracts with certified Minority Business Enterprises. Accordingly, the CONSULTANT is encouraged, when selecting or engaging the services of sub-consultants or sub-contractors pursuant to this Agreement, to spend Fifteen (15%) percent of the amount of compensation established in this Agreement and in subsequent Supplemental Agreements and Change Orders authorized thereto for the engagement of the services of certified Minority Business Enterprise Sub-Consultants or Sub-Contractors.

In furtherance of this statutory goal, the CITY expects the CONSULTANT to take affirmative action towards achieving this goal. "Affirmative Action", as used herein, shall constitute a good faith effort by the CONSULTANT to achieve the stated goal of engaging certified Minority Business Enterprise Sub-Consultants or Sub-Contractors to provide or perform services and/or work pursuant to the Scope Of Services required under this Agreement. Efforts taken by the CONSULTANT to assist the CITY in meeting this statutory goal must be documented in detail, records of Sub-Consultants or Sub-Contractors contacted maintained, including negotiation efforts, and written Agreements maintained for services or work awarded to Sub-Consultants or Sub-Contractors.

The CONSULTANT, upon receipt of a written request by the CITY, shall within ten (10) calendar days thereafter, submit to the CITY copies of records and supporting documentation to show evidence of its affirmative action efforts to achieve the above stated goal.

The CONSULTANT is encouraged to contact the City of Fort Myers Procurement Services, or the Minority Business Enterprise Program Coordinator, for information and assistance regarding the CITY'S Minority Business Enterprise Certification Program and listing of certified Minority Business Enterprises.

3.15 ALL DRAWINGS

All drawings for the CITY shall be submitted in both hard copy and electronic form in a format that is completely compatible to the CITY's software.

3.16 ALL REPORTS

All reports and written documents for the CITY will be submitted in both hard copy and electronic form in a format that is completely compatible to the CITY'S software. All photos, exhibits, graphs, tables, etc. contained within any report or document will be provided separately in a file format compatible to the CITY'S software.

3.17 CHANGE IN STATUS

If a firm changes its legal business structure through a merger, acquisition, or sale; has a legal name change, a change in principal location of conducting business; a change in status with the Secretary of State filing, a change in officers, or any other change that affects the structure of the business; a change in the level of service being offered, the nature of the products or service offered; or any deviation from what was presented by the firm to the CITY when being considered for this contract; the firm will immediately notify the CITY of said changes in writing to the office of Procurement Services, 2200 Second Street, City of Fort Myers, Florida 33901.

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 pursuant to the provisions of Article 2.13 of this Agreement. Such notification shall be provided to the CONSULTANT by the City's Contract Administrator.

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 Exhibit "E", entitled "Project Guidelines and Criteria", which Exhibit "E" 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 Contract Administrator 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 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.

4.05 PLAN REVIEWS

Plan reviews by CITY staff is only for conformance with the design concept of the project and for compliance with the information given in the contract documents, and shall not extend to means, methods, techniques,

sequences or procedures of construction or to safety precautions or programs incident thereto. The review does not relieve the CONSULTANT from responsibility for errors or omissions or from responsibility for having the design comply with the provisions of all codes having jurisdiction.

ARTICLE 5.00 - COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC 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 or its Amendment(s) and accepted by the CITY in accordance with the provisions for compensation and payment of said Basic Services set forth and prescribed in Exhibit "B", (including Attachment 1), entitled "Compensation and Method of Payment", which Exhibit "B" is attached hereto and made a part of this Agreement, 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 Supplemental Agreement or Change Order executed by both parties.

5.02 ADDITIONAL SERVICES

The CITY shall pay the CONSULTANT for all such Additional Services as have been requested and authorized by the CITY and agreed to, in writing, by both parties to this Agreement and which have been rendered as Additional Services by the CONSULTANT and completed in accordance with the requirements, provisions, and/or terms of this Agreement or its Amendments, and accepted by the CITY in accordance with the provisions for compensation and payment of said Additional Services, as set forth and prescribed in Exhibit "B", (including Attachment 1), entitled "Compensation and Method of Payment", which Exhibit "B" is attached hereto and made a part of this Agreement, 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 Supplemental Agreement or Change Order executed by both parties.

5.03 METHOD OF PAYMENT

(1) MONTHLY STATEMENTS

The CONSULTANT shall be entitled to submit not more than one 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 Supplemental Agreement(s) and/or Change Order(s), there under. The CONSULTANT'S invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in Supplemental Agreement(s), and/or Change Order(s) there under.

The CONSULTANT'S invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement, or Supplemental Agreement(s), Change Order(s), and/or Work Order(s) thereunder.

The CONSULTANT'S invoice statements shall be itemized of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in Supplemental Agreement(s), Change Order(s), and/or Work Order(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 the CONSULTANT, on the basis of services completed, for tasks set forth in Exhibits "A" and "B", (including Attachment 1), 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. A minimum of thirty-three and one-third (33 1/3%) percent shall be completed prior to first payment being made, provided services performed are on schedule. 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 five percent (5%) 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 Exhibits "A" and "B", (including Attachment 1), 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. A copy of all material shall be submitted with pay estimate. 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, redoing, 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 to be paid in this manner shall be identified in Exhibit "B" 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 five percent (5%) of the amount invoiced until such service requirements are fully completed.

(3) PAYMENT SCHEDULE

The CITY shall issue payment to the CONSULTANT within forty-five (45) 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, including percentage of completion per item. 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 twenty-seven (27) calendar days after the date on which the payment request or invoice is stamped as received. If such objection or exception remains unresolved at the end of ten (10) calendar day 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.

(4) NON-APPROPRIATION

The parties acknowledge that appropriation of funds is a governmental function which the City cannot contractually commit itself in advance to perform and this Agreement does not constitute such commitment. The CITY'S obligation to pay under this Agreement is contingent upon CITY'S annual appropriation of funds for such purpose, and the non-appropriation of funding for such purpose in any fiscal year shall immediately relieve both parties of their respective obligations hereunder, as of the last day for which funds have been appropriated. The CITY shall endeavor, upon determining that sufficient funds will not be budgeted and appropriated in any fiscal year under this Agreement, to provide prompt written notice to the CONSULTANT of such event.

5.04 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: (1) all services performed prior to the effective date of termination, including the overhead and profit allocable to the services performed; and (2) 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.

5.05 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, including the overhead

and profit allocable to the services performed, and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.06 NON-ENTITLEMENT TO ANTICIPATED FEE IN THE EVENT OF SERVICE TERMININATION, 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; and (3) and/or are modified by the subsequent issuance of Amendment(s), Supplemental Agreement(s), and/or Change Order(s), other than receiving the compensation set forth in Sub-Articles 5.04 and 5.05, 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 shall 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 Exhibit "C", entitled "Time and Schedule of Performance", which Exhibit "C" 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 and its Amendment(s), as a result of causes beyond the control of the CONSULTANT, or its Sub-Consultant(s) and/or Sub-Contractor(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 will begin determination with the CONSULTANT to length of extension and legitimacy of cause.

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. Said Schedule shall be updated at each pay request. 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 for completion of the various phases, and/or tasks of the project services set forth and described in this Agreement, as set forth in Exhibit "C", 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

Notwithstanding anything to the contrary in Paragraph 6.02 above, 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 the Agreement, or any Supplemental Agreement(s), or Change Order(s) or Amendment(s) issued thereto. CONSULTANT shall not be responsible for failure to perform in a timely manner due to causes outside CONSULTANT'S reasonable control.

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 – CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire agreement between Owner and Contractor/Consultant concerning the Work consist of: this Contract/Agreement and incorporate by reference 1) the advertised solicitation document 2) the Contractor/Consultant submittal 3) any addenda (if applicable) 4) Drawings/Plans (if applicable) 5) all Purchase Orders issued pursuant to the Solicitation documents 6) all amendments that may after the date of award be executed by the Contractor/Consultant and the City 7) Certificates of Insurance 8) any other Solicitation Documents.

These items constitute the entire contract/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 9.00 - CONFLICT OF INTEREST

The CONSULTANT represents that to the best of its knowledge and belief, 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 then 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 no 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 Sub-Consultant agrees to promptly terminate such representation. CONSULTANT shall require each of such Sub-Consultants to comply with the provision 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 10.00 - ASSIGNMENT, TRANSFER AND SUB-CONTRACTS

The CONSULTANT shall not assign or transfer any of its rights, benefits or obligations hereunder, without prior written approval from the CITY, 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 sub-contract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement or

Amendment(s) 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 Sub-Contractors 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 the event that the CONSULTANT 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 Sub-Contractor(s) set forth in Exhibit "D", entitled "Consultant's Associated Sub-Consultants and Sub-Contractors", which Exhibit "D" is attached hereto and made a part of this Agreement.

ARTICLE 11 - APPLICABLE LAW

Unless otherwise specified, this Agreement shall be governed by the laws, rules, and 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. The parties hereby irrevocably consent to the exclusive jurisdiction and venue of the State or Federal courts in Lee County, Florida, for any and all claims or causes of action arising from or related to this Agreement.

ARTICLE 12 - COVENANTS AGAINST DISCRIMINATION

12.01 FOR PROJECTS WITH FUNDS APPROPRIATED FROM GENERAL CITY 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, religion, national origin, physical disability, gender, sexual orientation or gender identity shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The CONSULTANT shall make every effort to comply with any MBE goals, which have been established for this project.

12.02 FOR PROJECTS WITH FUNDS APPROPRIATED EITHER IN PART OR WHOLLY FROM FEDERAL, STATE SOURCES OR OTHER SOURCES

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, national origin, religion, physical disability, gender, sexual orientation or gender identity shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The CONSULTANT shall comply with the Office of Federal Contract Compliance Programs (OFCCP) and Executive Order 11246 Affirmative Action. CONSULTANTS who are uncertain of their obligations regarding MBE for this project must obtain a copy of all relevant federal, state or other grantor's guidelines from the CITY OF FORT MYERS PROCUREMENT SERVICES. The failure of the CONSULTANT to adhere to relevant guidelines shall subject the CONSULTANT to any sanctions, which may be imposed upon the CITY.

ARTICLE 13.00 - 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 14.00 - INSURANCE

14.01 INSURANCE COVERAGE TO BE OBTAINED

(1) The CONSULTANT shall obtain and maintain such insurance as will protect the CONSULTANT from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of his or her employees including claims insured by usual personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property including loss or use resulting there from; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement,

whether such services, work and operations be by the CONSULTANT, its employees, or by any Sub-Consultant(s), Sub-Contractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

- (2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.
- (3) The CONSULTANT shall require, throughout the time this Agreement is in effect, that any and all of its Sub-Consultants and/or Sub-Contractors obtains and maintains until the completion of that SUB-Consultant's and/or Sub-Contractor's work, such of the insurance coverage described in Article 13.01, as are required by law, be provided on behalf of their employees and others.
- (4) The CONSULTANT shall obtain, have and maintain during the entire period of this Agreement, all such insurance policies as are set forth and required herein.
- (5) The insurance coverage to be obtained by the CONSULTANT, as set forth in Agreement Article 13.03 for: (1) Worker's Compensation; (2) Commercial General Liability; (3) Commercial Automobile Liability; or (4) Professional Liability is understood and agreed to cover any and all of the services or work set forth in Exhibit "A" of this Agreement, or in any and all subsequently executed Change Order(s), or Supplemental Agreement(s). If the total amount of insurance coverage established in, and required by, a Change Order or Supplemental Agreement exceeds the amount of insurance coverage carried by the CONSULTANT, then the CONSULTANT shall be required and expected to acquire such additional insurance, and the compensation established for the Change Order, or Supplemental Agreement, shall include consideration of any additional premium cost incurred by the CONSULTANT to obtain such additional insurance coverage.
- (6) The purchasing of any insurance on the behalf of the CITY shall not waive any defense under Sovereign Immunity.

14.02 CONSULTANT REQUIRED TO FILE INSURANCE CERTIFICATE(S)

- (1) **The CONSULTANT, before the Agreement is approved and executed by the CITY, shall submit to Procurement Services all such original insurance certificates, including all supporting endorsement, and related documentation as are required under this Agreement.** Before the CITY shall provide the CONSULTANT with written Notice to Proceed, and before the CONSULTANT shall commence any service or work pursuant to the requirements of this Agreement, the CONSULTANT shall obtain and maintain insurance coverages of the types, and to the limits specified hereinafter, and the CONSULTANT shall file with the CITY certificates and endorsements of all such insurance coverages. All such Certificates of Insurance are subject to review and approval by the CITY with respect to compliance with the insurance requirements set forth in the Agreement.
- (2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the CITY and licensed in the State of Florida.
- (3) Each Certificate of Insurance submitted to the CITY shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.
- (4) Each Certificate of Insurance shall specifically include all of the following:
 - (A) The name and type of policy and coverages provided; and
 - (B) The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and
 - (C) The date of expiration of coverage; and
 - (D) The designation of the City of Fort Myers, both as an additional insured to the GL & AL on a primary and non-contributory basis, and as a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and

- (E) A specific reference to this Agreement and the Project to which it pertains. (This requirement may be excepted for Professional Liability Insurance); or

In the event the CONSULTANT has, or expects to enter into an agreement for Professional Services other than those provided for in this Agreement; the CONSULTANT may elect to submit a Certificate of Insurance containing the following statement:

"This policy covers the services or work provided or performed by the Named Insured for any and all projects undertaken for the City of Fort Myers pursuant to one or more written Professional Services AGREEMENTS, or written Supplemental Agreements or Change Orders thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project."

Upon receipt and approval of such a Certificate of Insurance, a separate Certificate of Insurance will not be required for each separate agreement.

- (F) An identifying statement indicating the identification of any services or work that is included in, or required under, the Scope Of Professional Services set forth in Exhibit "A" that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the CONSULTANT'S insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements of deductible amount(s), or coverage statement of exclusions or exemptions, the CITY will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

- (G) Name of the Project and/or Project Number should be clearly indicated.

- (5) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by, and on behalf of, the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.
- (6) If the initial or any subsequently issued Certificate of Insurance expires prior to completion of the work or termination of this Agreement, **it is the CONSULTANT'S responsibility to furnish the CITY a renewal or replacement Certificate(s) of Insurance, including all endorsements, not later than thirty (30) calendar days prior to the date of their expiration.** Failure of the CONSULTANT to provide the CITY with such renewal certificate(s) shall be considered justification for the CITY to terminate this Agreement.
- (7) It is vitally important that all insurance coverage(s) required under this Agreement be in effect throughout the entire period of this Agreement. If any of the insurance coverage(s) required by this Agreement should reach the date of expiration indicated on the Certificate(s) of Insurance on record with the CITY, without the CITY having received satisfactory evidence in the form of a Certified Binder or a Certificate of Insurance, that the required insurance coverage(s) has either been renewed or replaced, then the CONSULTANT, unless notified in writing by the CITY to continue, shall therefore automatically and without further notice from the CITY, stop performing all previously authorized services and work until such date as the CITY shall receive and approve satisfactory documentation that the expired insurance coverage(s) has been renewed or replaced. During any time period that the CONSULTANT shall fail to comply with the insurance requirements set forth in the Agreement, the CITY shall not be required to make, nor shall it make payment on any invoices submitted by the CONSULTANT. Payment for any such invoices shall be made promptly by the CITY after the CITY receives and approves the renewal or replacement Certificates of Insurance. During any time period that the CONSULTANT'S services or work is suspended, as provided above, for failure to comply with the insurance requirements set forth in the Agreement, the CONSULTANT shall not be entitled, as a result of such suspension, to any additional compensation or time to provide and perform the required services or work.

14.03 INSURANCE COVERAGES REQUIRED

The CONSULTANT shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts, and in conformance with the following minimum requirements:

(1) WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

- (A) Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of **\$1,000,000** for each accident which limit is greater.
- (B) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the CITY with thirty (30) days prior written notice of cancellation and/or restriction.

(2) COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office, or its equivalent, and must include the following:

- (A) Minimum limits of **\$1,000,000** per occurrence combined single limit; **\$1,000,000** aggregate. This shall include premises and/or Operations, Independent Contractors, and Sub-Contractors and/or Completed Operations, Broad Form Property Damage, and a Contractual Liability Endorsement.
- (B) Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement excluding professional acts.
- (C) Such additional requirements as are set forth in Article 13.01 and 13.02 hereinabove.

(3) COMMERCIAL AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial Automobile Liability Policy filed by the Insurance Services Office, **or its equivalent**, and must include the following:

- (A) Minimum limits of **\$1,000,000** combined single limit liability.
- (B) Coverage shall include owned vehicles, hired, leased, non-owned vehicles, employee non-ownership.
- (C) Such additional requirements as are set forth in Articles 13.01 and 13.02 hereinabove.

(4) PROFESSIONAL LIABILITY

Coverage must include the following:

- (A) A minimum combined single limit of **\$1,000,000** aggregate
- (B) Such additional requirements as are set forth in Articles 13.01 and 13.02 hereinabove.
- (C) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written, so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the CITY shall hold the CONSULTANT responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, the CONSULTANT shall be required to provide written documentation that is acceptable to the CITY establishing that the CONSULTANT has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

ARTICLE 15.00 - 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 16.00 - REPRESENTATION OF THE CITY

The CONSULTANT in providing and performing the services and work required pursuant to this Agreement, and Amendments thereto, shall only represent the CITY in the manner and to the extent specifically set forth in writing in this Agreement or Amendments thereto, and as provided in any written Supplemental Agreement(s), and Change Order(s) issued there under.

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 Amendment 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 17.00 - 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 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. 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, and 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, and data and information contained 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.

ARTICLE 18.00 - MAINTENANCE OF RECORDS

The parties acknowledge and agree that all provisions of the Florida Public Records Law, Chapter 119, are and shall be binding and enforced at all times with regard to all actions and activities under this Agreement. PROVIDER recognizes that in contracting with the CITY, it has the burden of complying with the Florida Public Records Laws, Chapter 119, for any documents in its possession. Nothing in this Agreement shall prohibit or restrict or create any liability on the CITY for complying in good faith with the Florida Public Records Law, Chapter 119 of the Florida Statutes:

To the extent that PROVIDER may meet the definition of a "contractor" as defined by Section 119.0701, Florida Statutes, it will:

- a) Keep and maintain public records required by the CITY to perform the contracted services
- 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 Chapter 119 of the Florida Statutes or as otherwise provided by law
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the CITY;
- d) Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the contractor or keep and maintain public records required by the CITY to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from the public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor 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.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO RETAIN AND PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT (239) 321-7045, E-MAIL TO PUBLICRECORDS@CITYFTMYERS.COM, POST OFFICE BOX 2217, FORT MYERS, FLORIDA, 33902-2217.

ARTICLE 19.00 – 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 20.00 - ENTIRE AGREEMENT

This Agreement, including referenced Exhibits 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.

The following listed documents, which are made a part of, are attached to and are acknowledged, understood and agreed to be an integral part of this Agreement:

- (1) EXHIBIT "A" entitled "SCOPE OF PROFESSIONAL SERVICES"
 - (2) EXHIBIT "B" entitled "COMPENSATION AND METHOD OF PAYMENT"
 - (3) EXHIBIT "C" entitled "TIME AND SCHEDULE OF PERFORMANCE"
 - (4) EXHIBIT "D" entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUB-CONTRACTOR(S)"
 - (5) EXHIBIT "E" entitled "PROJECT GUIDELINES AND CRITERIA"
 - (6) EXHIBIT "F" entitled "TRUTH IN NEGOTIATION CERTIFICATE"
 - (7) EXHIBIT "G" entitled "MINORITY BUSINESS ENTERPRISE"
 - (8) EXHIBIT "H" entitled "INSURANCE".
- (Containing copies of applicable Certificates of Insurance(s) and supporting endorsement(s))

ARTICLE 21.00 - NOTICES AND ADDRESS OF RECORD

21.01 NOTICES BY CONSULTANT TO CITY

All notices from the CONSULTANT to the CITY, shall be in writing and deemed duly served if mailed by registered or certified mail to the CITY at the following address:

21.02 NOTICES BY CITY TO CONSULTANT

All notices from the CITY to the CONSULTANT, shall be in writing and deemed duly served if mailed by registered or certified mail to the CONSULTANT at the following address:

Firm Name, Inc.
Contact Person Name, PE, PSM
Address
City, State, Zip Code
Phone
Email Address

21.03 CHANGE OR ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party given in accordance with the requirements of this Article.

ARTICLE 22.00 - TERMINATION

This Agreement will terminate once the agreement is fully satisfied and accepted by the CITY. This Agreement may also be terminated by the CITY at its convenience, or due to the fault of the CONSULTANT, by the CITY giving thirty (30) 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 day 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, as set forth in Exhibit "A", or the Project Guidelines and Criteria, as set forth in Exhibit "E", or as such may be established by Supplemental Agreement or Change Order. 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, and no such termination request submitted by the CONSULTANT shall become effective unless, and until, CONSULTANT is notified, in writing, by the CITY of its acceptance.

22.01 CONSULTANT TO DELIVER MATERIALS ON TERMINATION

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 or provided by the CONSULTANT on behalf of the CITY.

ARTICLE 23.00 – AMENDMENTS/MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement may be amended upon the mutual acceptance thereof, by both parties and shall only be valid when issued in writing as a properly executed Amendment(s), or Supplemental Agreement(s), or Change Order(s). In the event of any conflicts between the requirements, provisions,

and/or terms of this Agreement and any written Amendment(s), Supplemental Agreement(s), and/or Change Order(s), the latest executed Amendment(s), Supplemental Agreement(s), and/or Change Order(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 therein, 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 24.00 - PROHIBITION AGAINST CONTINGENT FEES

The CONSULTANT (architect or registered land surveyor or professional engineer, as applicable) warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the consultant to solicit or secure this agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of this Agreement.

ARTICLE 25.00 - ACCEPTANCE

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement on the dates shown below to be effective the day and year first shown above.

CITY OF FORT MYERS, FLORIDA
a Municipal Corporation

ATTEST:

By: _____
Kevin B. Anderson, Mayor

Gwen Carlisle, MMC, City Clerk

Date: _____

By: _____
Marty K. Lawing, City Manager

Date: _____

APPROVED AS TO FORM:

Grant Williams Alley, City Attorney

DRAFT

Company Witnesses

Witness

Name: _____

Name: _____

By: _____

Authorized Signer Name

Title: _____

Date: _____

CORPORATE SEAL

EXHIBIT A
SCOPE OF SERVICES

Date:

For:

RFP #0065-23, Comprehensive Plan Update

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 SERVICES under the covenants, terms and provisions of this Professional Services AGREEMENT:

Full details of the General Scope of Services are contained in the referenced Project Name and RFQ document number shown above. This scope is incorporated by reference.

Section 2. Tasks

Pursuant to the GENERAL SCOPE of the SERVICES stated hereinabove, 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 EXHIBIT "B" entitled "COMPENSATION AND METHOD OF PAYMENT".

DRAFT

EXHIBIT B

COMPENSATION AND METHOD OF PAYMENT

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 EXHIBIT "A", entitled "SCOPE OF SERVICES", as follows:

Note: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) 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 Exhibit "A".

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE

Total _____

Section 2. Additional Services

The CITY shall compensate the CONSULTANT for such Additional Services as are requested and authorized in writing for such amounts, or on such a basis, as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for Additional Services requested and authorized in writing by the CITY shall be as set forth in Article 3.11 of this Agreement.

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 in ATTACHMENT NO. 1 hereto, dated _____, 20_____, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

ATTACHMENT No. 1 TO EXHIBIT B

PRIME CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE

Date:

Consultant Name _____

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct * Payroll Average Hourly Rate	(3) Multiplier **	(4) Hourly Rate to be charged (column 2x3)
DRAFT			

* Note: Direct Payroll hourly rate means the actual gross hourly wage paid.

** Note: Indicate applicable multiplier for indirect personnel costs, general administrative and overhead costs and profit.

EXHIBIT C

TIME AND SCHEDULE OF PERFORMANCE

Date:

This EXHIBIT C establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to Article 6.00 of this Agreement.

Phase and/or Task Reference as Enumerated in EXHIBIT "A"	Name or Title of Phase and/or 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

DRAFT

EXHIBIT D

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUB-CONTRACTOR(S)

Date:

CONSULTANT has identified the following SUB-CONSULTANT(S) and/or SUB-CONTRACTOR 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	Disadvantaged Business Enterprise (If Yes, Indicate Type)			SUB-CONSULTANT Services are Exempted from Prime Consultant's Insurance Coverage	
		Yes	No	Type	Yes	No

EXHIBIT E

PROJECT GUIDELINES AND CRITERIA

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

DRAFT

EXHIBIT F

TRUTH IN NEGOTIATION CERTIFICATE

Date:

This Certificate is executed and given by the undersigned as a condition precedent to entering into a PROFESSIONAL SERVICES AGREEMENT with the City of Fort Myers for the project known as:

For:

RFP #0065-23, Comprehensive Plan Update

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statement 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 Article 3.12.
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 here-in-above.
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 the CONSULTANT 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:

By: _____
<<authorized_officer>>

Title: _____

The foregoing instrument was acknowledged and executed before me by the above signed on this _____ day of _____, 20_____.

Notary Seal

Notary Public, State of Florida at Large

My commission expires:

EXHIBIT G

ARTICLE V. MINORITY BUSINESS ENTERPRISE PROGRAM

Sec. 38-122. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business location means a permanent office or other site where a local business conducts, engages in or carries on all or a portion of its business; has personnel, equipment and materials within the boundaries of the county sufficient to constitute a present ability to perform the service and/or provide the goods. Business stationery and business cards must make a specific reference to a county address. A post office box or a location at a postal service center shall not constitute a business location.

Construction means the erection, rehabilitation, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service, and includes the supervision, inspection and other on-site functions incidental to construction.

Contract means a binding agreement by which the city is committed to expend or does expend its funds or other resources for or in connection with any of the following purposes:

- (1) Construction of any public improvements
- (2) Purchase of any goods or services
- (3) Procurement of professional services.

Contractor means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.

County business means any person, firm, partnership, company or corporation which is duly licensed and authorized to engage in the particular business for which a proposal is submitted, and whose principal place of business, in the sole opinion of the city, is located within the boundaries of the county.

Goods means any tangible personal property, other than services or real property.

Minority business enterprise means a business certified by the state office of supplier diversity and a registered city vendor, where the primary place of business is within the county, as demonstrated by holding all applicable licenses and/or certifications as required.

Professional services mean those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying or mapping as defined by state statutes, or those performed by any architect, professional engineer, landscape architect, or registered surveyor or mapper in connection with his professional employment or practice.

Purchasing manager means the principal public purchasing official for the city, who shall be responsible for the procurement of supplies, services and construction in accordance with the city purchasing policy and procedures manual.

Services means the furnishing, primarily, of labor, time and/or effort, including construction contracts, if licensed as required.

Sec. 38-123. Created; purpose; applicability

There is created a minority business enterprise program to assist and protect the interests of minority businesses in order to promote and encourage full and open competition in the city, and to enhance opportunities for individuals to successfully compete in a free market as independent business owners in the city. The program shall apply to all contracts and shall include the taking of steps to increase the participation of minority business enterprises.

Sec. 38-124. Administration; assistance; utilization

- (a) Administration. The purchasing division shall administer this article by utilizing those businesses within the county on the state office of diversity list of certified minority businesses for participation in city contracts.
- (b) Assistance. The purchasing division shall provide appropriate assistance and direction to minority business enterprises so as to maximize their participation in contracts awarded by the city.
- (c) Utilization.
 - (1) This subsection (c) is applicable to procurement of construction contracts (see, section 38-125) and professional services (see, section 38-127); and goods and services (see section 38-126).
 - (2) Bidders shall meet or exceed, or demonstrate that they could not meet, despite their good faith efforts, the contract goals set by the city. Certain minority business enterprise participation information shall be submitted with the bid proposals as required. Award of the bid shall be conditioned upon submission of the minority business enterprise participation information with bid proposals, and upon satisfaction of the contract goals or, if the goals are not met, upon demonstration that sufficient good faith efforts were made to meet the goals.
 - (3) Bidders are encouraged to perform the following:
 - a. Attend pre-bid conferences to address minority business enterprise compliance questions.
 - b. Thoroughly review the minority business enterprise program regulations and accompanying forms early in the bidding preparation process to adequately comply and have questions timely addressed.
 - c. Contact the purchasing division regarding questions.
 - d. Comply with the forms to be submitted with bids to avoid a non-responsiveness ruling.
 - e. Complete all forms fully and accurately.
 - (4) The city shall provide a list of qualified minority business enterprises that are state certified within the county with distribution of the bid package on the bid issuance date. If additional minority business enterprise names are added during the bid solicitation term, an addendum may be issued. However, if an addendum is not issued, the originally distributed minority business enterprise list shall be utilized. Bidders are required to include documentation and utilization forms as part of their submittal package as follows:
 - a. General contractor or professional information.
 - b. Schedule of minority business enterprise participation.
 - c. Failure to submit completed utilization forms may result in a general contractor's bid being deemed non-responsive and the bid being rejected. If no minority business enterprise participation is proposed, it should be so stated on the forms as required.
 - d. The city reserves the right to request copies of proposals submitted by a minority business enterprise to the contractor or professional. Copies of said proposals shall be sent by facsimile or hand delivered to the purchasing division within 24 hours after the request is made. If the proposals are not delivered within the 24-hour period, the contractor or professional may be deemed non-responsive.
 - (5) Sufficient information to demonstrate that the contractor or professional made a good faith effort to meet the goal should be submitted with the bid. Contractors or professionals must use the good faith effort format and forms provided by the city in soliciting minority business enterprise participation and submit these forms, completed in full with their submittal.
 - (6) In evaluating the good faith effort of a contractor or professional, the city requires documented notice from the contractor or professional by facsimile transmittal, certified mail, return receipt requested, or hand delivered, with receipt, to certified minority business enterprise participants, that perform the type of work, which the contractor or professional intends to subcontract. The contractor or professional shall indicate the following in the notice to minority business enterprises:
 - a. The specific work the contractor or professional intends to subcontract, including contract plans and specifications related to the specific sub-contract work requested.
 - b. Along with good faith effort forms a summation of all minority business enterprise quotations received and an explanation of why any minority business enterprise participant was not selected. If the minority business enterprise participant was not selected, the name of the subcontractor and price submitted for that portion of the work shall be listed.
 - (7) The city will evaluate the good faith efforts of a contractor or professional by considering the following:

- a. Whether a minority business enterprise is qualified to perform the portions of work selected by the contractor or professional. The ability of a contractor or professional to perform the work with its own work force will not excuse a contractor or professional from meeting the minority business enterprise goals.
 - b. Whether the minority business enterprise goals were met by other bidders.
- (8) Failure to satisfy any of the above-referenced documentation requirements may result in bid submittals being deemed nonresponsive. All documentation must be complete and included in the bid submittal. Good faith efforts to meet the minority business enterprise goals shall be documented. The appropriate form shall reflect whether a good faith effort was made or assistance was offered but not accepted by the minority business enterprise firm.
- (9) The contractor or professional shall provide an annual reporting system to document the percentage of contracts that have been awarded to minority business enterprises.
- (d) Exemptions to minority business enterprise utilization. The minority business enterprise utilization in this section shall not apply to contracts or purchases as follows:
 - (1) Purchases or contract for which funding is received and minority business enterprise utilization is superseded by any other laws, rules, regulations or policies.
 - (2) Purchases made utilizing cooperative purchasing agreements with other governmental entities.
 - (3) Purchases made under emergency procedure situations as set forth in the Purchasing Policy and Procedures Manual, on file in the city clerks office.
 - (4) Purchases made for items that have been deemed as a single source and/or standard items utilized by the city.

Sec. 38-125. Construction contract requirements.

- (a) The following requirements are adopted by the city for the purpose of increasing the level of minority business enterprise participation in city contracts. As a goal, the city should utilize minority business enterprises for 15 percent of the total dollars when contracting for construction contracts through prime contracts or subcontracts.
- (b) Nothing shall prohibit a higher percentage participation by minority business enterprises whereby minority business enterprises possess the qualifications to perform 100 percent of the contract.
- (c) In the event a minority business enterprise has been selected, but is not utilized on the awarded job, the general contractor is obligated to offer this trade area to another certified and licensed minority business enterprise before seeking a nonminority business enterprise subcontractor to perform the contracted work. If no other minority business enterprise is available or does not enter into a contract, the general contractor may use a nonminority business enterprise. A nonminority business enterprise contract shall not be executed between the general contractor and the nonminority business enterprise subcontractor without full knowledge and approval of the contracts administration division and the purchasing division.
- (d) The contracts administrator shall be responsible for monitoring the execution of the contract between the general contractor and all minority business enterprise subcontractors. Presentation of an approved, executed minority business enterprise contract is a prerequisite to execution of a contract between the city and the general contractor, within ten days after award of the contract.
- (e) The general contractor shall provide the minority business enterprise subcontractor with ten percent of the minority business enterprise contract amount as funds for mobilization in advance of the commencement of construction. The total minority business enterprise mobilization funds will be indicated as a separate line item on the schedule of values. Contractors are required to pay minority business enterprise contractors within 30 days of receipt of payment from the city.
- (f) All bid utilization forms must include a break down between labor and material.

Sec. 38-126. Goods and services requirements.

- (a) The procurement of goods and services under this section is for minority business enterprises providing 100 percent of the goods and services.

- (b) The purchasing division shall maintain a list of services provided by minority business enterprises located in the county that are on the state office of diversity list of certified minority businesses for participation in city contracts that will be used when the city is purchasing goods and services under \$25,000.00, but more than the established small dollar threshold for the city. Those measures shall include a provision that every effort will be made by purchasing agents to contact all minority business enterprises within a particular commodity area for purchases under \$25,000.00, but more than the established small dollar threshold for the city. Awards of purchases under \$25,000.00, but more than the established small dollar threshold for the city will be made to the lowest responsible, responsive bidder unless a minority business enterprise is within seven percent of the lowest nonminority business enterprise bid, then the award shall be made to the minority business enterprise submitting the lowest bid.
- (c) The minority business enterprise participation measures provide that every effort will be made by purchasing agents to contact all minority business enterprises within a particular commodity area for purchases over \$25,000.00. Awards of purchases over \$25,000.00 will be made to the lowest responsible, responsive bidder unless a minority business enterprise is within six percent or up to \$10,000.00, whichever is less, of the lowest nonminority business enterprise bid, then the award shall be made to the minority business enterprise submitting the lowest bid.

Sec. 38-127. Professional service requirements.

- (a) The city will provide contracting opportunities for professional services pursuant to state statutes, as amended, known as the Consultant's Competitive Negotiation Act, which requires that one element of consideration is minority business enterprise participation.
- (b) The contracts administration division and the purchasing division shall make every effort to increase minority business enterprise participation within a particular profession during a solicitation for professional services.
- (c) A point system shall be utilized to determine the recipient of the contract award. Businesses submitting proposals to provide professional services to the city will be eligible to receive points, not to exceed 12 percent of the total number of possible points awarded, for minority business enterprise participation.
- (d) It will be the responsibility of the firm submitting a proposal to furnish all the necessary information to the city in order to receive points for minority business enterprise participation.

Sec. 38-128. Sanctions.

- (a) Every contract awarded under this article shall contain language indicating that if any document submitted to the city by a contractor, subcontractor, bidder or individual to be certified and licensed as a minority business enterprise for the purpose of participating in any contract contains false, misleading or fraudulent information, or any person knowingly engaged in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this article by providing false, misleading or fraudulent information, the purchasing manager shall debar for cause following the debarment or suspension procedures provided in the purchasing policies and procedures manual. Any contractor that does not use the minority business enterprise specified in the bid proposal shall be sanctioned. The sanctions on the contractor, subcontractor, bidder or individual may include any of the following:
 - (1) Withholding of payment.
 - (2) Termination, suspension or cancellation of the contract, in whole or in part.
 - (3) Denial to participate in any contracts awarded by the city for a period of not more than three years.
- (b) If the purchasing manager, purchasing/minority business enterprise dispute committee and city council determine, after written notice, that a contractor and/or minority business enterprise has made misrepresentations regarding the utilization of minority business enterprises, or has colluded with another making such misrepresentations or material omissions, the contractor or minority business enterprise, as the case may be, shall be recommended to be disqualified from contracting or subcontracting on future contracts for a period of not more than three years. Such persons or firms determined to have violated any sections of this article shall be subject to debarment for not more than three years under the cities

purchasing procedures. The city shall maintain a list of such disqualified entities, which shall be available for public inspection. In the event that a contractor submitting a bid is determined not to have been involved in any misrepresentation of status of a disqualified subcontractor included in the bid, the city may allow the contractor to discharge the disqualified subcontractor and identify and engage a qualified subcontractor as its replacement for inclusion in the bid. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject. The appeal process shall follow the purchasing policies and procedures manual.

DRAFT

EXHIBIT H

**INSERT THE
CERTIFICATE OF INSURANCE
HERE**

MANDATORY REQUIREMENTS OF CERTIFICATE: The City of Fort Myers is to be specifically included as an additional insured on both comprehensive general liability and the business auto liability policies.

1. Additional Insured Boxes need to be checked.
2. "Additional Insured" Endorsement page(s) MUST accompany the Certificate of Insurance
3. Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the CITY with thirty (30) days prior written notice of cancellation and/or restriction.
4. Check to ensure the dollar amount for each category is correct
5. DESCRIPTION OF OPERATIONS BLOCK: The following verbiage must be included in this block on COI:

City of Fort Myers named as Additional Insured on Comprehensive General Liability and Business Auto Liability policies.

RFP #0065-23

Comprehensive Plan Update

CERTIFICATE HOLDER verbiage (NO names of persons/divisions/departments can appear in this section):

The City of Fort Myers
2200 Second Street
Fort Myers, FL 33916