

*CITY OF CAPE CORAL*  
Request for Qualifications

“Master Agreement”

*for*  
*Citywide*  
*Professional Consultant*  
*Continuing Services*  
*(CCNA)*

*(Professional Engineering Services)*

CON-RFQ2323KR-D



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**PROFESSIONAL  
SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this <sup>21<sup>ST</sup></sup> day of 13, 2024, by and between the City of Cape Coral, Florida, a municipal corporation of the State of Florida, hereinafter referred to as the "City" and "Avalon Engineering, Inc." a Florida Corporation, hereinafter referred to as "Consultant" or "Engineer".

WITNESSETH:

WHEREAS, the City is a municipality providing to its citizens a comprehensive range of municipal services including general government, public safety, community development, public works, planning, utilities, and parks and recreation; and

WHEREAS, the City desires to contract with Firm(s) to provide Citywide **Professional Consultant Continuing Services (CCNA)** utilizing Staffing Cost Proposals (Exhibit A) for various City departments on an as needed basis. The Professional Continuing Services may include any of the following (not intended to be exhaustive):

*Planning; Design; Preparation of Preliminary Plans; Preparation of Specifications; Preparation of Final Plans; Preparations of documents, include preliminary and final cost estimates, bidding documents, information sheets; recommendations of consideration; Construction Project Management; Auxiliary Construction duties, which may include preparing progress reports, reviewing shop drawings, monitoring field testing and evaluation of change orders, analysis of pay applications. Performing surveying (boundary, topographic, miscellaneous design surveys); electrical, environmental, mechanical, hydraulic, civil design, hydrogeologic, planning services, permitting, budgeting, opinion of probable cost estimates, as built plans, traffic analysis, traffic studies, irrigation system design, landscape design, architectural design, structural analysis, trade service design, construction management, etc.*

WHEREAS, the Consultant hereby certifies that it has been granted and possesses valid, current licenses to do business in the State of Florida, Lee County, Florida and the City of Cape Coral, issued by the respective agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, Consultant has reviewed the professional services required pursuant to this Agreement and is qualified, willing and able to provide and perform 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 Consultant's Competitive Negotiation Act, Section 287.055, Florida Statutes, and in accordance with the provisions of all City procurement standards.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Consultant, intending to be legally bound, covenant and agree as follows:

**ARTICLE 1  
RECITALS**

The recitals set forth above are true and correct and are incorporated herein by reference.

**ARTICLE 2  
DEFINITIONS**

2.1 City: The term "City" shall mean the City of Cape Coral, also referred to as "Owner".

- 2.2 Consultant: The term "Consultant" shall mean prime consultant, or the "Firm" shall mean "To be Determined" a "xx" incorporated company.
- 2.3 Contract Documents: The term "Contract Documents" shall mean this Agreement, the City's Request for Qualification – CON-RFQ2323KR, the Consultant's responses and submissions to the RFQ, and all drawings and specifications prepared and/or adopted by Consultant and its sub-consultants while managing projects under this agreement. Any special conditions, together with all written amendments, change orders, work change directives or field orders, addendums, attached exhibits and signed forms will become a part of this agreement and are incorporated herein. In the event of conflict between any provisions of any other document referenced herein as part of this Agreement, the terms of this Master Agreement shall control. The Staffing Cost Proposal for each of the individual projects, along with any attached documents will utilize the terms and conditions of this Master Agreement.
- 2.4 Work: The term "Work" shall mean everything expressly or implicitly required to be furnished as the City's Firm of Record to provide professional engineering services to assist the City in accomplishing the general project elements outlined in each of the Staffing Cost Proposals. The Staffing Cost Proposals (Exhibit "A"- sample) will include a general outline of anticipated services, deliverables, schedule/timeline, hours, fees, other expenses required to accomplish tasks by each professional personnel classification position (Exhibit "G") outlined to meet the specific service requests as maybe performed for the design of a fully, constructible, operational and functioning Project, including but not limited to, that work described in Exhibit "A" - "Staffing Cost Proposal" sample as attached hereto.
- 2.5 Legal Entity is the legal name of submitting firm that will be utilized when creating an agreement with the awarded firm. The legal entity must be an active registered firm registered in the State of Florida with the Division of Corporations <https://dos.myflorida.com/sunbiz>.
- 2.6 Project: The term "Project" shall mean the outlined Project as defined in the Staffing Cost Proposal (Attachment I) and/or Scope of Professional Services (Exhibit A), which will be mutually defined and developed, on as needed basis.
- 2.7 Project Area: The term "Project Area" shall mean the established geographical boundaries within the City of Cape Coral, or other areas, that will be defined by "City and/or City's Project Manager", in the Staffing Cost Proposal
- 2.8 Substantial Completion: Completion of the Services outlined in the Staffing Cost Proposal (Scope of Professional Services) with completion and readiness for final payment, as set forth in Staffing Cost Proposal agreement, per the timelines as outlined in the document.
- 2.9 Final Completion of Design: Acceptance of Work in accordance with the Staffing Cost Proposal, as defined by City Project Manager, with any necessary corrections completed, so that the Professional Services can be utilized for the purposes for which it is intended.
- 2.10 Contract Duration: The time for this agreement will be a three (3) year period, with one (1) additional optional 3-year renewal period.

### ARTICLE 3 SCOPE OF PROFESSIONAL SERVICES

Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and Work as set forth in the Staffing Cost Proposals (Exhibit A) when applicable, as indicated in said schedule, which is attached hereto and made a part of this Agreement ("Master Agreement – Citywide Professional Consultant Continuing Services (CCNA)"). Consultant shall be responsible for providing and performing all services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all the tasks and work set forth in the "Staffing Cost Proposal" as attached hereto as (Exhibit "A") which includes the Consultant's Scope of Professional Services with tasks, timelines and deliverables required to meet the City's services required.

ARTICLE 4  
CONTRACT MODIFICATIONS

The City reserves the right to make any contract modifications it so desires, including but not limited to the deletion or removal of specific tasks or activities from the scope of the Work to be performed hereunder. All contract modifications shall be performed in accordance with the terms and conditions of this Agreement. No extra Work shall be performed unless ordered in writing by the City prior to the installation of such Work and upon the terms agreed to in advance by the City.

ARTICLE 5  
ADDITIONAL PROFESSIONAL SERVICES

The City may, without invalidating this Agreement, require that Consultant perform professional services ("Additional Professional Services") in addition to those identified as Professional Services in this Agreement. If the Consultant believes a professional service to be beyond those included in the Professional Services, Consultant shall notify the City in writing, and obtain the City's written authorization to proceed with such service as an Additional Professional Service for such service to be considered an Additional Professional Service. These Additional Professional Services shall be provided by the Consultant if directed and authorized in advance, in writing, by the City and if Consultant is reasonably qualified to provide the services. Additional Professional Services shall be performed under and governed by the terms and provisions of this Agreement. The City shall pay Consultant for all Additional Professional Services directed and authorized in writing and in advance by the City, except that the City shall not be obligated to pay for any such Additional Professional Services or any other services which result from or are caused by Consultant's breach of its obligations under this Agreement.

Furthermore, and notwithstanding the foregoing and the City's right to require performance of Additional Professional Services under this Agreement, the City may desire to enter into subsequent agreement(s) with Consultant for Consultant to provide further construction bidding services and inspection services. In such event, the City and Consultant will negotiate and endeavor to enter into subsequent agreement(s) for the furnishing of such further services.

The Firm agrees that it will incorporate the provisions of this Article 5 into all agreements with lower tier sub-consultants who will also include this Article 5 into agreements with all lower tier sub-consultants, etc. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost-plus Fee change order proposals.

- 5.1 **Contingency:** In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the work.
- 5.2 **Amendment/Change Order Proposal (Time and Scope Change Directives):** The Firm's proposals for changes in the Agreement amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Firm to proceed with the changes without waiting for the Firm's proposal or for the formal amendment to be issued. In the case of an unacceptable Firm proposal, the Owner may direct the Firm to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Firm by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in an Amendment which will result in a change order to the Agreement. The use of a written Amendment to the original staffing cost proposal will be the required method of change order to an existing Staffing Cost Proposal. The Amendment shall be drafted by the City staff, with the inclusion of the consultant's written proposal, provided on their letterhead, for a mutually agreed upon amendment. Change Orders for Scope/Price will be via a written amendment by City staff and signed by authorized City personnel and consultant personnel. Time changes or extensions may be performed through written change orders by mutual agreement of the firm and designated City project manager and shall be provided as an attachment to the open purchase order for the Staffing Cost Proposal. The hourly rates as shown in Exhibit "E" will be utilized for any mutually agreed upon amendments.

- 5.3 **Accurate Change Order Pricing Information:** Firm (sub-consultant or supplier) agrees that it is responsible for submitting accurate cost and pricing data to support its Change Order Proposals or other Agreement price adjustments under the Agreement. Firm further agrees to submit change order proposals with cost and pricing data, which is accurate, complete, current, and in accordance with the terms of the Agreement with respect to pricing of change orders. Firm agrees that any "buy-out savings" on change orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Firm with a sub-consultant or a material supplier after receiving approval of a change order amount that was designated to be paid to a specific subconsultant or supplier for the approved change order work – any change to a NTE fee for a project fee would require a mutually agreed upon written amendment to the Staffing Cost Proposal contract utilizing hourly rates as shown in Exhibit E.
- 5.4 **Right to Verify Change Order Pricing Information:** Firm, sub-consultant and supplier agrees that any designated Owner's representative will have the right to examine (copy or scan) the records of the Firm, subconsultant or supplier records (during the contract period and up to three years after final payment is made on the contract) to verify the accuracy and appropriateness of the pricing data used to price all change order proposals and/or claims. Firm agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the Agreement regarding pricing of change orders, an appropriate contract price adjustment will be made. Such post-approval Agreement price adjustments will apply to all levels of sub-consultants and/or suppliers and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders. This provision survives the expiration of this Agreement.
- 5.5 **Requirements for Detailed Change Order (Amendments) Pricing Information:** Firm agrees to provide and require all Subconsultant and suppliers to provide a breakdown of allowable labor cost information as outlined in this Article 5. This information will be used to evaluate the potential cost of labor related to change order work. It is intended that this information represent an accurate estimate of the Firm's actual labor cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders (amendments) are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate. The hourly rates as provided in Exhibit "E" shall be utilized for any change orders (**amendments**), along with personnel qualification classifications as provided in Exhibit "G".

ARTICLE 6  
TIME FOR PERFORMANCE

- 6.1 Following the execution of this Agreement by both parties and after Consultant has complied with the insurance requirements set forth herein, the City may issue to Consultant task order assignments on as needed basis. Those task order work assignment will be provided a written notice to proceed. Following the issuance of such a written notice to proceed, Consultant shall commence Work within fourteen (14) calendar days and shall carry on all services and work in a timely and diligent manner to substantial completion, as provided within a Staffing Cost Proposal for designated (xxx) calendar days, which shall be completed as required in Exhibit "A" – "Staffing Cost Proposal".
- 6.2 Should Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of Consultant, or its subconsultants and/or subcontractors and not due to their fault or neglect, 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 Consultant's time of performance. Upon receipt of Consultant's request for an extension of time, the City shall grant the extension if the City, in its sole discretion, determines that the delay(s) encountered by Consultant or its sub consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.
- 6.3 Consultant shall be required as a condition of this Agreement to prepare and submit to the City, Consultant's Work schedule, which is included in the Staffing Cost Proposal (Exhibit A). The Consultant's Work schedule shall set forth in an understandable fashion the schedule for all the various phases and/or tasks required to perform and complete all the services set forth or described in the Staffing Cost Proposal (Exhibit A) and/or

Consultant's Work Schedule (Work Schedule is included in Exhibit A). The Consultant's Work schedule of planned and actual Work progress shall be updated and submitted by Consultant to the City on an as needed basis and as requested by the City's Project Manager.

- 6.4 Consultant's services shall be performed as expeditiously as is consistent with professional skill and care in the orderly progress of the Project. Consultant represents to the City that it shall deliver its services in accordance with the Staffing Cost Proposal (Exhibit A) and Consultant's Schedule of Work (Work Schedule as included in Exhibit A). The Consultant's Work schedule of planned and actual Work progress shall be updated and submitted by the Consultant to the City on an as needed basis and as requested by City's designed Project Manager.
- 6.5 **NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, CONSULTANT SHALL NOT BE ENTITLED TO RECOVER ANY MONETARY DAMAGES IT MAY SUSTAIN AS A RESULT OF ANY DELAY CAUSED BY THE CITY, ANY SEPARATE DESIGN PROFESSIONAL EMPLOYED BY THE CITY, CONSULTANT OR ANY OTHER CAUSES WHATSOEVER. CONSULTANT FURTHER AGREES THAT IT SHALL MAKE NO CLAIM FOR COMPENSATION FOR SUCH DELAYS AND WILL ACCEPT IN FULL SATISFACTION FOR SUCH DELAYS ANY EXTENSIONS OF TIME WHICH ARE GRANTED TO IT BY THE CITY.**

#### ARTICLE 7 QUALITY CONTROL

Consultant shall develop and employ a comprehensive quality control program designed to protect the City from patent or latent defects in any Work related to the Project or in Construction Work performed at the Project by third parties. At a minimum, Consultant will follow guidelines listed in the Consultant's most recent quality control and/or practices manual, and any subsequent revisions or updates, provided such guidelines do not conflict with any of the Contract Documents.

#### ARTICLE 8 CONSULTANT'S PERSONNEL

- 8.1 Licensing. Consultant agrees to obtain and maintain throughout the period this Agreement is in effect, all such licenses as are required to do business in the State of Florida, Lee County, Florida and the City of Cape Coral, 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 Consultant pursuant to this Agreement. Consultant is required to notify City within five (5) calendar days of any pending, or newly initiated, disciplinary or other actions imposed on Consultant or its subconsultants by any regulatory or licensing authority.
- 8.2 Qualified Personnel. Consultant agrees when the services to be provided and performed related 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 Professional Services and Additional Professional Services to be provided pursuant to this Agreement., whether personnel of Consultant or Sub-Consultant or suppliers, shall have achieved the minimum qualifications as set forth in the Staffing Cost Proposal (Exhibit A) and/or on Personnel Qualifications submittal as attached hereto as "Personnel Qualification Classification" (Exhibit G).
- 8.3 Consultant's Project Manager. Consultant agrees to employ and designate in writing, a qualified, and if required by law, a licensed professional to serve as the Consultant's Project Manager. Consultant's Project Manager shall be authorized and responsible to act on behalf of Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement. Consultant's Project Manager shall have full authority to bind and obligate Consultant on any matters arising under this Agreement unless substitute arrangements have been furnished and agreed to with the City in writing. Consultant agrees that the Project Manager shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by Consultant throughout the entire period this Agreement is in effect. During the term of the Project, Consultant's Project Manager shall neither have nor undertake any other assignment or

engagement on behalf of Consultant other than serving as Project Manager in connection with the Project, if such assignment interferes with the abilities of Project Manager to complete the work on this assignment or unless otherwise agreed in advance by the City. The person selected to serve as Consultant's Project Manager shall be subject to the prior approval and acceptance of the City.

- 8.4 Removal of Personnel. Consultant agrees, within ten (10) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Manager or any other personnel employed or retained by Consultant or any personnel of a sub consultant or subcontractor engaged by Consultant to provide and/or perform services and or Work pursuant to the requirements of this Agreement, who the City shall request in writing to be removed, which request may be made by the City with or without cause.

## ARTICLE 9

### SUBCONSULTANTS AND SUBCONTRACTORS

- 9.1 Definition. A subconsultant or subcontractor is a person or organization who has a direct contract with Consultant to perform any part of the Work associated with the Project. Nothing contained in this Agreement shall create any type of contractual relationship between the City and any subcontractor and/or subconsultant.
- 9.2 Consultant's Selection of Subcontractors and Subconsultants. Consultant, within fourteen (14) calendar days after execution of this Agreement, shall furnish, in writing to the City, the names of persons or entities proposed to be subconsultants and/or subcontractors on the Project (referred to in this paragraph as "subconsultants"), along with copies of proposals and contracts between Consultant and such subconsultant(s). The City shall promptly reply to Consultant in writing whether the City, after due investigation, has reasonable objections to any such proposed person or entity. Failure of the City to reply within fourteen (14) days after its receipt of such information shall constitute notice of no reasonable objection. All subconsultants shall be duly licensed pursuant to any applicable requirements and regulations of the State of Florida. Consultant shall use its best efforts to propose and retain subconsultants appropriately qualified, locally based (Cape Coral - Fort Myers - Lee County, Florida) and/or minority owned and operated Consultants with experience in the Lee County area. Consultant shall not, without reasonable cause and after obtaining the approval of the City (which approval shall not be unreasonably withheld) change a subconsultant or its role which has been previously selected and approved by the City. Consultant shall be responsible to the City for the damages to the extent caused by the negligent acts or omissions of, or services provided by or through its subconsultants. The City's review, approval or rejection of proposed subconsultants or their respective proposals or contracts will not relieve Consultant of its responsibilities under this Agreement, or for the actions or omissions of such subconsultants.
- 9.3 Sub-contractual Relations. By an appropriate written agreement, Consultant shall require each subcontractor or subconsultant, to the extent of the Work to be performed by the subcontractor or subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all obligations and responsibilities which Consultant, by this Agreement, assumes towards the City. Consultant shall make available to each proposed subcontractor or subconsultant prior to the execution of any such agreement, a copy of this Agreement.
- 9.4 Responsibilities for Acts and Omissions. Consultant shall be responsible to the City for the acts and omissions of its employees and agents and its subcontractors and/or subconsultants, their agents and employees, and all other persons performing any Work or supplying any service under a contract with Consultant.

## ARTICLE 10

### COOPERATION WITH PROJECT PARTICIPANTS

- 10.1 Consultant shall cooperate with the City, and others working on the Project to avoid interference, inconvenience or damage. To aid in avoiding conflicts, Consultant, without additional charge or compensation, shall make all reasonable modifications in its services or the scheduling of its services as may be directed by the City. Consultant agrees that it has become familiar with the Project and accepts responsibility for all necessary coordination of its services with the work of other parties working on the Project or any adjacent projects affected thereby.

- 10.2 Consultant will assume primary coordination of its Work with the work of others. As part of said service, Consultant shall be primarily responsible for the coordination and compilation of all design documents pertaining to the Project.
- 10.3 In the event of a dispute between Consultant and others working on the Project, Consultant and the others working on the project shall present their dispute to the City, who shall decide with respect to the matter in dispute. Consultant agrees to proceed with the furnishing of its services in accordance with any decision which is rendered by the City.

ARTICLE 11  
COMPENSATION

- 11.1 Basic Compensation. Subject to the Not to Exceed Price, as per hourly negotiated fees in this Master Agreement and defined in the Staffing Cost Proposal (Exhibit A), and the satisfaction of the conditions precedent set forth in paragraph 11.3 below, and in exchange for the proper performance of the Basic Professional Services, including all Task deliverables, Firm shall be compensated on an hourly basis in conformity with that rate schedule included in the Staffing Cost Proposal (Exhibit A) and/or Personnel Hourly Rates (Exhibit E) for the performance of the Professional Engineering Services contemplated hereunder and wherein such rates are fixed for the duration of this contract and any subsequent renewals.

The Staffing Cost Proposal (Exhibit A) and/or Personnel Qualification Classification (Exhibit G) shall set forth the titles for positions to be utilized in the Staffing Cost Proposals and when Personnel Hourly Rates (Exhibit E) is utilized, the name and the identity of each individual, whether personnel of Firm or Firm's sub-consultants and suppliers, performing services on the Project for which compensation shall be paid to Firm by the City together with the corresponding billable rate for each individual. The City shall not be liable to Firm for payment of services performed by any individual not identified in the Staffing Cost Proposal and/or shown in Exhibit "A" absent written approval by the City prior to the individual performing services. The billable rate for each individual who is an employee of Firm is based upon actual hourly rate of compensation paid by Firm to the employee as set forth in Staffing Cost Proposal (Exhibit A) and/or Personnel Hourly Rates (Exhibit E).

*All costs from sub-consultants' services utilized by Prime Firm to Owner are to be provided with fees on subconsultant letterhead, showing the associated tasks that sub-consultant will perform, and those costs shall not be marked up by Prime Firm. The subconsultant proposal will be included as a separate attachment to the Staffing Cost Proposal.*

*The "Other Direct Costs" (ODC) that are associated with projects, shall be broken down and mrk up on the other direct expense costs will not be accepted. These expense cost examples may include travel, hotel, mileage, meals, equipment rentals, copies, and any other material items intended to be expensed as part of the project. The list of expense cost examples is not intended to be exhaustive and are included as Exhibit F- Reimbursable Expenses to this agreement. When utilized in a Staffing Cost Proposal, the expenses will be detailed on the spreadsheet attachment to the Staffing Cost Proposal.*

- 11.2 Not to Exceed Price. In no event shall the professional fees associated with the performance of the Professional Services, and any third party or other expenditures made or to be made by Firm in connection with the performance of Professional Services exceed the agreed upon Staffing Cost Proposal. Not to Exceed Price \$\_\_ ("NTE") contained in the Staffing Cost Proposal. Firm shall not be entitled to compensation or reimbursement for any cost or expense which exceeds the Not to Exceed Price. Firm and Firm alone shall be financially responsible for any sums more than the Not to Exceed Price should the professional fees to be paid Firm in connection with the Professional Services, any third party or other expenditure made or to be made by Firm in connection with the performance of Professional Services exceed the Not to Exceed Price, as adjusted by any City approved change orders.
- 11.3 Schedule of Values. The Consultant billing shall be based on Exhibit "A", Staffing Cost Proposal and Exhibit "B" Spreadsheet Summary of Staffing Cost Proposal - Not -to Exceed (NTE) fee establishing a separate estimated amount for each Task of the Consultant's work. In no event, shall the Consultant be entitled to receive compensation in excess of the amount ascribed to any task unless otherwise previously approved by the City in writing. The not to exceed amounts set include not only the fees to the Consultant for its services to be performed but also any third-party costs associated with a Task. Reimbursable Expenses incurred by Consultant are defined in Exhibit "F" - "Reimbursable Expenses".

- 11.4 Applications for Payment. The Consultant shall deliver to the City an Application for Payment reflecting the tasks completed in the Staffing Cost Proposal, Exhibit "A" and Spreadsheet Summary of Fee, Exhibit "B" - NTE Fee which shall be approved in writing. Provided the Application for Payment is received not later than the last day of the month, the City shall make payment to the Consultant not later than the last day of the following month. With each Application for Payment, the Consultant shall submit such evidence as may be necessary, in the opinion of the City, to demonstrate the work performed during such month and the percentage of completion of each category of the Work. In no event, shall the cost of the Work exceed the Contract Price referred to in Article 11 shown above.
- 11.5 Certification and Release Documentation. In each Application for Payment, the Consultant shall certify that there are no known claims outstanding at the date of this application, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of this Application for Payment, and that there is no known basis for the filing of any claims on account of the Work, and that all work has been performed in strict conformity with the requirements of the Contract Documents and that the Consultant is unaware of any defective work. This certification will include that all subconsultants have been paid for outstanding work. Concurrent with each Application for Payment, the Consultant shall execute and furnish waiver of claims through the effective date of the previous Application for Payment.
- 11.6 Joint Checks and or Direct Payments. The City reserves the right to issue joint checks to the Consultant and its subcontractors and materialmen, or, to make direct payments to the Consultant's subcontractors or materialmen, if, in the City's sole judgment, it is necessary to do so to ensure payment to the aforesaid parties. The amounts of said joint or direct checks shall be deducted from the Contract Price.
- 11.7 Final Payment. Provided that the Consultant has fully performed its obligations hereunder, final payment, including retainage amounts, shall be made by the City to the Consultant on or about thirty (30) calendar days following final performance of all Work and the Consultant's submittal of a final Application for Payment therefore and final Affidavit. In this regard, it is further agreed that the final Application for Payment shall not be made until the Consultant has fully and finally completed all tasks and delivers to the City a complete release of all claims arising or which could arise out of this Agreement. The acceptance of final payment by the Consultant shall constitute a waiver of all claims by the Consultant except those previously made in writing and identified by the Consultant as unsettled at the time of the final Application for Payment.
- 11.8 Payment is Not Acceptance. The payment of any Application for Payment by the City, including the final Application for Payment does not constitute approval of, or acceptance of that portion of the Work to which such payment relates nor shall such payment relieve the Consultant of its obligations nor constitute a waiver of any claim which the City may then have or thereafter discover.
- 11.9 Payments Withheld. The City may decline to pay an application for payment submitted by Consultant, in whole or in part, to the extent reasonably necessary to protect the City if:
- 11.9.1 Consultant is not entitled to payment in the amount specified in the application for payment;
  - 11.9.2 Consultant is in default of its obligations hereunder;
  - 11.9.3 Appropriate backup data and documentation required by the City is not submitted with the application for payment;
  - 11.9.4 The application for payment is not otherwise appropriately substantiated;
  - 11.9.5 Any known or alleged, willful, wanton or negligent act, error or omission of Consultant which gives rise to a claim by the City or by some other party against the City; or
  - 11.9.6 Any other reason the City is permitted to withhold payment under any other provision of this Agreement.
- 11.9.1 Interest. In the event of a bona fide dispute by the City for any sums for which payment has been requested, no interest shall be due on such disputed sums until the dispute is resolved, provided that all undisputed sums shall have been paid in due course.
- 11.10 Compensation for Additional Professional Services. For Additional Professional Services of Consultant directed and authorized in writing in advance by the City, as described in Article 5, the City shall pay to Consultant a Not to Exceed Amount, as mutually agreed upon in writing by the parties which shall be the sole and exclusive compensation payable to Consultant in connection with the performance of such Additional Professional Services.

ARTICLE 12  
INSURANCE

Consultant shall, at all times during the performance of this Agreement, provide and maintain the following types of insurance protecting the interests of the City of Cape Coral including their employees and officers, and the Consultant with coverages and limits of liability not less than those set forth below. **Insurance requirements are required by contract as follows:**

- 12.1 Workers Compensation Insurance. Consultant shall maintain worker's compensation insurance, insuring its liability under the Workers Compensation and Occupational Disease Laws of the State of Florida, in accordance with Chapter 440 F.S., with limits of liability not less than the minimum statutory limits imposed by applicable State and Federal laws. The worker's compensation insurance policy must include employer's liability with a minimum limit of \$1,000,000.00 for each accident and shall cover all employees engaged in any work under the agreement.
- 12.2 Comprehensive General Liability Insurance. Consultant shall maintain comprehensive general liability insurance which shall be written on an "occurrence" basis and afford the following coverages:
- 12.2.1 Premises – operation
  - 12.2.2 Explosion, collapse and underground property damage (XCU)
  - 12.2.3 Products/completed operations
  - 12.2.4 Blanket contractual liability
  - 12.2.5 Personal injury
  - 12.2.6 Advertising injury
  - 12.2.7 Premises medical payments
  - 12.2.8 Property damage
  - 12.2.9 Additional insureds - employees and temporary workers
  - 12.2.10 Newly acquired organizations
  - 12.2.11 Property damage liability
  - 12.2.12 Independent contractors
  - 12.2.13 The commercial general liability insurance to be maintained by Consultant must include products and completed operations, and contractual liability. The City of Cape Coral and shall be named as an additional, named insured on the comprehensive general liability policy. The limits of liability associated with Consultant's comprehensive general liability policy shall not be less than the following:
    - 12.2.13.1 \$1,000,000 each occurrence
  - 12.2.14 Notwithstanding anything contained herein to the contrary, the coverages under the comprehensive general liability policy to be furnished by Consultant must be afforded on a policy form no more restrictive than the last edition of the commercial general liability policy filed by the Insurance Services Office.
- 12.3 Automobile Insurance. Consultant shall maintain business vehicular liability insurance covering all owned, non-owned, and hired vehicles used in connection with the Work to be provided hereunder with combined minimum limits of \$1,000,000 single limit for bodily injury and property damage per occurrence/aggregate.
- 12.4 Excess Liability Insurance. Consultant shall maintain excess liability insurance in an amount not less than \$1,000,000 combined single limit bodily/property damage, in excess of the general liability insurance described above.
- 12.5 Professional Liability Insurance. Consultant shall maintain professional liability insurance with a minimum level of liability coverage of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate insuring the City against losses arising out of the delivery of professional services by Consultant and its sub-consultants. Consultant shall also ensure that each of its subconsultants shall maintain professional liability insurance with minimum limits of liability coverage not less than \$1,000,000 per occurrence/\$2,000,000, in aggregate insuring the City against losses arising out of the provision of professional services by each in connection with the Project. The deductibles associated with the professional liability insurance policies to be furnished by Consultant and its subconsultants shall be the

responsibility of the Consulting firm and/or their Sub-Consultant. Consultant shall provide to the City certificates reflecting the City of Cape Coral as a certificate holder with respect to the professional liability insurance policies maintained by Consultant and subconsultants.

- 12.6 **Property Insurance.** It is Consultant's responsibility to carry its own property insurance including insurance on equipment that will not become an integral part of the Project.
- 12.7 **Certificate of Insurance.** Prior to performing any services hereunder, Consultant shall file with the City a certificate of insurance in a form acceptable to the City. The certificate of insurance shall reflect the City of Cape Coral as an additional named insured, and its employees and officers on Consultant's comprehensive general liability, excess liability, and business vehicular liability policies. In addition, the City of Cape Coral shall be reflected as the certificate holder with respect to Consultant's professional liability and worker's compensation insurance. The certificate of insurance furnished by Consultant shall contain a provision that the coverages afforded under the policy described thereon will not be cancelled until at least thirty (30) days prior written notice has been given to the City.
- Also, to be included on the policy for the Certificate of Insurance under the "Description of Operations /Locations/Vehicles/Exclusions added by endorsement/Special Provisions" section, the Contract Number "CON-RFQ2323KR-D" and Title of Project - "CITYWIDE Professional Consultant Continuing Services (CCNA)".**
- 12.8 **Ratings of Companies.** All companies issuing the policies provided for herein shall be licensed or approved by the Department of Insurance, State of Florida, and shall have a financial rating no lower than II and a policy holder surplus rating no lower than (A) as listed in A.M. Best TK Rating Guide, current edition or interim report. Companies with ratings lower than those specified herein will be acceptable only upon the written consent of the City.
- 12.9 **Primary Coverage.** The insurance required hereunder is primary and direct and shall apply to any loss prior to any insurance coverage carried by the City or any other party.
- 12.10 **Extent of Coverages.** The insurance coverages referred to above are set forth in full in their respective policy forms. The foregoing descriptions of such policies are not intended to be complete or to limit any provision of the actual policies and should said description be narrower than the coverages afforded under the actual policies of insurance, the provisions of the actual policies of insurance shall govern.
- 12.11 **Waiver of Subrogation.** Consultant's insurance policies shall be endorsed to provide that the insurers waive their rights of subrogation against the City of Cape Coral and to provide that the policies afford primary coverage over any other applicable insurance coverage.
- 12.12 **Subconsultant Insurance Requirements.** Except as otherwise specified herein, Consultant shall require that all subconsultants and subcontractors performing Work on the Project to maintain the same coverages and policy limits as Consultant is required to furnish hereunder. An insurance provision, including waivers of subrogation, identical to the provisions of Article 12 of this Agreement and shall be included by Consultant in each written subcontract or subconsultant agreement issued by it in conjunction with the Project.
- 12.13 **Deductibles:** The City of Cape Coral is exempt from, and are in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible(s) shall be the sole responsibility of the firm providing such insurance.

In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued thirty (30) days prior to said expiration date. The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy.

### ARTICLE 13 INDEMNIFICATION

In consideration of the first One Hundred and No/100 Dollars (\$100.00) to be paid hereunder and to the fullest extent permitted by law, Consultant agrees to indemnify and hold harmless the City of Cape Coral and its agents, servants and employees, from and against any and all claims, costs, expenses, damages, or liability (including reasonable attorneys' fees and

costs of defense) caused by, attributable to, arising out of, or resulting from Consultant's negligence, recklessness, or intentional wrongful conduct in the performance of professional services under this Agreement and those of its subconsultants, agents and employees. Consultant is not obligated to indemnify the City in any manner whatsoever for the City's own negligence. This indemnity provision shall be considered a material part of the specifications governing Consultant's performance under this Agreement. This indemnity provision is intended to comply with Florida laws on indemnity and, specifically, to comply with Sections 725.06 and 725.08, Florida Statutes, and is to be interpreted in such a manner as to be enforceable.

#### ARTICLE 14 DRAFTING FORMATS AND STANDARDS

In performing professional services hereunder, Consultant shall review and incorporate the City's drafting formats and office drafting standards into any drawings and specifications generated in connection with the provisions of this Agreement.

#### ARTICLE 15 COPYRIGHTS AND LICENSES

All drawings, sepias, electronic media and specifications prepared in connection with the Project shall remain the property of the City and Consultant shall not be entitled to a repeat design fee, or any other compensation should the City elect to utilize said drawings, sepias, electronic media and specifications in connection with additional alterations or remodeling or additions to the Project to which said design documents originally pertain. Consultant hereby assigns to the City any and all right, title, and interest it may possess in the design documents and materials produced in connection with this Agreement, including but not limited to, all statutory and common law copyrights it possesses in said documents and materials. The future use of said materials shall be at the sole discretion of the City. The City agrees to hold Consultant harmless from any claims based upon the future use of said materials in connection with any purpose other than the Project or future maintenance or support of the Project.

#### ARTICLE 16 PERMITS

Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, the Existing Design, drawings and specifications required by any governmental body having authority over the Project. Consultant will be similarly responsible for preparing and submitting all required specifications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at Consultant's request, assist in obtaining required signatures and provide Consultant with all information known to be available to the City to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

#### ARTICLE 17 CITY'S RESPONSIBILITIES

- 17.1 The City's Representative. The City shall designate a Project Representative who shall be fully acquainted with the Project and shall define the lines of City authority to approve changes in the Project. He or she shall render decisions promptly and furnish information expeditiously.
- 17.2 Lines of Authority. The City shall establish and maintain lines of authority for its personnel and shall provide this definition to the Consultant and all other affected parties.
- 17.3 Existing Design. The City shall provide to Consultant all design documentation in its possession pertaining to the Project.
- 17.4 Funding. The City shall furnish reasonable evidence satisfactory to Consultant that sufficient funds will be available and committed for the cost of the Project.

- 17.5 Project Fault or Defect. If the City becomes aware of any fault or defect in the Project, or in the specifications or drawings for the Project, it shall give prompt written notice thereof to Consultant.

ARTICLE 18  
CONSULTANT'S REPRESENTATIONS

In order to induce the City to enter this Agreement, Consultant makes the following express representations:

- 18.1 Consultant has reviewed and confirmed that the basis and approach taken by the City in its Project planning represents sound programming and provides an adequate basis for the performance of Consultant's services hereunder.
- 18.2 Consultant has familiarized itself with the Scope of Work and the nature and extent of the Work to be performed, local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner affect costs, progress or performance of the work.
- 18.3 Consultant represents that the Work can be performed within the time frames contemplated in the Consultant's SCP Work Schedule, a copy of which is attached hereto included in Exhibit "A".
- 18.4 Consultant has reviewed the Scope of Work and has provided the City with written notice of all conflicts, errors or discrepancies it has discovered in the Scope of Work and the cost to the City of addressing such conflicts, errors or discrepancies.
- 18.5 Consultant has familiarized itself with the nature and the extent of the proposed Project contemplated under the City's program and local field conditions and affirmatively represents that no field conditions are known to exist which would have a cost or scheduling impact on the Project.

ARTICLE 19  
ACCURACY, TECHNICAL SUFFICIENCY OF SERVICES  
PROVIDED BY CONSULTANT

- 19.1 Notwithstanding anything contained herein to the contrary, it is understood and agreed between the parties that the City is not examining any data, surveys, studies, designs, specifications, calculations, plans, drawings, or any other documents furnished hereunder by Consultant for accuracy and technical sufficiency and is not under any obligation to inspect the Project. Furthermore, it is understood and agreed between the parties that neither the review, approval, nor acceptance by the City of data, surveys, studies, designs, specifications, calculations, plans, drawings, or any other documents furnished hereunder by Consultant shall in any way relieve Consultant of responsibility for the adequacy, completeness, and accuracy of its work, and in no event shall the City's review, approval, acceptance of or payment for such services be construed to operate as a waiver of any of the City's rights under this Agreement or of any cause of action it may have, arising out of the performance of this agreement.
- 19.2 Consultant further acknowledges that it, alone, is responsible for the accuracy, completeness, and technical sufficiency of all Work performed under this Agreement, and that the information contained in the City's Request for Proposals and Project descriptions does not relieve, release, or in any way whatsoever diminish the Consultant's ultimate responsibility for the accuracy, completeness, and technical sufficiency of the Project and any work performed hereunder.
- 19.3 Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, adoption and coordination of all data, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments and other services, work and materials performed, provided and/or furnished by Consultant or by any subconsultant retained or engaged by Consultant pursuant to this Agreement. Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services or materials resulting from the negligent act, errors or omissions or any intentional misconduct of Consultant or any subconsultants engaged by Consultant.

ARTICLE 20  
TERMINATION OR  
SUSPENSION OF AGREEMENT

- 20.1 The City reserves the right to terminate this Agreement without cause and without regard to fault or breach upon ten (10) calendar days written notice to Consultant, effective immediately, unless otherwise provided in said notice. In the event of a termination for the City's convenience, the Consultant shall only be due those sums which are due for Work performed as of the date of termination. Upon Consultant's receipt of such payment, the parties shall have no further obligation hereunder. It is understood and agreed that no fee or other compensation or payment shall be due and payable to Consultant for unperformed Work associated with this Agreement.
- 20.2 If the City fails to make payment on conforming or non-disputed invoices when due for Consultant's services and expenses, Consultant may, upon ten (10) calendar days written notice to the City, suspend performance of services under this Agreement. Unless payment in full is received by Consultant within ten (10) calendar days from the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, Consultant shall have no liability to the City for delay or damages caused the City because of such suspension of services. Should the City fail to satisfy the payment due Consultant within sixty (60) calendar days from the date the payment was originally due, Consultant shall be entitled to terminate this Agreement for cause. If Consultant fails to perform the services described herein or fails to respond with responsible promptness to the City, the City, without waiving the City's right to terminate as a result thereof, may suspend performance of the City's obligations under this Agreement (including, but not limited to, the City's obligation to make payment) on ten (10) calendar days written notice to Consultant.
- 20.3 Notwithstanding anything contained herein to the contrary, the City shall be entitled to terminate this Agreement for cause should Consultant fail to perform the services contemplated herein, perform any of its obligations hereunder, or otherwise fail to respond with reasonable promptness to the requests of the City. In the event of such a termination for cause, the City shall be entitled to recover from Consultant such additional costs as it incurs in procuring performance of Consultant's remaining obligations hereunder. If the City terminates this Agreement hereunder and it is determined, for any reason, that sufficient ground did not exist for the City to terminate this Agreement hereunder, the Consultant as its sole and exclusive remedy shall be entitled to and due only those sums which are due for Work performed as of the date of termination as if the termination were for no fault or breach.

ARTICLE 21  
SPECIAL PROVISIONS

- 21.1 Consultant accepts the relationship of trust and confidence established between it and the City by this Agreement.
- 21.2 Consultant warrants that it has not employed or retained any company or person, other than an employee working solely for Consultant, to solicit or secure this Agreement and that it has not paid any person, company, corporation, individual or Consultant, other than a bona fide employee working solely for Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.
- 21.3 Any person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract or subcontract with a public entity, for construction or repair of a public building or public work, may not submit bids or leases of real property to a public entity, may not be awarded or perform any Work a contractor, supplier, subcontractor, or Consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY 2 for a period of thirty-six (36) months from the date of being placed on the Convicted Vendors List. Consultant agrees not to use any subconsultants whose names appear on the Convicted Vendors List.
- 21.4 Consultant represents to the City that it is experienced in design and that it will perform its services under this Agreement in a skillful and competent manner.
- 21.5 Consultant represents that it presently has no interest and shall acquire no interest either direct or indirect, which would conflict in any manner with the performance of services required hereunder. Consultant further agrees that no person having any such interest shall be employed or engaged by Consultant for said performance. If Consultant for

itself or on behalf of its subconsultants, is about to engage in representing another client, which it in good faith believes would result in a conflict of interest with the Work being performed by Consultant or such subconsultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise 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 there is a conflict of interest, Consultant or such subconsultant shall decline the representation upon written notice by the City. If the City determines that there is not such a conflict of interest, then the City shall give its written consent to such representation.

- 21.6 If Consultant or subconsultant 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 subconsultant under this Agreement, then Consultant or such subconsultant agrees to promptly terminate such representation. Consultant shall require each of its subconsultants to comply with the provisions of this section. Should the Consultant fail to advise or notify the City as provided herein above, of representation which could, or does, result in a conflict of interest, or should Consultant fail to discontinue such representation, the City may consider such failure a justifiable cause to terminate this Agreement.
- 21.7 Consultant agrees to maintain the business ethics expected by the City. In that regard, Consultant shall:
- 21.7.1 During the course of pursuing contracts with City and while performing contract work in accordance with this agreement, Consultant agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the City's best interests. Consultant shall take reasonable actions to prevent any conditions which could result in a conflict with the City's best interests. These obligations shall apply to the activities of Consultant's employees, agents, subconsultants, subcontractor employees, etc. Consultant employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to the City's representatives, employees or their relatives. Consultant's employees, agents, or subcontractors (or their relatives) should not receive any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from contractors, representatives of contractors, subcontractors, representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project. Consultant agrees to notify the City within 48 hours of any instance where the Consultant becomes aware of a failure to comply with these provisions. The email address to report any concerns related to any possible violations is [krose@capecoral.gov](mailto:krose@capecoral.gov). Upon request of the City, Consultant agrees to provide a certified Management Representation Letter executed by selected Consultant representatives in a form agreeable to City stating that they are not aware of any situations violating the business ethics expectations outlined above or any similar potential conflict of interest situations. Consultant agrees to include this clause in all contracts with subconsultants and suppliers receiving more than twenty-five thousand (\$25,000) dollars in funds in connections with the City's project. Consultant shall permit interviews of employees, reviews and audits of accounting or other records by City representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Consultant's employees, agents, representatives, vendors, subconsultants, and other third parties paid by Consultant in their relations with the City's current or former employees or employee relatives. This provision survives the expiration of this Agreement. Consultant agrees to implement a program requiring their employees sign acknowledgements that they have read and understand City's business ethics expectations and the related obligation outlined in this contract.
- 21.7.2 Consultant, subconsultants, subcontractors, contractors, suppliers, and other entities connected with this Project shall permit interviews of employees, reviews and audits of accounting or other records by authorized City representative(s) to evaluate compliance with the business ethics expectations stated in this article. Such reviews and audits will encompass all dealings and activities of Consultant's employees, agents, representatives, vendors, subconsultants, subcontractors, suppliers, and other third parties paid by Consultant in their relations with the City's current or former employees or employee relatives.

- 21.7.3 Consultant, subconsultants, subcontractors, contractors, suppliers, and other entities connected with this Project agree to implement a program requiring their key employees in any connection with this Project sign acknowledgments that they have read and understand the City's Business Ethics Expectations and related obligations outlined in this article.
- 21.7.4 Consultant, by execution of this Agreement, represents that it possesses that degree of care, learning, skill, ability and is properly licensed and qualified to perform the Basic Professional Services and any Additional Professional Services (as directed and approved in Article 3 hereof) and that it and its subconsultants and/or subcontractors, and suppliers will undertake to use the degree of skill and care of performance of obligations under this Agreement, which are utilized by professionals in the same field performing the same or similar services under the same or similar circumstances for similar infrastructure projects. Consultant acknowledges that all professional services provided under this Agreement will meet or exceed the requirements of this Agreement, including without limitation, the standard of care required by this Agreement; that any design documents prepared by Consultant with respect to the Project will meet or exceed the City's Project requirements as specified in this Agreement or otherwise provided by the City to Consultant. Consultant agrees to use the services of competent, qualified personnel, and, when required by law, properly licensed subconsultants and other professionals for the execution of its services. Consultant will use commercially reasonable efforts and skill to endeavor to protect the interests of the City and the City's residents at all times.

ARTICLE 22  
CONSULTANT'S RECORDS

- 22.1 Records of the Consultant's personnel, subconsultants, suppliers, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.
- 22.2 Consultant shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Consultant shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Consultant on the Project. Consultant shall preserve the Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.
- 22.3 As the City is subject to the public records requirements of Chapter 119, Florida Statutes, the Consultant shall comply with Florida's Public Records Law. Specifically, the Consultant shall:
- 22.3.1 Keep and maintain public records required by the City to perform the service.
- 22.3.2 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, Florida Statutes, or as otherwise provided by law.
- 22.3.3 Ensure that public records that are exempt or confidential and from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City.
- 22.3.4 Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-574-0411, [cityclk@capecoral.gov](mailto:cityclk@capecoral.gov), City of Cape Coral, 1015 Cultural Park Boulevard, Cape Coral, FL 33990**

ARTICLE 23  
RIGHT OF AUDIT  
EXAMINATION OF RECORDS

Records for all contracts, specifically including but not limited to "Not to Exceed" subcontracts (i.e. fixed price or stipulated sum contracts, unit price, costs plus or time & material contracts with or without a guaranteed maximum (or not-to-exceed amounts) shall upon seven (7) calendar days written notice from the City shall be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any City representative, or any outside representative engaged by the City for the purpose of examining such records. Such records must be complete and made available at Consultant's offices located in Lee County, Florida. The City or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of four (4) years after final payment or longer if required by law. The City's representatives may (without limitation) conduct verifications such as counting employees at the construction site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Consultant's employees, field and agency labor, subcontractors and vendors.

- 23.1 Consultant's "records" as referred to in this Agreement shall include any and all information, materials, and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets, payroll registers, payroll records; cancelled payroll checks, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating worksheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other Consultant records which may have a bearing on matters of interest to the City in connection with the Consultant's dealings with the City (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of all the following:
- 23.1.1 Compliance with contract requirements for deliverables;
  - 23.1.2 Compliance with approved plans and specifications;
  - 23.1.3 Compliance with the City's business ethics expectations;
  - 23.1.4 Compliance with contract provisions regarding the pricing of change orders;
  - 23.1.5 Accuracy of Consultant's representations regarding the pricing of invoices; and
  - 23.1.6 Accuracy of Consultant representations related to claims submitted by Consultant or any of its payees.
- 23.2 Consultant shall require all payees (examples of payees include subconsultants, subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Consultant and payee. Consultant will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this Agreement.
- 23.3 Owner authorized representative(s) shall have reasonable access to Consultant's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with this article.
- 23.4 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges to the City (of any nature) by Consultant and/or Consultant's subcontractors and/or subconsultants the City shall be entitled to adjustment and reimbursement or recovery in the amount of such overpricing or overcharging. If the

amount of the overpricing or overcharging is determined, in addition to making adjustments for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Consultant's invoices and/or record shall be made within a reasonable amount of time (not to exceed thirty (30) calendar days) from presentation of the City's findings to Consultant. This provision shall survive the expiration of this Agreement.

- 23.5 In addition to the normal paperwork documentation Consultant typically furnishes to the City, in order to facilitate efficient use of the City's resources when reviewing and/or auditing Consultant's billings and related reimbursable cost records, Consultant agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

Type of Record	PC Readable File Format
Monthly Job Cost Detail	.pdf and Excel
Detailed job Cost History To Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Weely Task Reports listing names and hours and tasks of personnel who worked on Project	.pdf
Weekly Project Manager Reports	.pdf
Detailed Subcontractor/Subconsultant Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf

ARTICLE 24  
CLAIMS AND DISPUTES

- 24.1 Prior to the filing of any litigation by the City or Consultant against the other (and, except as described below, as a precondition to any such filing), the City and Consultant shall engage in pre-suit non-binding mediation. Such mediation may be requested by either party, at any time, and shall be conducted the same as if such mediation were ordered by a Florida Circuit Court (i.e., in accordance with, and subject to, all the laws and rules applicable to court-ordered mediation). Such mediation shall be conducted within a reasonable period of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request that the Circuit Court in Lee County, Florida (or the Mediation Coordinator for the Courts of Lee County, Florida) appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not preemptorily. While the request for and the conducting of such a mediation may be a precondition to the filing of a civil action, in the event either party is in jeopardy of losing its right to sue (e.g., the statute of limitations is about to expire), then suit may be filed before a mediation is conducted provided that mediation is requested before, or simultaneously with the filing of such suit, and is conducted before the named defendant in the suit is required to respond to the complaint. If the scheduling of the mediation requires, the plaintiff in the suit shall grant the defendant an appropriate extension of time to respond to the complaint so as to permit the mediation to be conducted before the defendant must so respond. The mediation contemplated hereunder shall be conducted, unless otherwise agreed by the parties, in Lee County, Florida. The parties shall bear the mediator's fee and any filing fees associated with the mediation equally.
- 24.2 The City and Consultant agree that any litigation between them arising out of, resulting from, or relating to this Agreement or the Project shall be a venue in a state court of competent jurisdiction in Lee County, Florida.

ARTICLE 25  
ANNUAL APPROPRIATION  
CONTINGENCY

Pursuant to Florida Statute §166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Contract is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City if the City Council reduces or eliminates appropriations.

ARTICLE 26  
DAMAGE TO PROPERTY

Consultant shall be responsible for all claims filed for damage to private property owned by third parties as well as all damage to public property relating in any fashion whatsoever to Consultant's performance of Work hereunder. The Consultant will work cooperatively with the City in establishing a damage claim program acceptable to the City for processing and satisfying property damage which arises during the Project.

ARTICLE 27  
SAFETY AND OSHA  
COMPLIANCE

27.1 The Contractor shall comply in all respects with all Federal, State and Local Safety and health regulations. Copies of the Federal regulations may be obtained from the U.S. Department of Labor, Occupation Safety and Health Administration (OSHA), Washington DC 20210 or their regional offices.

27.2 The Contractor shall comply in all respects with the applicable Workman's Compensation Laws.

ARTICLE 28  
EQUAL EMPLOYMENT  
OPPORTUNITY

During the term of the Agreement, Consultant agrees it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. 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, age or national origin. Consultant shall comply with all aspects of the Americans with Disabilities Act ("ADA") during the performance of this Agreement.

ARTICLE 29  
PROPRIETARY INFORMATION

Except as otherwise provided in this Agreement, Consultant agrees not to divulge, furnish, or make available to any third parties, Consultant or organization, without the City's prior written consent, or unless instant to the proper performance of Consultant's obligations hereunder, or in the course of any judicial or legislative proceeding where such information has been properly subpoenaed, any nonpublic information concerning services to be rendered by Consultant or any of its subconsultants or subcontractors under this Agreement.

ARTICLE 30  
COMPLIANCE WITH IMMIGRATION LAWS

The City will not intentionally award contracts to any party who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 A(e) Section 274 A(e) of the Immigration and Nationality Act ("INA"). The City may consider the employment by Consultant of unauthorized aliens to be a violation of Section 274 A(e) of the INA. Such violation by Consultant of the employment provisions contained in Section 274 A(e) of the INA shall be grounds for unilateral termination of this Agreement by the City. Consultant

affirmatively represents to the City that it is fully compliant with all applicable immigration laws, including but not limited to, the 1986 Immigration Act and subsequent amendments.

As a condition precedent to entering into this AGREEMENT, and in compliance with The Immigration and Nationality Act (INA), 8 U.S.C. Section 1324a(e) Section 274A(e) and Florida Statute State Section §448.095, Contractor or Consultant and their subcontractors shall register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021. The Employment Verification System (E-Verify) is operated by the Department of Homeland Security in partnership with the Social Security Administration.

**The following conditions must be met by all Contractors, Consultants and Subcontractors:**

- a. Contractor or Consultant shall require each of its subcontractors to provide them with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor, Consultant or Bidder shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.
- b. The CITY, Contractor, Consultant, Bidder or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated The Immigration and Nationality Act (INA) contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) Section §448.09(1), Florida Statute or the provisions of this section shall terminate the contract with the person or entity.
- c. The CITY, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor or Consultant otherwise complied, shall promptly notify Contractor or Consultant and they shall immediately terminate the contract with the subcontractor.
- d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section §448.095(2)(d), Florida Statute. Contractor or Consultant acknowledges that upon termination of this AGREEMENT by the CITY for a violation of this section by Contractor or Consultant, that the Contractor or Consultant may not be awarded a public contract for at least one (1) year. Contractor or Consultant further acknowledges that Contractor or Consultant is liable for any additional costs incurred by the CITY as a result of termination of any contract for a violation of this section.
- e. Subcontracts: Contractor, Consultant or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor or Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

ARTICLE 31  
COMPLIANCE SCRUTINIZED COMPANIES

The Consultant affirms and attests that they are eligible to enter into this agreement and are not prohibited against contracting, base on not being a scrutinized company as outlined in Florida Statutes 287.135; Florida Statute 215.473 and Florida Statute 215.4725. The consultant further agrees that if they are included on the list of scrutinized firms list in the future, located at (<http://www.sbafla.com>), that this agreement may be terminated at the City's option. The Consultant firm understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject the Consultant to civil penalties, attorney's fees, and/or costs. The signed Scrutinized Companies Certification Form is included as an attachment to this agreement and is shown as Exhibit "I".

ARTICLE 32  
OBSERVANCE OF LAWS,  
RULES, REGULATIONS, CODES,  
AND ORDINANCES

Consultant shall always observe and fully comply with all applicable laws, rules, regulations, codes and ordinances of any federal, state or local government agency or regulatory body which in any manner affect or apply to the Work or Consultant's performance hereunder. Consultant shall require all its agents, representatives, employees and sub-consultants to observe and comply with the said laws, rules, regulations, codes and ordinances.

ARTICLE 33  
PUBLICITY

Publicity and public announcements pertaining to the Project shall be approved by the City in writing prior to release.

ARTICLE 34  
MISCELLANEOUS

- 33.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- 33.2 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, signed by the parties against whom the enforcement of such modification, waiver, amendment, discharge, or change is sought.
- 33.3 Nothing contained in this Agreement shall create a contractual relationship or cause of action in favor of a third party against either the City or Consultant.
- 33.4 This Agreement and the Exhibits attached hereto constitute the entire Agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.
- 33.5 This Agreement shall be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- 33.6 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person(s) or entity may require.
- 33.7 In the event of any conflict between the terms of this Agreement and any other Contract Documents including Specifications for the Project, the provisions of this Agreement shall govern and control.
- 33.8 If any provision or any portion of any provision of this Agreement or the application of any such provision or portion thereof to any person or circumstance shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement, or the application of such provision held invalid, or unenforceable to persons or circumstances other than those to which it has been invalid or unenforceable, shall not be affected thereby.
- 33.9 In the event of any dispute as to the precise meaning of any term contained herein, the principles of construction and interpretations that written instruments be construed against the drafter shall not apply.
- 33.10 Consultant shall not assign, subcontract or transfer any interest in this Agreement without the prior written consent of the City.
- 33.11 The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

- 33.12 All articles, titles, or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement and shall not affect the meaning or interpretation of this Agreement.
- 33.13 If Consultant is comprised of more than one (1) entity, each such entity shall be jointly and severally liable hereunder. **HOWEVER, PURSUANT TO F.S. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.**
- 33.14 All notices, demands, or other communications made pursuant to this Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid at the following address:

Notice to Consultant:                   Avalon Engineering, Inc.  
Attn: Mr. Brendan Sloan, PE, VP, Director of Engineering  
2503 Del Prado Blvd. South  
Suite #200  
Cape Coral, FL 33904-9618  
Email: [brendan@avaloneng.com](mailto:brendan@avaloneng.com)  
Phone Number: 239-573-2077

If to the City:                           City of Cape Coral  
Finance/Procurement Division  
Attn: Ms. Kathy Rose  
[krose@capecoral.gov](mailto:krose@capecoral.gov)  
PO Box 150027  
Cape Coral, FL 33915

With a copy to City Legal:           Aleksandr Boksner, Esq.  
Attorney for the City of Cape Coral  
P.O. Box 150027  
Cape Coral, FL 33915

Or, to such other address or to such other persons as any party may designate to the other for such purpose in the manner herein above set forth.

- 33.15 The parties hereto shall, at any time and from time to time following the execution hereof, execute and deliver all such further instruments and take all such further action as may be reasonably necessary or appropriate in order to carry out more effectively the purposes of this Agreement.
- 33.16 Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and shall not be strictly construed for or against any party.
- 33.17 Any projects that utilize federal or state funding maybe subject to terms and conditions related to 2 CFR 200

END OF SECTION

IN WITNESS, WHEREOF, OWNER AND CONTRACTOR HAVE SIGNED THIS AGREEMENT. THIS AGREEMENT WILL BE EFFECTIVE ON 3/21/2024 (WHICH IS THE EFFECTIVE DATE OF THE CONTRACT).

OWNER:

City of Cape Coral, Florida

Signature: Michael Ilczynski

Typed Name: Michael Ilczynski

Title: City Manager

Date: 3/21/2024

Signature Attest: Kimberly Bruns

Title: City Clerk

Typed Name: Kimberly Bruns, CMC

Date: 3-22-24

Address for giving notices:  
City of Cape Coral (Attn: Procurement)  
P.O. Box 150027  
2nd Floor  
Cape Coral, FL 33915

LEGAL REVIEW:

Signature: WKL

Typed Name: Aleksandr Boksner, ESQ.

Title: City Attorney

Date: 1/29/2024

CONTRACTOR:

FIRM NAME: Avalon Engineering, Inc.

Signature: Brendan D. Sloan

Typed Name: Brendan D. Sloan, P.E.

Title: Vice President / Director of Engineering / Secretary

Date: 2/5/2024

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign with corporate resolution.)*

Signature Attest: Linda L. Miller

Title: Vice President / Director of Planning / Director

Typed Name: Linda L. Miller

Date: 2/5/2024

Address for giving notices:  
2503 Del Prado Boulevard South, Suite 200  
Cape Coral, Florida 33904

State of Florida  
Contractor License No.: \_\_\_\_\_  
*(as applicable)*

System Awards Management - www.sams.gov  
REQUIRED FIELD - UNIQUE IDENTIFIER NUMBER:  
GXVALTY5PB7

## CONTRACT EXHIBITS

Exhibit "A"	Staffing Cost Proposal
Exhibit "B"	Staffing Cost Proposal – Attachment A - Spreadsheet for Fees
Exhibit "C"	Staffing Cost Proposal – Attachment B - Subconsultant Scope of Professional Services (shown on letterhead)
Exhibit "D"	Staffing Cost Proposal – Attachment Project Map
Exhibit "E"	Personnel Hourly Rates
Exhibit "F"	Reimbursable Expenses
Exhibit "G"	Personnel Qualification Classifications
Exhibit "H"	Truth-in-Negotiations
Exhibit "I"	Scrutinized Companies Certification
Exhibit "J"	Corporate Resolution
Exhibit "K"	Business Ethics Expectations
Exhibit "L"	Immigration- E-Verify
Exhibit "M"	Drug Free Certification
Exhibit "N"	Disclosure on Lobbying Activities
Exhibit "O"	Debarment, Suspension and Voluntary Exclusion

**EXHIBIT "A"**

**STAFFING COST PROPOSAL  
SAMPLE**

**STAFFING and COST PROPOSAL** No. \_\_\_\_\_  
(SCP No is Firm's INITIALS dash and Sequential Number Starting with 1 –  
"Example: "PG-01" Piggly-Giggly)

to

**AGREEMENT for Citywide Professional Services**

between

**The City of Cape Coral**

and

**(Prime FIRM'S LEGAL NAME)**

THIS DOCUMENT, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022, is a Staffing and Cost Proposal (SCP) No. (XX-XX), following all terms and conditions per Miscellaneous Professional Engineering Services Contract #CON-RFQ2323KR- (*Alpha Suffix Inserted*), executed between the **City of Cape Coral** (City) and (**FIRM LEGAL NAME**), (Engineer) on December 1, 2023, and approved for a 3-year term, and one 3-year renewal by mutual agreement (hereafter called "Agreement") shall be in effect for the time noted in this agreement, or as mutually agreeable to meet the requirements of the Staffing Cost Proposal.

**A. GENERAL**

The CITY and (**FIRM NAME**), have entered into an Agreement to provide professional engineering services in connection with the City's (**PROJECT NAME**). The Agreement provides for services to be performed on the basis of a Staffing and Cost Proposal (SCP) to be prepared by the (**FIRM NAME**). The SCP will be executed once FIRM and CITY have a fully signed Staffing Cost Proposal and a Purchase Order has been provided to the Firm by the CITY for services described in the Staffing Cost Proposal. The CITY's expectation is for work under this Staffing Cost Proposal to be self-performed by the PRIME firm, whenever possible.

**B. DESCRIPTION OF ASSIGNMENT**

Provide Professional Design Services for the City of Cape Coral's (**PROJECT NAME/DESCRIPTION OF ASSIGNMENT**).

**C. PROJECT OVERVIEW:**

The City of Cape Coral, plans to update the existing (xxxxxxxxxxxxxx) with the assistance of the engineering firm providing (xxxxxxxxxxxxxx) which includes (xxxxxxxxxxxxxx) and (xxxxxxxxxxxxxx).

## **D. SCOPE OF SERVICES (SAMPLE SHOWN BELOW)**

### **Task 1 - Project General and Common Tasks**

- *Project Meetings Weekly*
- *Pay Application Reviews and Submittals Weekly*
- *Project Schedule Updates Weekly*
- *Drawing Reviews and Submittals Weekly*

### **Task 2 - Environmental Services**

- *Listed Species Survey*
  - *Relocation Permit Application.*
- *Coordinate FWCC permit application with Client.*
  - *Gopher Tortoise Relocation Activities*
  - *Conduct observations of backhoe excavation for one day and assist with relocation efforts.*
  - *Deliver gopher tortoises to recipient site.*
  - *Prepare relocation report for submittal to FWCC.*
  - *Coordinate gopher tortoise relocation activities with Client.*

### **Task 3 - Design Survey**

- *Vertical control*
- *Topography*
- *Horizontal control file will be created to be utilized throughout the design.*

### **Task 4 - Roadway and Drainage design**

- *Engineer will prepare the Design and Contract Documents for the roadway improvements in accordance with the appropriate sections of the City of Cape Coral Engineering Design Standards and FDOT Design Manual except as modified herein.*
- *The plans will be prepared in a conventional 11" x 17" sheets. The plans will be prepared on design topographic survey. The sheets will be developed to a horizontal scale of 1" = 40' and vertical scale of 1" = 4'. Various elements such as median modifications, widening details, pavement width, pavement design, drainage improvements, signing and marking, street and driveway crossings, and right-of-way and easement lines will be shown and dimensioned on the plan view. The profile view will include the proposed PGL line for the proposed new construction south bound lanes and necessary proposed and existing drainage and utility infrastructure.*
- *Cross-Sections will be developed at 50-foot intervals and at special locations and driveways along the baseline of survey to scales of 1" = 20' horizontal and 1" = 5' vertical. Major underground utilities will be shown based on information provided by the utility companies or*

as identified during surveying efforts. Roadway cross-sections will be limited to only the areas that are shown for proposed roadway improvements.

- Due to the urgency of this project, two submittals (60% and 100%) are included in the scope of work. An estimate of probable construction costs will be provided at both the 60% and 100% design submittal.

**Task 5 Permitting**

- Engineer will schedule a pre-application meeting with the South Florida Water Management District (SFWMD) at the 60% design stage of the project.
- The permitting scope includes the submittal and support of an Individual Environmental Resource Permit Application.

**E. PROJECT DELIVERABLES BY TASK: (SAMPLE SHOWN BELOW)**

**Task 1: Project Meeting Minutes and Project Time-Line Schedule Provided Weekly; Hours applied to project, along with Pay Apps and Drawings** **Summarized reviews.**

**Task 2: Signed and Sealed right of way map**

**Task 3: Completed Survey**

**Task 4: Biddable set of construction plans and specifications signed and sealed by a Professional Engineer registered in the State of Florida. Construction plans will be provided in both AutoCAD and PDF format. Estimate of Probable Construction Costs will be provided at the 60% and 100% Submittal.**

**Task 5 Permitting Approval letter from the SFWMD.**

**F. PROPOSED STAFFING (SAMPLE SHOWN BELOW)**

The following staffing of the PRIME FIRM staff is proposed for performing the services authorized in this SCP. These position titles and fees should match those shown in the Master Agreement for Miscellaneous Professional Services.

<b>Labor Classification</b>	<b>Assignment</b>
Senior Project Manager - \$ /hour	Task 1, Task 4, Task 5
Engineer 1 - \$ /hour	Task 1, Task 4, Task 5
Senior Land Surveyor - \$ /hour	Task 3
Survey Crew Chief - \$ /hour	Task 3
Survey Technician - \$ /hour	Task 3
Senior CAD Designer - \$ /hour	Task 4, Task 5
Project Administrator - \$ /hour	Task 1, Task 5

**Sub consultant assignment (Sub-Consultant Name filled in here) for a Lump Sum Fee \$x,xxx.xx as shown on letterhead – Exhibit B):**

<b>Labor Classification</b>	<b>Assignment</b>
Environmental	(Environmental Services) – Task 2

PLEASE NOTE – No Mark Up on Sub-Consultant fees will be accepted.

## G. TIMELINES by TASK (SAMPLE SHOWN BELOW)

(Write in what service FIRM will provide the City by number of days by task )

Task 1 - xx calendar days

Task 2 - xx calendar days

Task 3 - xx calendar days

Task 4 - xx calendar days

Task 5 - xx calendar days

Completion – xxx calendar days

## H. CITY RESPONSIBILITIES

The CITY will designate (City Project Manager Name Inserted here) as the CITY's project manager/representative and primary contact for the (Engineering Firm Name Here) will rely on the CITY'S designated project manager/representative for instructions and approval of (Engineering Firm Name) services.

## I. COMPENSATION

Based on the scope of services and the schedule outlined above, (*Engineering Firm's Name*) has prepared a detailed labor disaggregation for the proposed tasks. Summarized in an Attachment "A" - FEE PROPOSAL which is a summary spreadsheet that details the man-hours for each task for (*Engineering Firm Name*) for personnel titles as shown in the contract and sub-consultants service fees will be included. All anticipated other direct expenses will be outlined in spreadsheet. Sub-consultant fees will also be shown on the spreadsheet and additional attachment on Sub-consultant's Letterhead as an attachment to the Staffing Cost Proposal. No Mark-up on Sub-consultant fees will be accepted. All fees will be shown as "Not to Exceed".

No LUMP SUM fees will be accepted.

For the professional services as set forth in this SCP, the CITY shall pay the (*Engineering Firm's Name*) a not-to-exceed fee in the amount of (\$xx,xxx) as displayed in the attached price proposal. Payment is estimated to be distributed to the Firm in monthly progress payments based on work performed during each monthly billing period. Certain assumptions have been made in developing the fees for services. To the extent possible, all fees will be shown in the proposal.

### All Other Direct Cost (ODC):

Include any other direct costs (Examples Include: Travel, Hotel, Mileage, Meals, Copies, Equipment Rental, etc.) will be shown at actual cost as shown in Master Agreement for miscellaneous professional services. No mark up on Sub-consultant Services or Other Direct Cost Expenses will be accepted.

(END OF SECTION)

IN WITNESS WHEREOF, the parties hereto have executed STAFFING COST PROPOSAL No. \_\_\_\_ to be effective as of this day \_\_\_\_ of \_\_\_\_ of 2024

**ATTEST:**

**FIRM NAME: XYZ CORPORATION**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

**CITY OF CAPE CORAL**

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Kimberly Bruns, CMC  
City Clerk

Michael Ilczyszyn, City Manager  
(if over \$50,000)  
Wanda Roop, Procurement Manager or  
Mark Mason, Financial Services Director  
(if under \$50,000)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Address for giving notices:**

City of Cape Coral (Attn: Procurement)  
1015 Cultural Park Blvd., 2<sup>nd</sup> Floor  
Cape Coral, FL 33990

**Address for giving notices:**

(Firm Representative Name)  
\_Street Address \_\_\_\_\_  
City, State, ZIP CODE

FIRM System Awards Management ([www.sams.gov](http://www.sams.gov))

Unique ID Number: \_\_\_\_\_

**LEGAL REVIEW:**

By: \_\_\_\_\_

Aleksandr Boksner, Esq.  
City Attorney

Date: \_\_\_\_\_

**EXHIBIT "B"**

**STAFFING COST PROPOSAL**

**FEE PROPOSAL  
SPREADSHEET SAMPLE**

**"ATTACHMENT -A"**

Attachment "A" - SUMMARY FEE PROPOSAL

Hourly Rate:	FIRM NAME					Extended Cost
	\$50	\$75	\$100	\$95	\$99	
Task	Sr Eng 3	Sr Sci 2	Sr S/G Hydro 2	Sr Hydrogeo	Hydrogeo 2	
Task 1 - Detailed Work Plan	1		10	4		\$1,430
Task 2 - Permit Application	1	2	20			\$2,200
Task 3 - Pipe Installalton	1				20	\$2,030
Task 4 - Install 3 stage recorders			4	20		\$2,300
Task 5 - Review Gaging 3 ditch locations			16	80	40	\$13,160
Task 6 - Check on pits, pumps, ponds	12		16		96	\$11,704
Task 7 - Data Analysis	12	8	16	60		\$8,500
Task 8 - Report, weekly and final	6	4	24	12	24	\$6,516
						\$0
						\$0
<i>Sum Hours:</i>	33	14	106	176	180	NA
<i>Sum Cost by Individual/Expense</i>	\$1,650	\$1,050	\$10,600	\$16,720	\$17,820	NA
						<b>\$47,840</b>

# EXHIBIT "C"

## STAFFING COST PROPOSAL SUBCONSULTANT PROPOSAL SAMPLE

SCP - ATTACHMENT "B"

### SAMPLE SCP -SUBCONSULTANT SERVICES



Lab Location: Tampa, FL  
Lab Project Manager: Chad Bechtold  
Client Name: Cardno  
Client Project Manager: Joe Marsh

Date: 12-27-18  
Data Reporting: Level 2

City of Cape Coral-Everest Water Reclamation Facility					
Parameter	Matrix	Method	Quantity	Unit Price Standard TAT (5 7 Business days)	Total Price Standard TAT
As,Cd, Cr, Pb	Soil	SW-846 6010	1	\$40.00	\$40.00
TCLP Extraction	Soil	SW-846 1311	1	\$35.00	\$35.00
SPLP Extraction	Soil	SW 846 1312	1	\$35.00	\$35.00
VOHs	Soil	SW-846 8260B	1	\$65.00	\$65.00
TRPH by FL PRO	Soil	SW-846 8270C	1	\$45.00	\$45.00
<b>Total</b>					<b>\$220.00</b>

Note: Subconsultant Firm to provide fees on their letterhead.

These were laboratory services for 7 business days at the shown rate per day.

The total price isr \$220 x 7 days = \$1540.00 total fee.

**THIS IS A SAMPLE STAFFING COST PROPOSAL DOCUMENT**

**EXHIBIT “D”**

**STAFFING COST PROPOSAL**

**SAMPLE – MAP  
“ATTACHMENT – C”**

**SAMPLE PROJECT MAP**



**EXHIBIT "E"**

**PERSONNEL  
HOURLY  
RATES**

**Avalon Engineering, Inc.**  
**Billable Hourly Rates by Position**  
**Contract # CON-RFQ2323KR**

<b>Position</b>	<b>Billable Hourly Rate</b>
Archaeologist 1	
Archaeologist 2	
Architect	
Assistant Planner (Planner 1)	
Associate Planner (Planner 2)	
Principal Planner (Planning Manager)	
Senior Planner (Planner 3)	\$185
Clerical	\$65
Senior Clerical	\$75
Chemical Specialist:	
Landscape Architect	
Senior Landscape Architect	
Registered Landscape Architect	
CAD Technician 1	\$110
CAD Technician 2	\$135
Senior CAD designer	\$150
Construction Administrator	
Construction Manager 1	
Construction Manager 2	

**Avalon Engineering, Inc.**  
**Billable Hourly Rates by Position**  
**Contract # CON-RFQ2323KR**

<b>Position</b>	<b>Billable Hourly Rate</b>
Construction Project Representative 1	\$85
Construction Project Representative 2	\$110
Ecologist	
Engineer 1	\$120
Engineer 2	\$140
Environmental Biologist:	
GIS Specialist I	
GIS Specialist II	
Senior GIS Analyst	
Hydrogeologist 1	
Hydrogeologist 2	
Senior Hydrogeologist 1	
Senior. Hydrogeologist 2	
Senior. Hydrogeologist 3	
Surface/Groundwater Hydrogeologist	
Senior Surface Ground Water Hydrogeologist 1	
Senior Surface Ground Water Hydrogeologist 2	
Instrumentation & Controls Project Manager	
Instrumentation & Controls Engineer 3	
Instrumentation & Controls Field Engineer	
Instrumentation & Controls Senior CAD Designer	
Operations Manager	

**Avalon Engineering, Inc.**  
**Billable Hourly Rates by Position**  
**Contract # CON-RFQ2323KR**

<b>Position</b>	<b>Billable Hourly Rate</b>
Project Administrator	
Project Analyst	
Project Engineer 1	\$185
Project Engineer 2	
Senior Engineer 1	
Senior Engineer 2	
Senior Engineer 3	
Project Manager	
Senior Project Manager	\$200
Project Scientist 1	
Project Scientist 2	
Scientist	
Senior Scientist 1	
Senior Scientist 2	
Senior Land Surveyor	
Survey Technician	
Survey Crew Chief	
2- Person Survey Crew (Hour)	
3- Person Survey Crew (Hour)	
SUE Designating Crew ( Hour)	
Sue Locating Crew (Hour)	
Traffic Operations Engineer	
Traffic Engineer	
Principle in Charge	\$200

**EXHIBIT "F"**

**REIMBURSABLE  
EXPENSE  
SHEET**

## REIMBURSABLE EXPENSES

<b>Reimbursable Expenses</b>	
ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost for Specific Need
Postage and Shipping	Actual Cost for postage and shipping fee
*WHEN APPROVED (OUT OF TOWN): Commercial Air Travel	Actual Cost (Coach)
*WHEN APPROVED: Vehicle Travel Allowance	\$0.585/Mile or Current IRS Rate
*WHEN APPROVED: Vehicle Rental/Gas	Actual Cost
*WHEN APPROVED: Lodging (Per Person)	In accordance with the GSA M&IE FY 2023 schedule for Travel utilizing the "Fort Myers, Florida" rates **
*WHEN APPROVED: **MEALS:	In accordance with the GSA M&IE FY 2023 schedule for Travel utilizing the "Fort Myers, Florida" rates **
*WHEN APPROVED: Breakfast	\$14/meal*
*WHEN APPROVED: Lunch	\$16/meal*
*WHEN APPROVED: Dinner	\$29/meal*
Reproduction (Photocopy)	
8 ½" x 11" B&W	\$00./Page
8 ½" x 11" Color	\$00./Page
8 ½" x 14" B&W	\$00./Page
8 ½" x 14" Color	\$00./Page
11" x 14" B&W	\$00./Page
11" x 14" Color	\$00./Page
11"x17" B&W	\$00./Page
11"x17" Color	\$00./Page
24"x36" B&W	Actual Cost/Sheet
24"x36" Color	Actual Cost/Sheet
Printing/Binding	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
Permit Fees	Actual Cost
CD/DVD/Flashdrive	Actual Cost
Aerials	\$.00/Sheet
Courier Service	Actual Cost
DRONE SERVICES	Per HOUR – Actual Cost

\*UTILIZED WHEN OUT OF TOWN TRAVEL APPROVED- not for local purposes

# **EXHIBIT "G"**

## **PERSONNEL QUALIFICATION CLASSIFICATIONS**

**ATTACHMENT B – PROFESSIONAL  
PERSONNEL CLASSIFICATION**

Employee Last Name, First	Primary Office Location City, State	Classification	Active License Yes or No	Min Yrs. Exp.	Education AND/OR License Requirements	Role Synopsis and Progression
DeLacey, John	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 22904	Senior CAD designer	No	10	High School or GED; Associates Degree Preferred	Performs many of the less complex tasks typically performed by engineers/architects with significant independence; typically spending 70% of the time designing for engineer/architect's approval; designs at a level comparable to an experienced EIT or non-licensed architect; works with clients and consultants to ensure that deliverables will be properly formatted, and all data can be exchanged efficiently. Prepares complete set(s) of complex drawings.
Aral, Mark, P.E.	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 22904	Project Engineer 1	Yes	5	BS or BA & PE Required	Newly registered PE and/or has PhD, taking leadership and ownership of projects or significant project tasks. Responsible for direct client interface on questions of technical nature. Heavily relied on by Project Manager. Limited project management responsibilities on small projects. Performs or assists with state, federal and local permitting, and client/agency coordination. May perform tasks associated with engineering disciplines including but not limited to mechanical, electrical, plumbing, fire protection, and utilities.
Vilim, Noelle P.E.	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 22904	Project Engineer 1	Yes	5	BS or BA & PE Required	Newly registered PE and/or has PhD, taking leadership and ownership of projects or significant project tasks. Responsible for direct client interface on questions of technical nature. Heavily relied on by Project Manager. Limited project management responsibilities on small projects. Performs or assists with state, federal and local permitting, and client/agency coordination. May perform tasks associated with engineering disciplines including but not limited to mechanical, electrical, plumbing, fire protection, and utilities.
Sloan, Brendan, P.E.	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 22904	Senior Project Manager	Yes	15	BS or BA & PE or PG Required	Primary interface with client. Entrusted to function independently on behalf of firm regarding contracts, change orders, business development with existing and new clients, critical decisions, and negotiations with clients. Coordinating and leading project teams. Clients see as a preferred point of contact.
Miller, Linda, A.I.C.P.	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 22904	Senior Planner (Planner 3)	N/A A.I.C.P	4-8	Master's Degree, preferred with 4 years' experience or Bachelor's Degree with 6 years' experience in zoning and planning; AICP preferred.	Advanced professional planning experience of high complexity and variety. Significantly involved with larger, more complex planning assignments. Planners at this level exercise greater independence and judgement, receiving general supervision from senior management. Typical functions may include developing project budgets, administering bidding process, and verifies contract expenditures. Conducts research and prepares statistical reports on land use, physical, social, and economic issues. Works within specializations such as regional planning, natural resource management, community & economic development, coastal zone management, and transportation planning. Exhibits ability in creative problem-solving skills to gather information relevant to solve less well-defined planning problems.
Giles, Tom, P.E.	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 22904	Principle in Charge	Yes	20	BS or BA & PE Required	The Principal in Charge is a Registered Professional Engineer who holds full project responsibility and authority to represent the firm. It is his responsibility to assure that all necessary corporate and staff resources are available. The authority of the Principal in Charge, combined with an extensive understanding of the work to be performed, provides the project team and staff with strong leadership, technical direction and expert supervisory guidance of all work undertaken by the firm. The principle is ultimately the lead for the firm.



**ATTACHMENT B – PROFESSIONAL  
PERSONNEL CLASSIFICATION**

Employee Last Name, First	Primary Office Location City, State	Classification	Active License Yes or No	Min Yrs. Exp.	Education AND/OR License Requirements	Role Synopsis and Progression
DeLacey, John	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 33904	Senior CAD designer	No	10	High School or GED; Associates Degree Preferred	Performs many of the less complex tasks typically performed by engineers/architects with significant independence; typically spending 70% of the time designing for engineer/architect's approval; designs at a level comparable to an experienced EIT or non-licensed architect; works with clients and consultants to ensure that deliverables will be properly formatted, and all data can be exchanged efficiently. Prepares complete set(s) of complex drawings.
Aral, Mark, P.E.	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 33904	Project Engineer 1	Yes	5	BS or BA & PE Required	Newly registered PE and/or has PHD, taking leadership and ownership of projects or significant project tasks. Responsible for direct client interface on questions of technical nature. Heavily relied on by Project Manager. Limited project management responsibilities on small projects. Performs or assists with state, federal and local permitting, and client/agency coordination. May perform tasks associated with engineering disciplines including but not limited to mechanical, electrical, plumbing, fire protection, and utilities.
Vilim, Noelle P.E.	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 33904	Project Engineer 1	Yes	5	BS or BA & PE Required	Newly registered PE and/or has PHD, taking leadership and ownership of projects or significant project tasks. Responsible for direct client interface on questions of technical nature. Heavily relied on by Project Manager. Limited project management responsibilities on small projects. Performs or assists with state, federal and local permitting, and client/agency coordination. May perform tasks associated with engineering disciplines including but not limited to mechanical, electrical, plumbing, fire protection, and utilities.
Sloan, Brendan, P.E.	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 33904	Senior Project Manager	Yes	15	BS or BA & PE or PG Required	Primary interface with client. Entrusted to function independently on behalf of firm regarding contracts, change orders, business development with existing and new clients, critical decisions, and negotiations with clients. Coordinating and leading project teams. Clients see as a preferred point of contact.
Miller, Linda, A.I.C.P.	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 33904	Senior Planner (Planner 3)	N/A A.I.C.P	4-6	Master's Degree, preferred with 4 years' experience or Bachelor's Degree with 6 years' experience in zoning and planning; AICP preferred.	Advanced professional planning experience of high complexity and variety. Significantly involved with larger, more complex planning assignments. Planners at this level exercise greater independence and judgement, receiving general supervision from senior management. Typical functions may include developing project budgets, administering bidding process, and verifies contract expenditures. Conducts research and prepares statistical reports on land use, physical, social, and economic issues. Works within specializations such as regional planning, natural resource management, community & economic development, coastal zone management, and transportation planning. Exhibits ability in creative problem-solving skills to gather information relevant to solve less well-defined planning problems.
Giles, Tom, P.E.	2503 Del Prado Blvd. S., Suite 200 Cape Coral, Florida 33904	Principle in Charge	Yes	20	BS or BA & PE Required	The Principal in Charge is a Registered Professional Engineer who holds full project responsibility and authority to represent the firm. It is his responsibility to assure that all necessary corporate and staff resources are available. The authority of the Principal in Charge, combined with an extensive understanding of the work to be performed, provides the project team and staff with strong leadership, technical direction and expert supervisory guidance of all work undertaken by the firm. The principle is ultimately the lead for the firm.



**EXHIBIT "H"**

**TRUTH-IN NEGOTIATIONS  
FORM**

**TRUTH-IN-NEGOTIATIONS**

**Negotiated Fees (FS 287.055)**

**DESIGNER- ENGINEER - CONSTRUCTION MANAGER**

The undersigned hereby certifies under the penalties of perjury that the wage rate and other costs used to support its compensation are accurate, complete and current at the time of contracting. The undersigned agrees that the original contract price and any additions to the contract may be adjusted within one year of completion of the contract to exclude any significant amounts if the City determines that the fee was increased by such amounts due to inaccurate, incomplete or non-current wage rates or other costs.

**Company Name (Typed):** Avalon Engineering, Inc.

**City of Cape Coral Project Title:** RFQ # 2323KR - CITYWIDE PROFESSIONAL CONSULTANT CONTINUING SERVICES (CCNA)

**Authorized Name:** Brendan D. Sloan  
Printed Name

**Representative Title:** Vice President/Secretary  
Printed Title

**Representative Signature:** 

**Date Signed:** 5/17/2023

**Notary Name:** Michelle L. Moore  
Printed Name

**Notary Address:** 2503 Del Prado Boulevard South, Suite 200

Cape Coral, Florida 33904

**Florida County:** Lee

**Notary Date:** 5/17/2023

**Notary Signature:** 

**Notary Seal:**




**EXHIBIT "I"**

**SCRUTINIZED COMPANIES  
CERTIFICATION  
FORM**

## Scrutinized Companies CERTIFICATION FORM

Pursuant to 287.135 Florida Statute, 215.4725 and 215.473, companies contracting with public agencies are prohibited from contracting for goods or services \$1 million or more that appear on the Scrutinized Companies List. This form is to certify that the "Vendor/Company Name" below hereby swears or affirms that as of the signature date below that "Vendor/Company Name" is not listed on a Scrutinized Companies list. By authorized signature (authorized to enter into binding agreements), representative from this company, further affirms the following:

1. This "Vendor/Company Name" is not participating in a boycott of Israel such that company is not refusing to deal, is not terminating business activities, or taking any other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israel controlled territories, in a discriminatory manner.
2. This "Vendor/Company Name" does not appear on the Scrutinized Companies with Activities on Sudan List, where the State Board of Administration (<http://www.sbafla.com/>) has established and maintains the following criteria:
  - a. Have a material business relationship with the government of Sudan or a government-created project involving oil related, mineral extraction, or power general activities, or
  - b. Have a material business relationship involving the supply of military equipment, or
  - c. Impart mineral benefit to disadvantaged citizens that are typically located in the geographic Periphery of Sudan, or
  - d. Have been complicit in the genocidal campaign in Darfur.
3. This "Vendor/Company Name" does not appear on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List where the State Board of Administration (<http://www.sbafla.com/>) has established the following criteria:
  - a. Have a material business relationship with the government of Iran or a governmental-created project involving oil related or mineral extraction activities, or
  - b. Have made material investments with the effect of significantly enhancing Iran's petroleum sector.
4. The "Vendor/Company Name" is not engaged in business operations in Cuba or Syria.
5. The company identified below in the section entitled "Vendor/Company Name" understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. "Vendor/Company Name" further understands that any contract with an agency for goods or services may be terminated at the option of the agency if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and/or with business operations in Cuba or Syria.

<b>Vendor/Company Name:</b> Avalon Engineering, Inc.
<b>Street Address:</b> 2503 Del Prado Boulevard South, Suite 200
<b>City / State / Zip Code:</b> Cape Coral, Florida 33904
<b>Vendor/Company Telephone Number:</b> 239-573-2077
<b>Email Address:</b> brendan@avaloneng.com
<b>Vendor FEIN:</b> 59-2036078
<b>Authorized Signature:</b> 
<b>Printed Name/Title:</b> Brendan D. Sloan, Vice President/Secretary
<b>Date of Signature:</b> 5/17/2023

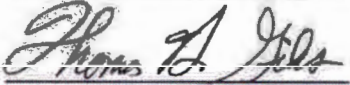
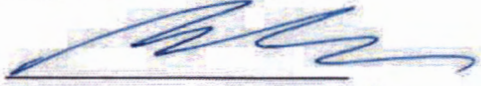

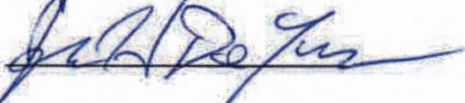
**CORPORATE RESOLUTION**

I, Brendan D. Sloan, Secretary of Avalon Engineering, Inc., a corporation organized and existing under the laws of the State of Florida, hereby certify that at a meeting of the Board of Directors of the Corporation duly called and held on May 17, 2023, at which a quorum was present and acting throughout, the following resolutions were adopted and are now in full force and effect:

RESOLVED that the following individuals of this corporation are authorized to execute on behalf of this corporation a Bid/RFP and Agreement to City of Cape Coral, Florida for the design/construction of the RFQ #2323KR – Citywide Professional Consultant Continuing Services (CCNA).

(Project Name)


I further certify that the names of the officers of this corporation and any other persons authorized to act under this resolution and their official signatures are as follows:

<u>NAME</u>	<u>OFFICIAL TITLE</u>	<u>OFFICIAL SIGNATURE</u>
<u>Thomas H. Giles</u>	<u>President</u>	
<u>Brendan D. Sloan</u>	<u>Secretary</u>	
<u>Linda L. Miller</u>	<u>Director</u>	
<u>John Delacey</u>	<u>Director</u>	

Corporation address 2503 Del Prado Boulevard South, Suite 200 Cape Coral, Florida 33904

Corporation phone number 239-573-2077

IN WITNESS WHEREOF, I have hereunto subscribed my name as Secretary and affixed the seal of the corporation this 17th day of May, 2023.

SECRETARY:  (Signature) Typed Name: Brendan D. Sloan

DATE: 5/17/2023

**EXHIBIT "K"**

**BUSINESS ETHICS  
EXPECTATIONS  
FORM**

## BUSINESS ETHICS REQUIREMENTS

1. During the course of pursuing contracts with Owner and while performing contract work in accordance with this agreement, Contractor/Consultant/Vendor/Supplier/Sub-consultant, hereafter referred to as Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner best interests.
2. Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations shall apply to the activities of contractor employees, agents, subcontractors, subcontractor employees, consultants of contractor, etc.

Contractor employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.

Contractor employees, agents or subcontractors (or their relatives) should not receive any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the project.

3. Contractor agrees to notify a designated Owner representative within 48 hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.
4. The e-mail address and/or telephone number to report any concerns related to any possible violations of the Owner's Business Ethics Expectations are as follows:

E-mail: Kathy Rose, [krose@capecoral.net](mailto:krose@capecoral.net) Telephone: 239-242-3679

5. Upon request by Owner, Contractor agrees to provide a certified Management Representation Letter executed by selected Contractor representatives in a form agreeable to Owner stating that they are not aware of any situations violating the business ethics expectations outlined in this contract or any similar potential conflict of interest situations.
6. Contractor agrees to include this clause in all contracts with subcontractors and material suppliers receiving more than \$25,000 in funds in connection with the Owner's project.
7. Contractor shall permit interviews of employees, reviews and audits of accounting or other records by Owner representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Contractor's employees, agents, representatives, vendors, subcontractors, and other third parties paid by Contractor in their relations with Owner's current or former employees or employee relatives.
8. Contractor agrees to implement a program requiring their employees sign acknowledgements that they have read and understand Owner's Business Ethics Expectations and the related obligations outlined in this contract exhibit.

Firm Name: Avalon Engineering, Inc. Printed Name of Signer: Brendan D. Sloan

Authorized Signature  Date of Signature 5/17/2023

ATTACHMENT M  
CITYWIDE PROFESSIONAL CONSULTANT CONTINUING SERVICES (CCNA) -RFQ2323KR

**EXHIBIT "L"**

**IMMIGRATION  
E-VERIFY  
CERTIFICATION**



## Immigration Affidavit Certification

The City of Cape Coral Invitation to Bid; Request for Proposal or Quotation # - **RFQ2323KR**

Project Name: **Citywide Professional Consultant Continuing Services (CCNA)**

This Affidavit is required and should be signed, notarized by an authorized principal of the firm, and submitted with formal Invitations to Bid (ITB's) and Request for Proposals (RFP) submittals, Request for Quotation submittals.

Consultant's or Bidder's or Contractors are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, at the time of the submission of the solicitation Consultant's/bidder's proposal shown above.

Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company. Failure to include this Affidavit and acceptable evidence of enrollment in the E-Verify program may deem the Consultant / Bidder/Contractor's proposal as nonresponsive. The City of Cape Coral will not intentionally award City contracts to any Consultant who knowingly employs unauthorized alien workers, constituting a violation of the employment provision contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act ("INA"). The City of Cape Coral may consider the employment by any Consultant/Bidder/Contractor 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 termination of the contract by The City of Cape Coral. Consultant/Bidder/Contractor attests that they are fully compliant with all applicable immigration laws (specifically to the 1986 Immigration Act and subsequent Amendment(s)) and agrees to comply with the provisions of the Memorandum of Understanding with E-Verify and to provide proof of enrollment in The Employment Eligibility Verification System (E-Verify), operated by the Department of Homeland Security in partnership with the Social Security Administration at the time of submission of the Consultant's or Bidder's or Contractor's submitted proposal.

Company Name Avalon Engineering, Inc.

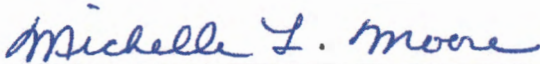
Authorized Printed Name Brendan D. Sloan Title Vice President/Secretary

Signature Date 5/17/23 Signature: 

State of Florida County of Lee

The foregoing instrument was signed and acknowledged before me this 17th day of May, 2023, by

Brendan D. Sloan who has produced Florida Driver's License S450-064-81-241-0 as identification.  
(Print or Type Name) (Type of Identification and Number)

  
Notary Public Signature

Michelle L. Moore  
Printed Name of Notary Public



12/7/2026  
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.

E-Verify Form – March 25, 2021

**EXHIBIT "M"**

**DRUG-FREE  
CERTIFICATION  
FORM**


# DRUG FREE WORKPLACE CERTIFICATION

In order for the City of Cape Coral to continue as a drug-free workplace, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid/proposal a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid/proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require 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. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Avalon Engineering, Inc.  
Company Name (please print)

  
Authorized Signature

5/17/2023  
Date

Brendan D. Sloan  
Typed Name of Authorized Signer

**EXHIBIT "N"**

**CERTIFICATION**

**DISCLOSURE**

**LOBBYING**

**FORM**

**Certification for Disclosure of Lobbying Activities  
On Federal-Aid Contracts  
(Contracts, Grants, Loans and Cooperative Agreements)  
Compliance with 49CFR, Section 20.100 (b)**

The prospective participant certifies, by signing this certification that to the best of his or her knowledge and belief:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal 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 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 submit Standard FORM-LLL "Disclosure of Lobbying Activities", 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 sub-contractors, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclosure 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 prospective participant also agrees by submitting his or her proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**PROJECT FOR CITY of CAPE Coral, FL – Request for Qualification #RFQ2323KR  
– Citywide Professional Consultant Continuing Services (CCNA) for subsequent – Staffing Cost Proposals – Project Work**

FIRM NAME OF CONSULTANT: Avalon Engineering, Inc.

By Authorized Representative: Brendan D. Sloan DATE: 5/17/2023  
(PRINTED NAME)

Authorized Signature:  \_\_\_\_\_

TITLE: Vice President/Secretary

**EXHIBIT "O"**

**DEBARMENT SUSPENSION  
AND  
VOLUNTARY EXCLUSION  
FORM**

## DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION FORM

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions** This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

### Instructions for Certification

1. By signing and submitting this bid, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this bid is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "bid," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this bid is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this bid that it will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the No procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Certification

- (1) The prospective lower tier participant certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. **Must be registered in System Awards Management System(SAMS) and provide your Unique Entity ID number - <https://sam.gov/content/home>.**
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to the bid submittal.

### LEGAL NAME OF FIRM/CONSULTANT:

System Award Management (SAM's) - CAGE Number: 5CX22  
System Award Management (SAM's) - Entity ID Number: GXVALTY5PB7

SOLICITATION/CONTRACT: **RFQ2323KR -CITYWIDE PROFESSIONAL CONSULTANT CONTINUING SERVICES (CCNA)**

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE: Brendan D. Sloan

SIGNATURE:

DATE: 5/17/2023