

City of Marco Island Florida



AGREEMENT FOR PROFESSIONAL SERVICES

Professional Engineering Services Library:

Coastal Engineering Services

Contract # 2023-009

March 8, 2023

HUMISTON & MOORE ENGINEERS, P. A.
5679 Strand Ct.
Naples, FL 34110
Phone: (239) 594-2021

AND

CITY OF MARCO ISLAND
50 Bald Eagle Drive
Marco Island, Florida 34145
Phone: (239) 389-5000

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT made this March 8, 2023 by and between the City Council of the City of Marco Island, Florida, a municipal corporation of the State of Florida, located within Collier County, hereinafter referred to as "OWNER," and Humiston & Moore Engineers, P. A. a Florida Corporation, authorized to do business in the State of Florida, whose business address is 5679 Strand Ct., Naples, FL 34110, hereinafter referred to as "CONSULTANT."

WITNESSETH

WHEREAS, OWNER desires to obtain professional engineering and associated services from CONSULTANT concerning **Coastal Engineering Services**; and

WHEREAS, professional services to be provided and performed by CONSULTANT pursuant to this Agreement are being procured and have been negotiated by OWNER in accordance with applicable provisions of Florida Statute 287.055 for professional engineering services; and

WHEREAS, the OWNER has heretofore qualified and selected CONSULTANT pursuant to and in accordance with the consultant selection provisions set forth in Florida Statute 287; and

WHEREAS, the OWNER desires to engage the CONSULTANT to perform certain professional services pertinent to such work in accordance with this AGREEMENT and with SERVICE AUTHORIZATIONS to be issued at the time of or subsequent to execution of this AGREEMENT; and

WHEREAS, the CONSULTANT has submitted a formal proposal for provision of professional services contemplated by Owner under this Agreement; and

WHEREAS, the CONSULTANT represents that it has expertise in the type of professional engineering services that will be required by the OWNER.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and provisions contained herein, the parties hereto agree as follows:

ARTICLE ONE

CONSULTANT'S RESPONSIBILITY

1.1. CONSULTANT shall provide to OWNER professional engineering design and associated services concerning **Coastal Engineering Services** as more particularly described in this Agreement.

1.2. The Basic Services to be performed by CONSULTANT hereunder are those set forth in this Agreement and any Supplemental Agreements which may be prepared and issued by the OWNER, and executed by the parties hereto, subsequent and pursuant to execution of the Agreement. The

unit compensation to be paid unto CONSULTANT by the OWNER for all Basic Services and Additional Services shall be based on the hourly wage rates and overhead factors set forth in Article Five and Schedule A, "Consultant's Employee Hourly Rate Schedule," which is attached hereto and incorporated herein. The hourly rate schedule will be in force for the duration of this agreement and subsequent addendum(s).

1.3. The CONSULTANT agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, Collier County, and the City of Marco Island, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONSULTANT pursuant to this Agreement.

1.4. The CONSULTANT agrees that, when the services to be provided hereunder relate to a professional service, which under Florida Statutes requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified and appropriately licensed personnel to provide such services.

1.5. CONSULTANT agrees to employ and designate a Project Manager in writing for Owner's approval, within five (5) calendar days after receiving a Notice to Proceed. The Project Manager shall be a licensed professional engineer, and shall be authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating, and managing all aspects of the services to be provided and performed by CONSULTANT under this Agreement and Supplemental Agreements thereto. Within five (5) calendar days from the date of the Notice to Proceed issued by OWNER to CONSULTANT, the CONSULTANT shall deliver to the OWNER a written statement executed by duly authorized officers of the CONSULTANT, acknowledging that the Project Manager shall have full authority to bind and obligate the CONSULTANT on all matters arising out of or relating to this Agreement and all Supplemental Agreements thereto. The CONSULTANT agrees that the Project Manager shall devote whatever time is required to satisfactorily manage the services to be provided and performed by the CONSULTANT hereunder. The person selected by the CONSULTANT to serve as the Project Manager shall be subject to the prior approval and acceptance of the OWNER.

1.6. CONSULTANT agrees to promptly remove and replace the Project Manager, with or without cause, within fourteen (14) calendar days of receipt of a written directive from the OWNER. This provision also applies to all other personnel employed or retained by the CONSULTANT, or any sub-consultants or any personnel of any such sub-consultants or sub-Consultants engaged by the CONSULTANT to provide and perform services or work pursuant to the requirements of this

Agreement, whom the OWNER shall direct in writing to be removed and replaced with or without cause.

1.7. CONSULTANT has represented to the OWNER that it has expertise in the type of professional services that will be required hereunder. The CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the OWNER'S review and approval and the standard of care for all professional engineering and related services performed or furnished by CONSULTANT under this Agreement shall be in accordance with generally accepted standards of professional practice in the State of Florida, and endeavor to be in accordance with all published laws, statutes, ordinances, codes, rules, regulations, and requirements of all governmental agencies which regulate or have jurisdiction over the Owner's project(s) or the services to be provided and performed by CONSULTANT hereunder. In the event of any conflicts in these requirements, the CONSULTANT shall notify the OWNER in writing of each existing or arising conflict, and will utilize its professional judgment to advise OWNER regarding resolution of the conflict.

1.8. CONSULTANT agrees not to divulge, furnish, or make available to any third person, firm or organization, without OWNER'S prior written consent, or unless incident to the proper performance of the CONSULTANT'S obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning services to be rendered by CONSULTANT herein, and CONSULTANT shall require all of its employees, agents, sub-consultants, and sub-Contractors to comply with the provisions of this paragraph.

1.9. CONSULTANT agrees to provide OWNER with professional evaluations of the OWNER'S budget for each project authorized under this Agreement. The evaluations and opinions shall be delivered to OWNER in accordance with the following schedule:

- (a) The professional evaluations of the OWNER'S project or work budget shall be delivered in a report format to be furnished by CONSULTANT as part of the Scope of Services.

1.10. Evaluations of the OWNER'S project or work budget, as prepared by the CONSULTANT, represent the CONSULTANT'S best cost opinions based on judgment as an experienced and qualified professional engineering consultant.

ARTICLE TWO

ADDITIONAL SERVICES OF CONSULTANT

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services above customary design services, generally of the types listed in Article Two herein. The cost of these Additional Services will be paid for by OWNER under individually negotiated Supplemental Agreements based on a supplemental fee schedule and/or in accordance with the hourly wage rates and overhead factors set forth in Article Five and Schedule A, "Consultant's Employee Hourly Rate Schedule," which is attached hereto and incorporated herein. The following shall be considered as Additional Services within the general scope of the project(s) and tasks contemplated under this Agreement if not included in Scope of Services, or statement of qualifications.

2.1. Preparation of applications and supporting documents (except those already included in this Agreement) for private or governmental grants, loans, bond issues, or advances.

2.2. Services resulting from significant/major changes in the general scope, extent, or character of a project or its design including, but not limited to, changes in size, complexity, OWNER'S schedule, or character of construction; and, revising previously accepted studies, reports, design documents, or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, or government orders enacted subsequent to but not reasonably anticipated prior to the original preparation of such studies, reports, or documents, or due to any other cause beyond CONSULTANT'S reasonable control.

2.3. Preparation and submission of technical or environmental support information to and necessary consultations with the City of Marco Island Departments, Florida Department of Environmental Protection, Florida Department of Transportation, South Florida Water Management District, U.S. Army Corps of Engineers or other appropriate regulatory agencies, in order to obtain necessary permits or approvals for construction of the project(s) to the extent such services are not contracted herein as Basic Services.

2.4. Provide renderings or models of a project or task for OWNER'S use.

2.5. Investigations and studies involving detailed consideration of public works operations, maintenance, and overhead expenses; including, but not limited to the preparation of feasibility studies, cash flow and economic evaluations, cost schedules and appraisals, and evaluation of processes available for licensing and assisting OWNER in obtaining process licensing.

2.6. Furnishing services for a project or task by independent professional associates, construction Consultants, attorneys, and specialty consultants for Owner needs and requirements above and beyond the customary **Coastal Engineering Services** contract services to be provided and furnished by CONSULTANT hereunder.

2.7. Services provided or furnished during out-of-town travel, as required of CONSULTANT and directed by OWNER, other than visits to the project site or OWNER'S office or local travel as defined herein.

2.8. Assistance in connection with bid protests, re-bidding, or renegotiating contracts for construction, materials, equipment, or services, except as otherwise provided for herein.

2.9. Providing any type of property surveys, aerial photography, or related engineering services needed for the transfer of interests in real property, including routine and specific purpose field surveys for design purposes and engineering surveys and construction staking to enable Consultants to proceed with their work except as otherwise provided for herein.

2.10. Preparation of operating, maintenance, and staffing manuals, except as otherwise provided for herein.

2.11. Preparing to serve or serving as a specialty Consultant or expert witness for OWNER in any litigation, or other legal or administrative proceeding involving the project or task (except for assistance in consultations which are deemed to be a part of the Basic Services to be provided herein).

2.12. Additional services to be rendered by Consultants, that were not contemplated by the parties herein or provided for in this Agreement, or otherwise which are not customarily furnished in accordance with generally accepted engineering practice.

ARTICLE THREE

OWNER'S RESPONSIBILITIES

3.1. The OWNER shall designate in writing a Project Coordinator to act as OWNER'S representative with respect to the services to be rendered under this Agreement and all authorized Supplemental Agreements (hereinafter referred to as the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to CONSULTANT'S services for a project or task. However, unless approved in advance by the City Manager or Public Works Director in writing, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CONSULTANT that would have

the effect, or be interpreted to have the effect, of modifying or changing in any way the following contract matters:

- (a) The time the CONSULTANT is obligated to commence and complete all such services; or
 - (b) The amount of compensation the OWNER is obligated or committed to pay the CONSULTANT.
- 3.2. The Project Coordinator shall:
- (a) Review and make appropriate recommendations on all requests submitted by the CONSULTANT for payment for services and work provided and performed in accordance with this Agreement;
 - (b) Provide all criteria and information requested by CONSULTANT as to OWNER'S requirements for each project or task, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations;
 - (c) Upon request from CONSULTANT, assist CONSULTANT by placing at CONSULTANT'S disposal all available information in the OWNER'S possession pertinent to each project or task, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data relative to design or construction of each project or task; and,
 - (d) Arrange for access to and make all provisions for CONSULTANT to enter the work site to perform the services to be provided by CONSULTANT under this Agreement.
- 3.3 CONSULTANT acknowledges that access to any work site, to be arranged by OWNER for CONSULTANT, may be provided during times that are not the normal business hours of the CONSULTANT.
- 3.4. OWNER shall be responsible for the acquisition of all easements, property sites, rights-of-way, and other property rights required for construction of each project or task and for the costs thereof, including the costs of any required land surveys in connection with such acquisition.

ARTICLE FOUR

TIME

- 4.1. The initial period of this service AGREEMENT is through March 8, 2026, with the potential for one – three (3) year extension. The CONSULTANT shall be allowed to complete all services authorized prior to the termination of time.
- 4.2. The period of service and design schedule for each service authorization shall be as so specified for each project, Scope of Services and Fees, attached hereto and incorporated herein.

4.3. Services to be rendered by CONSULTANT shall commence subsequent to the execution of this Agreement upon receipt of a written Notice to Proceed from OWNER for all or any designated portion of each project authorized herein and shall be performed and completed in accordance with the provisions of this Agreement and Schedules A-D, attached hereto and incorporated herein.

4.4. Should CONSULTANT be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the reasonable control of CONSULTANT, and not due to its own fault or negligence, including, but not restricted to, acts of God or of public enemy, acts of government or of the OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then CONSULTANT shall notify OWNER in writing within five (5) working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which CONSULTANT may have had to request a time extension for professional services.

4.5. Except as noted in Section 4.4, no interruption, interference, inefficiency, suspension, or delay in the commencement or progress of CONSULTANT'S services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve CONSULTANT of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONSULTANT'S sole remedy against OWNER will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of the CONSULTANT, the services to be provided hereunder have not been completed within two calendar years of a Notice to Proceed, the CONSULTANT'S compensation may be equitably adjusted with respect to those services that have not yet been performed so as to reflect the incremental increase in costs experienced by CONSULTANT after expiration of the three-year period.

4.6. Should the CONSULTANT fail to commence, provide, perform, or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the OWNER hereunder, the OWNER at its sole discretion and option may withhold any and all payments due and owing to the CONSULTANT until such time as the CONSULTANT resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the OWNER'S satisfaction that the CONSULTANT'S performance is or will shortly be back on schedule.

ARTICLE FIVE
COMPENSATION

5.1. The Owner will compensate the CONSULTANT for the services satisfactorily performed under this agreement in accordance with one or more of the following methods of negotiation and payment: a) negotiated lump sum fixed price; b) established hourly billing rates as provided in Schedule A attached hereto; c) labor multiplier not to exceed amount; or e) other methods. The method used shall be identified in each Service Authorization.

5.2. Subcontract services, if any, shall be invoiced by the CONSULTANT in the exact amounts and for actual fees, with no additional mark-up, as paid by the CONSULTANT.

5.3. Reimbursable expenses shall be invoiced for the actual expenditures incurred with no additional mark-up by the CONSULTANT as follows:

- a. Expenses of transportation and living when traveling in connection with each authorized project herein, except for local travel between Collier and Hillsborough Counties, as provided in Section 112.061, Florida Statutes, and fees paid for securing approval of authorities having jurisdiction over the professional services under this Agreement.
- b. Invoiced expenses of reproductions, postage and handling of drawings and specifications, including duplicate sets at the completion of professional services for the Owners review and approval.
- c. Expenses of special overtime work requiring higher than regular rates, when authorized by the Owner.
- d. Expenses of renderings and models for the Owners use.

5.4. Non-reimbursable costs include computers, Computer-Aided Design and Drafting Systems and associated appurtenances. These systems are considered to be part of the normal overhead of a modern engineering operation and associated costs should be included in the firm's overhead factor.

5.5. Total compensation for all services and expenses shall not exceed the maximum fees reflected in the approved Service Authorization(s) without written approval by Owner.

5.6. Total compensation for all services and expenses authorized under this Agreement, pursuant to Schedule A, shall not be exceeded and additional payments cannot be processed by OWNER unless Supplemental Agreements are executed by the parties if so authorized by OWNER.

5.7. Payments for Basic Services, Additional Services, subcontract services, and reimbursable expenses as defined in Article Five, shall be made upon Owner's review and approval of CONSULTANT'S itemized invoice in a format as required by OWNER.

5.8. Records of reimbursable expenses and expenses pertaining to Basic Services and Additional Services shall be kept on a generally recognized accounting basis, and shall be made available and automatically provided to the Owner as part of periodic invoice submittals.

5.9. Lump sum method of compensation. The OWNER agrees to pay CONSULTANT compensation for a well-defined level of services, based on a lump sum. The CONSULTANT shall submit all the appropriate details to justify the lump sum value, including task description; labor hour by subtask, expenses by subtasks, and billing rate used to determine lump sum.

5.10. Billing rate method of compensation. The OWNER agrees to pay CONSULTANT compensation for services rendered, based upon the actual hours performed by the employees of the CONSULTANT, times an hourly rate established in Schedule A – Consultant’s Employee Hourly Rate Schedule. The schedule shall be based on generally accepted classifications by Professional Organizations (i.e. Grade 1, 2, 3 Engineers / Architects, etc.). The billing rate schedule provided in Schedule A shall be used for the initial duration of the Agreement. Subsequent extension to this Agreement will allow the consultant to update Schedule A.

5.11. Labor multiplier not to exceed method of compensation. When a service is to be compensated for on a labor multiplier / not-to-exceed basis, the CONSULTANT will submit a not-to-exceed budget costs proposal to the OWNER for approval, based on estimated time charges (raw salary rates times the multiplier fixed below), plus reimbursable expenses and other related costs. The OWNER shall not be obligated to reimburse the CONSULTANT for costs incurred in excess of the not-to-exceed cost amount. The OWNER agrees to pay the CONSULTANT compensation for services rendered based upon the raw hourly salary rates for actual employees of the CONSULTANT for services rendered on OWNER’S projects multiplied by a maximum factor for overhead and profit based on Provisional Federal or F.D.O.T. cost rate of 3.0. The actual multiplier factor that will be used shall be determined, based on the most current year Provisional Federal indirect overhead cost rate or Florida D.O.T. overhead rate, multiplied by 1.15. Should this value be in excess of 3.0, then 3.0 shall be used. The CONSULTANT shall provide a copy of the most current year Provisional Federal indirect or F.D.O.T overhead cost rate as a component of Schedule A. The overhead factor may be subject to an audit in accordance with current US E.P.A. regulations, and Florida D.O.T., D.E.P., or other State agency procedures. The CONSULTANT’S invoice shall specifically justify any employee raw salary rate, which is increased in excess of 10% in any one calendar year. The CONSULTANT will be reimbursed only for employees working directly on the OWNER’S project. Reimbursement for the CONSULTANT’S office support services staff shall be excluded from the monthly invoices. Examples

of these exclusions include: administrative assistants, administrative secretaries, accounts receivable and payable personnel, messengers, receptionist, etc. Time invoiced for secretarial or clerical personnel working directly on the project will be accepted.

5.12. If the OWNER determines that any price for services, however calculated, provided by the CONSULTANT, including profit, negotiated in connection with this AGREEMENT, or any cost reimbursable under this AGREEMENT was increased by any significant sums because the CONSULTANT or, any subcontractor furnished incomplete or inaccurate costs or pricing data, then such price or cost or profit shall be reduced accordingly and the Service Authorization shall be reduced by the OWNER accordingly and the Service Authorization shall be modified in writing to reflect such reduction.

5.13. The OWNER agrees that it will use its best effort to pay the CONSULTANT within thirty (30) calendar days from presentation of the CONSULTANT'S itemized report and invoice, and approval by the OWNER'S representative. The CONSULTANT shall submit separate monthly invoices for each Service Authorization, which shall include a report of work completed during the respective invoice period. The report shall be adequate in detail to describe work progress (including percentage complete for each task and for the Service Authorization as a whole) and written summaries of work completed. No payment request shall exceed the budgeted value of work and services performed by the CONSULTANT under the SERVICE AUTHORIZATION.

ARTICLE SIX

OWNERSHIP OF DOCUMENTS

6.1. Upon completion or termination of this Agreement, all records, documents, tracings, plans, specifications, maps, evaluations, reports, computer assisted design or drafting disks, and other technical data, other than working papers, prepared or developed by CONSULTANT under this Agreement shall be delivered in (a) paper and (b) electronic form to and will become the property of OWNER. CONSULTANT, at its own expense, may retain copies for its files and internal use. OWNER agrees to indemnify and hold harmless CONSULTANT with respect to any claim, loss, or damage, including attorney's fees incurred by CONSULTANT due to the OWNER'S use of said records, documents, tracings, plans, specifications, maps, evaluations, reports, computer disks, and other technical data on some other work or project, unless such use is authorized in advance by CONSULTANT. OWNER acknowledges that the CONSULTANT'S work under this Agreement produces instruments of professional services, not products.

6.2. With respect to and in consideration of the indemnification provided by OWNER in paragraph 6.1. above, CONSULTANT agrees to pay to OWNER \$10.00, the sufficiency and receipt of which is acknowledged by Owner through the signing of this Agreement.

ARTICLE SEVEN

MAINTENANCE OF RECORDS

7.1. CONSULTANT will routinely keep and maintain adequate records and supporting documentation, which concern or reflect its services hereunder. The records and documentation will be retained by CONSULTANT for a minimum period of five (5) years from the date of termination/expiration of this Agreement or the date on which all services are completed, and accepted by OWNER, whichever date is the later. OWNER, or any duly authorized agents or representatives of OWNER, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the ensuing five (5) year period noted above, provided however, that such activity shall be conducted only during normal business hours.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239.389.5010; MSHEFFIELD@CITYOFMARCOISLAND.COM; 50 BALD EAGLE DR., MARCO ISLAND, FL 34145.

ARTICLE EIGHT

INDEMNIFICATION, INSURANCE AND SAFTEY, GOVERNMENTAL COMPLIANCE AND HAZARDOUS MATERIALS

8.1 Indemnity

8.1.1 To the maximum extent permitted by Florida law, Consultant shall indemnify and hold harmless the City, and their respective officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional misconduct of Consultant or anyone employed or utilized by the Consultant in the performance of this contract and any Work Order issued pursuant thereto. Consultant's obligation to indemnify under this Paragraph will survive the expiration or earlier termination of this contract and any Work Order issued pursuant thereto until it is determined by final

judgment that any action against the City or an indemnified party for any matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

8.1.2 In claims against any person or entity indemnified under this Article by an employee of Consultant, anyone directly or indirectly employed by Consultant, or anyone for whose acts the Consultant may be liable, the indemnification obligations shall not be limited to any limitation on amount or types of damages, compensation or benefits payable by or for the Consultant under workers' compensation acts, disability benefits acts or other employee benefit acts.

8.1.3 The obligations of Consultant under this Article shall not extend to the liability of the City's architect, its agents, or employees, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (b) the giving of or the failure to give direction or instructions by the architect, its agents or employees, provided such giving or failure to give is the sole cause of the injury or damage.

8.1.4 Consultant shall procure contractual liability insurance to cover its obligation under this article.

8.2 Insurance

8.2.1 During the entire term of this contract and any extensions thereof, Consultant shall obtain and maintain at Consultant's expense, the insurance coverages required by the terms of the contract and Exhibit B in accordance with the requirements and limits set forth therein. Such insurance shall be kept in full force and effect until acceptance of the Work by the City, except as otherwise required hereby. By obtaining the insurance required by this Article, Consultant shall in no manner lessen, diminish or affect Consultant's obligations under this contract and any Work Order issued pursuant thereto. Such insurance shall be maintained with insurance companies both acceptable to the city and licensed to transact business and issue insurance in the State of Florida.

8.2.2 Before proceeding with any Work under the appropriately issued Work Order, Consultant shall furnish to the City, a Certificate(s) of Insurance, and such endorsements thereto as requested by the City, and otherwise in form satisfactory to the City, as necessary to certify and evidence the existence of the required insurance policies, coverages, terms, limits and conditions required hereby. A certificate that contains wording that in any way reduces or lessens the insurer's obligations or that does not fulfill any of the requirements hereof shall not be acceptable, and will be returned for resubmission by Consultant's insurer.

8.2.3 If Consultant fails or neglects to maintain the required insurance, or provide a satisfactory certificate thereof, or should any insurance be terminated or cancelled (prior to satisfactory replacement insurance being obtained) or should any insurance carrier provide notice to the City of

cancellation or termination (prior to satisfactory replacement insurance being obtained), then in any such case the City shall have the right, but not the duty, at Consultant's expense, to obtain replacement insurance coverage from other insurance companies, and deduct from any sums that may be due or become due to Consultant, any and all premiums paid by the City for and on account of such insurance. Consultant shall be liable for any and all costs and damages incurred by the City as a result of Consultant's failure or neglect to maintain the minimum insurance limits as required hereunder.

8.2.4 On each Project the "indemnitee" shall be listed as additional insured on the insurance policies required hereunder, except for Consultant's worker's compensation and professional liability insurance policies. Consultant's insurance policies shall be endorsed to provide that the coverage shall be primary and noncontributory over any other insurance maintained by the City. Consultant's obligation to provide insurance pursuant to this article shall be independent of all other obligations under this contract.

8.2.5 In addition to the insurance required by the contract, Consultant shall provide any insurance it deems necessary to protect its interest in the Work and any insurance required to be maintained by Consultant under applicable law.

8.3 SAFETY, GOVERNMENTAL COMPLIANCE AND HAZARDOUS MATERIALS

8.3.1 Consultant shall be responsible for safety of its operations and its employees and shall take all reasonable safety precautions with respect to its Work. Consultant in addition to its own standards shall comply will all safety policies and procedures initiated by Consultant for the Project, including Consultant's policy regarding drugs, alcohol and controlled substances, and shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property, including, but not limited to, the Federal Occupational Safety and Health Act (OSHA). Consultant shall immediately notify City of any injury to any of the Consultant's employees. Consultant shall require its personnel to attend any safety meetings the City might conduct and direct Consultant to attend.

8.3.2 Consultant agrees that in performing its Work, it will not create, use or dispose of any hazardous chemicals or substances in an unlawful or hazardous manner and shall be solely responsible for the lawful, proper and safe handling, storage and removal of all hazardous wastes, chemicals and substances which are introduced to the site, or removed from the site, by Consultant's operations. The term "hazardous wastes, chemicals or substances" shall mean those materials and substances prohibited, proscribed, or the use of which is controlled by any agency of the federal

government or the applicable state or local agency having jurisdiction of such matters. In the event Consultant encounters material reasonably believed to be hazardous wastes, chemicals or substances, Consultant shall immediately stop work in the area affected and report such condition to City in writing. Consultant shall comply with all federal, state and local regulations dealing with the use, storage or disposal of all hazardous wastes, chemicals and substances. Consultant shall be responsible for any and all claims and damages resulting from its use, handling, storage, removal and disposal of such hazardous wastes, chemicals or substances from the Project, and will indemnify, defend and hold City harmless from any and all liability associated with such use, handling, storage, removal and disposal including all associated attorney's fees and costs and costs of all cleanup operations wherever and whenever required by any governmental authority or City.

ARTICLE NINE

SERVICES BY CONSULTANT'S OWN STAFF

9.1. The services to be performed hereunder shall be performed by CONSULTANT'S own staff of employees, unless otherwise authorized in writing by the OWNER. The employment of, contract with, or use of the services of any other person or firm by CONSULTANT, as an independent consultant or otherwise, shall be subject to the prior written approval of the OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between the OWNER and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against the OWNER beyond such as may otherwise exist without regard to this Agreement.

ARTICLE TEN

WAIVER OF CLAIMS

10.1. CONSULTANT'S acceptance of a final payment for each project authorized under this Agreement shall constitute a full waiver of any and all claims, except for insurance company subrogation claims by it against OWNER, arising out of this Agreement or otherwise related to the work and services, except those previously made in writing and identified by CONSULTANT as unsettled at the time of the final payment. Neither the acceptance of CONSULTANT'S services nor payment by OWNER shall be deemed to be a waiver of any of OWNER'S rights against CONSULTANT.

ARTICLE ELEVEN

TERMINATION OR SUSPENSION

11.1. CONSULTANT shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement, in whole or in part as further set forth in this section, for any of the following reasons: (a) failure to begin work or services under the Agreement within the time specified under a Notice to Proceed; or (b) failure to properly and timely perform the services to be provided hereunder or as directed by OWNER; or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONSULTANT or by any of CONSULTANT'S principals, officers, or directors; or (d) failure to obey laws, ordinances, regulations, or other codes of conduct; or (e) failure to perform or abide by the terms or spirit of this Agreement; or (f) for any other just cause. The OWNER may so terminate this Agreement in whole or in part by giving the CONSULTANT seven (7)-calendar day's advance written notice.

11.2. If, after Owner submits a notice of termination of this Agreement as provided for in paragraph 11.1. above, it is determined for any reason that CONSULTANT was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against CONSULTANT provided for in paragraph 11.1., then the notice of termination given pursuant to paragraph 11.1. shall be deemed to be the notice of termination provided for in paragraph 11.3. below and CONSULTANT'S remedies against OWNER shall be the same as and limited to those afforded CONSULTANT under paragraph 11.3. below.

11.3. OWNER shall have the right to terminate this Agreement, in whole or in part, without cause upon seven (7) calendar day's written notice to CONSULTANT. In the event of such termination for convenience, CONSULTANT'S recovery against OWNER shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by CONSULTANT that are directly attributable to the termination, but CONSULTANT shall not be entitled to any other compensation or further recovery against OWNER, including, but not limited to, anticipated fees or profits on work and services not required to be performed.

11.4. Upon termination, the CONSULTANT shall deliver to the OWNER all original papers, records, documents, drawings, models, and other materials set forth and described in this Agreement.

11.5. The OWNER shall have the power to suspend all or any portions of the services to be provided by CONSULTANT hereunder upon giving CONSULTANT two-(2) calendar days prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended,

the CONSULTANT'S sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in Article Four herein.

ARTICLE TWELVE

TRUTH IN NEGOTIATION REPRESENTATIONS

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

12.2. In accordance with provisions of Section 287.055, (5)(a), Florida Statutes, the CONSULTANT agrees to execute the required Truth-in-Negotiation Certificate, attached hereto and incorporated herein as Schedule C, stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of the Agreement. The CONSULTANT agrees that the original Agreement price, if applicable, and any additions thereto pursuant to authorized Supplemental Agreements shall be adjusted to exclude any significant sums, by which the OWNER determines the Agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such adjustments shall be made within one (1) year following the termination or conclusion of services and work under this Agreement.

ARTICLE THIRTEEN

CONFLICT OF INTEREST

13.1. 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 represents that no persons having any such interest shall be employed to perform those services.

ARTICLE FOURTEEN

MODIFICATION

14.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

ARTICLE FIFTEEN

NOTICES AND ADDRESS OF RECORD

15.1. All notices required or made pursuant to this Agreement to be given by the CONSULTANT to the OWNER shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following OWNER'S address of record:

Lina Upham
Purchasing and Risk Manager/
Deputy City Clerk
City of Marco Island
50 Bald Eagle Drive
Marco Island, Florida 34145
Phone: (239) 389-5011
LUpham@cityofmarcoisland.com

15.2. All notices required or made pursuant to this Agreement to be given by the OWNER to the CONSULTANT shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONSULTANT'S address of record:

Mohamed A. Dabees, PhD., P.E., D. C.E.
Vice-President
Humiston & Moore Engineers, P. A.
5679 Strand Ct.
Naples, FL 34110
Phone: (239) 594-2021
md@humistonandmoore.com

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

ARTICLE SIXTEEN

MISCELLANEOUS

16.1. CONSULTANT in representing OWNER shall promote the best interest of OWNER and the citizens of the City of Marco Island, and shall assume towards OWNER confidence and fair dealing.

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

16.3. This Agreement is not assignable, in whole or in part, by CONSULTANT without the prior written consent of OWNER.

16.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

16.5. Headings of the Articles, Schedules, Parts, and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions in such Articles, Schedules, Parts, and Attachments.

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

16.7 Offer Extended to Other Governmental Entities: The City of Marco Island encourages and agrees to the successful bidder/proposer extending the pricing, terms and conditions of this solicitation or resultant contract to other governmental entities at the discretion of the successful bidder/proposer.

ARTICLE SEVENTEEN

APPLICABLE LAW

17.1 Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought forth in the appropriate Florida State Court in Collier County, Florida.

ARTICLE EIGHTEEN

SCRUTINIZED COMPANIES

18.1 Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

18.2 If this Agreement is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized

Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor , its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

18.3 As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the latest date(s) indicated below.

ATTEST:

HUMISTON & MOORE ENGINEERS, P. A.


Corporate Secretary/Witness



2nd Witness (If Not Incorporated)

BY: Mohamd Dabees, PE. , Vice President

ITS: _____

President (If Incorporated)




Date: March 14, 2023

[Corporate Seal]

ATTEST:

CITY OF MARCO ISLAND, FLORIDA


BY: 
Michael J. Sheffield, City Clerk

BY: 
Michael A. McNees, City Manager

Date: 3/22/23

MU
3.20.23

Approved as to form and legal sufficiency for the use and reliance of the City of Marco Island only.

BY: 
Alan L. Gabriel, City Attorney

SCHEDULE A

CONSULTANT'S EMPLOYEE HOURLY RATE SCHEDULE

Agreement for Professional Services

Coastal Engineering Services

Contract No. 2023-009

See attachment for Consultant's Employee Hourly Rate Schedule.
Overhead Rates and Mark-Up Rates Subject to Article 5 of this Agreement

* * * * *

SCHEDULE B-ATTACHMENT 1
RATE SCHEDULE

Title	Hourly Rate
Principal	\$231
Senior Project Manager	\$203
Project Manager	\$160
Senior Engineer	\$177
Engineer	\$130
Senior Inspector	\$126
Inspector	\$93
Senior Planner	\$150
Planner	\$120
Senior Designer	\$140
Designer	\$105
Environmental Specialist	\$120
Senior Environmental Specialist	\$167
Scientist/Geologist	\$115
Senior Scientist/Geologist	\$153
Marine Biologist/Hydrogeologist	\$120
Senior Marine Biologist/Hydrogeologist	\$145
Senior GIS Specialist	\$155
GIS Specialist	\$115
Clerical/Administrative	\$73
Senior Technician	\$103
Technician	\$83
Surveyor and Mapper	\$125
CADD Technician	\$107
Survey Crew - 2 man	\$145
Survey Crew - 3 man	\$180
Survey Crew - 4 man	\$215
Senior Architect	\$160
Architect	\$125

SCHEDULE B

INSURANCE REQUIREMENTS

- COMMERCIAL GENERAL LIABILITY LIMITS \$ 2,000,000 AGGREGATE
 (MUST INCLUDE CONTRACTUAL LIABILITY) \$ 1,000,000 EACH OCCURRENCE
 \$ 1,000,000 PRODUCTS-COMP/OP
 \$ 1,000,000 PERS & ADV INJURY
- PROFESSIONAL LIABILITY AND/OR \$ 1,000,000 AGGREGATE
 ERRORS AND OMISSIONS LIABILITY \$ 1,000,000 EACH OCCURRENCE
- AUTOMOBILE LIABILITY \$ 1,000,000 COMBINED SINGLE LIMIT
 (INCLUDE HIRED AND NON-OWNED LIABILITY)
- WORKER'S COMPENSATION STATUTORY
- EMPLOYER'S LIABILITY \$ 1,000,000 EACH ACCIDENT
 \$ 1,000,000 DISEASE-POLICY LIMIT
 \$ 1,000,000 DISEASE-EACH EMPLOYEE

- THE CITY OF MARCO ISLAND, FLORIDA MUST BE NAMED AS AN ADDITIONAL INSURED
 UNDER THE GENERAL LIABILITY POLICY. CONTRACTOR'S AND/OR SUBCONTRACTOR'S
 GENERAL LIABILITY SHALL BE ON A PRIMARY AND NON-CONTRIBUTORY BASIS.

THE ABOVE REFLECTS THE MINIMUM REQUIREMENTS FOR WORKING WITH THE CITY OF MARCO ISLAND, FLORIDA. ANY REQUIREMENTS FOUND IN A PARTICULAR JOB'S CONTRACT THAT ARE OF A HIGHER STANDARD WILL PREVAIL.

THE CITY OF MARCO ISLAND, FLORIDA MUST BE GIVEN A CERTIFICATE OF INSURANCE SHOWING THAT THE ABOVE REQUIREMENTS HAVE BEEN COMPLIED WITH. A CURRENT CERTIFICATE OF INSURANCE MUST BE IN THE CITY'S OFFICES BEFORE THE WORK BEGINS. THE CERTIFICATE OF INSURANCE MUST REMAIN CURRENT IN ORDER FOR THE CITY TO ISSUE PAYMENTS TO THE CONTRACTOR OR SUB CONTRACTOR.

POLLUTION AND REMEDIATION LIABILITY INSURANCE

Required by this Agreement? ___ Yes No

(1) If coverage is provided on a "Claims Made" form as opposed to an "Occurrence" form, the retroactive date for coverage shall be no later than the commencement date of this Contract and shall provide that, in the event of cancellation or non-renewal, the Extended Reporting Period (Discovery Period) for claims shall be no less than three (3) years.

- (2) The City of Marco Island shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the Owner.
- (3) Consultant shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same contractor shall provide the City with certificates of insurance meeting the required insurance provisions.
- (4) The City of Marco Island must be named as **"ADDITIONAL INSURED"** on the Insurance Certificate for Commercial General Liability.
- (5) The City of Marco Island shall be named as the Certificate Holder. NOTE: The "Certificate Holder" should read as follows:

The City of Marco Island
Attn: Risk Management
50 Bald Eagle Drive
Marco Island, FL 34145

- (6) **Thirty (30) Days Cancellation Notice is required.**

SCHEDULE C

TRUTH IN NEGOTIATION CERTIFICATE

In compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, **HUMISTON & MOORE ENGINEERS, P. A.** hereby certifies that wages, rates, and other factual unit costs (i.e., Schedule A- Consultant's Employee Hourly Rate Schedule), supporting the compensation for the professional engineering services of the CONSULTANT to be provided under the Agreement for Professional Engineering Services are accurate, complete, and current as of the time of contracting.

BY: 

Mohamd Dabees, PE. VP, Humiston & Moore Eng.

Name and Title

Attest:

BY: 

March 14, 2023

Date

(CORPORATE SEAL)



SCHEDULE D

TRUTH IN NEGOTIATION CERTIFICATE

CONSULTANT'S RESPONSE TO RFQ 2023-009

Professional Engineering Services Library: Coastal Engineering Services

Contract No. 2023-009

**CONSULTANT'S RESPONSE TO RFQ 2023-009 DATED FEBRUARY 2,
2023 IS HEREBY INCORPORATED AS SCHEDULE D.**