

City of Marco Island Florida



CONTRACT 2023-031:

Professional Auditing Services for the City of Marco Island, Florida

January 9, 2024

CliftonLarsonAllen LLP
4501 Tamiami Trail North, Suite 200
Naples, FL 34103
Phone: (239) 262-8686

AND

City of Marco Island
50 Bald Eagle Drive
Marco Island, Florida 34145
Phone: (239) 389-5000

Professional Services Agreement

THIS AGREEMENT, made and entered into this 9th day of January, 2024, by and between CliftonLarsonAllen LLP, hereinafter called the "Contractor," and the City of Marco Island, Florida, a political subdivision of the State of Florida, Collier County, hereinafter called the "City."

WITNESSETH

1. **CITY APPROVAL OF BID/AGREEMENT**: The Proposal for RFP #2023-031 Professional Auditing Services, submitted by the Contractor on October 20, 2023 has been approved for contract award.
2. **CONTRACT TIME**: Three (3) fiscal years commencing with the fiscal year ending September 30, 2024, with an option for one (1), three (3) year renewal.
3. **STATEMENT OF WORK**: Professional Auditing Services as specified in the RFP document and the Engagement Letter(s) (see Exhibit "A").
4. **COMPENSATION**: The City shall compensate the contractor for the satisfactory performance of work based solely on the services provided as may be ordered by the City from time to time during the term of this Agreement. All invoices shall be submitted in sufficient detail to demonstrate compliance with the terms of the contract.
5. **NOTICES**: Contractor's address of record:

Christopher Kessler, CPA, Principal
CliftonLarsonAllen LLP
4501 Tamiami Trail North, Suite 200
Naples, FL 34103
chris.kessler@CLAconnect.com
Phone: (239) 262-8686

City's address of record:

Angela Johenning
Purchasing and Risk Manager
50 Bald Eagle Drive
Marco Island, Florida 34145
ajohenning@cityofmarcoisland.com
Phone: (239) 389-5000

The Contractor and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

6. **NO PARTNERSHIP:** Nothing herein contained shall create, or be construed as creating, a partnership between the City and the Contractor. Moreover, nothing stated in this Agreement shall be interpreted to indicate in any way that the Contractor is an agent of the City of Marco Island.

7. COMPLIANCE WITH LAWS: Contractor agrees to comply with all laws, ordinances, rules, and regulations that are now or may become applicable to the Services covered by this Agreement, regardless of the applicable jurisdiction.

8. **LICENSES:** Contractor must be fully licensed for the type of work to be performed in the State of Florida. Licenses must remain current during contract term with the City. Professional License number(s) must be identified.

9. **NO IMPROPER USE:** The Contractor will not use, nor cause or permit any employee or subcontractor to use or occupy in any manner whatsoever, City or private facilities or properties for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, state, county or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of such violation by the Contractor the City, or its authorized representative, shall deem such conduct on the part of the Contractor to be objectionable or improper. Accordingly, the City shall have the right to suspend this Agreement with Contractor in full or in part. Should the Contractor fail to correct any noted violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension shall continue until the violation is cured. The Contractor further agrees not to commence operations during the suspension period until the violation has been corrected to the satisfaction of the City. The City reserves the right to immediately terminate this Agreement for the foregoing actions or inactions by the Contractor.

10. **TERMINATION:** Should the Contractor be deemed or found to have failed to perform services herein in a professional manner satisfactory to the City in accordance with standards of practice in the industry, and/or the terms and requirements of this Agreement, the City may terminate said Agreement immediately for cause. Moreover, the City may terminate this Agreement for convenience with a seven (7) day written notice to the Contractor. The City shall be the sole judge of non-performance or cause.

11. **NO DISCRIMINATION:** The Contractor agrees not to discriminate against or upon employees or subcontractors as to race, sex, color, creed or national origin.

12. **INSURANCE:** All entities wishing to perform work for the City of Marco Island will be required to comply with the following minimum 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 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.

(1) This policy shall include contractual liability coverage to contemplate the indemnity provisions of this agreement.

(2) Contractor 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.

(3) 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: Angela Johenning
50 Bald Eagle Drive
Marco Island, Fl 34145

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

13. **INDEMNIFICATION:** The Contractor, in consideration of One Hundred Dollars (\$100), the receipt and sufficiency of which is accepted through the signing of this Agreement, shall hold harmless and defend the City of Marco Island and its agents and employees from all suits and

actions, including attorney's fees, and all costs of litigation and judgments of any name and description arising out of or incidental to the performance of this Agreement or Work performed

hereunder. This provision shall also apply to any claims brought against the City by any employee of the named Contractor, the Contractors' subcontractor or sub-subcontractor, or anyone directly or indirectly employed by any of them. The Contractor's obligation under this provision shall not be limited in any way by the agreed upon contract price as listed in Section 4 above, or the Contractor's limit of, or lack of, sufficient insurance protection. The first One Hundred Dollars (\$100) of money received on the contract price herein is considered as payment of this obligation by the City. Nothing in this Agreement shall be deemed or treated as a waiver by the City of any immunity to which it is entitled by law, including but not limited to the City's sovereign immunity as set forth in Section 768.28, Florida Statutes.

This section does not pertain to any incident arising from the sole negligence of the City of Marco Island.

14. **ADMINISTRATION OF AGREEMENT:** This Agreement shall be fully administered by the City Manager or his designee on behalf of the City. The Contractor shall only receive and act upon orders and directives issued by the City Manager, his designee, or the City's Purchasing and Risk Manager/Deputy City Clerk.

15. **COMPONENT PARTS OF THIS AGREEMENT:** This Agreement consists of, by reference, the Contract Bidding Documents for: Professional Auditing Services, **RFP# 2023-031** and the Contractor's Bid submittal, attached, and thus made a formal part of the binding Agreement between the City and the Contractor.

16. **OFFER EXTENDED TO OTHER 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.

17. **SUBJECT TO APPROPRIATION:** It is further understood and agreed by and between the parties herein that this Agreement is subject to the continuation of appropriation of funds by the City Council of the City of Marco Island.

18. **AUDITS AND PUBLIC RECORDS:** Contractor shall maintain adequate records to justify all charges, expenses and costs incurred in performing the Work outlined in this Agreement for at least four (4) years after the completion of Work pursuant to this Agreement. Owner reserves the right to audit the records of the Contractor related to the Work performed at any time during the execution of the Work and for a period of four (4) years after final payment for such Work is made.

19. **PUBLIC RECORDS:** Contractor acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to Marco Island contracts, pursuant to the provisions of Chapter 119, Florida Statutes. Contractor agrees to maintain public records in its possession or control in connection with its performance under this Agreement and to provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. Contractor

shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Owner. In the event of termination of this Agreement by either party, any reports, photographs, surveys and other data and documents and public records prepared by, or in the possession or control of, Contractor, whether finished or unfinished, shall become the property of the Owner and shall be delivered by Contractor to the Owner's City Manager, at no cost to the Owner, within seven

(7) days of termination of this Agreement. All such records stored electronically by Contractor shall be delivered to the Owner in a format that is compatible with the Owner's information technology systems. Upon termination of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure. Any compensation due to Contractor shall be withheld until all documents are received as provided herein. Contractor's failure or refusal to comply with the provisions of this Section may result in the immediate termination of this Agreement by the Owner.

Section 119.0701(2)(a), Florida Statutes

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Public Records: Joan Taylor, CITY CLERK
Mailing address: 50 Bald Eagle Drive, Marco Island, FL 34145
Telephone number: 239-389-5010
Email: JTaylor@cityofmarcoisland.com

20. **ANTI-LOBBYING:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for Contractor any fee, commission, percentage fee, gifts or any other considerations contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Owner shall have the right to cancel this Agreement without liability.

21. **SEVERABILITY:** Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

22. **GOVERNING LAW, JURISDICTION AND VENUE:** The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating

to, this Agreement. Venue for any action to enforce this Agreement shall be in Collier County, Florida.

23. SAFETY, GOVERNMENTAL COMPLIANCE AND HAZARDOUS MATERIALS: Contractor shall be responsible for safety of its operations and its employees and shall take all reasonable safety precautions with respect to its Work. Contractor in addition to its own standards shall comply will all safety policies and procedures initiated by Contractor for the Services, including Contractor'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). Contractor shall immediately notify City of any injury to any of the Contractor's employees. Contractor shall require its personnel to attend any safety meetings the City might conduct and direct Contractor to attend.

Contractor agrees that in performing the Services, 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 Contractor'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 Contractor encounters material reasonably believed to be hazardous wastes, chemicals or substances, Contractor shall immediately stop work in the area affected and report such condition to City in writing. Contractor shall comply with all federal, state and local regulations dealing with the use, storage or disposal of all hazardous wastes, chemicals and substances. Contractor 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.

24. SCRUTINIZED COMPANIES: 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.

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.

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.

25. **E-VERIFY:** Contractors providing service to the City are required to comply with all state and federal employment laws. This includes, but is not limited to, laws resulting from the Immigration and Reform and Control Act of 1986, wherein all employers are required to verify the identity and employment eligibility of all employees. The Department of Homeland Security, U.S. Citizenship and Immigration Services require employees and employers to complete Form I-9 and the employer must examine evidence of identity and employment eligibility within three business days of the date employment begins. Non-compliant Contractors will be subject to contract sanctions, up to and including contract termination.

26. **INDEPENDENT CONSULTANT.** During the term of this Agreement, Contractor shall be an independent Contractor and not an employee of the City. Contractor is not an agent of, or authorized to transact business, enter into agreements, or otherwise make commitments on behalf of the City, unless expressly authorized in writing by the City Manager or his designee. Contractor shall perform the Services at the request of the City Manager or his designee. Nothing set forth in this Agreement shall be construed to create the relationship of employer and employee or principal and agent between the City and Contractor. Unless expressly provided for otherwise in this Agreement, Contractor shall not act or attempt to act or represent itself, directly or indirectly or by implication, as an employee of the City or in any manner assume or create, or attempt to assume or create, any obligation on behalf of or in the name of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits of the City, nor any rights generally afforded City employees. Contractor further understands that Florida Worker's Compensation benefits available to employees of the City are not available to Contractor or to any employee or agent of the Contractor. Contractor shall be responsible for complying with Florida's Worker's Compensation laws. All employees and subContractors of the Contractor shall be considered to be, at all times, the sole employees or Contractors of the Contractor, under its sole direction and not an employee, Contractor or agent of the City. Contractor is responsible for the payment of all required payroll taxes, whether federal, state, or local in nature, including, but not limited to income taxes, Social Security taxes, Federal Unemployment Compensation taxes, and any other fees, charges, licenses, or payments required by law.

27. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the Parties and their respective successors, heirs and assigns. The Parties agree that nothing contained herein shall authorize the assignment of this Agreement or the delegation of any duties hereunder by either Party, unless previously set out in this Agreement, without the prior written consent of the other party.

28. HEADINGS. The sections headings used in this Agreement are for reference and convenience only and shall not enter into the interpretation hereof.

29. SURVIVAL OF TERMS. Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement, which (a) the Parties have expressly agreed shall survive any such termination, or (b) remain to be performed and by their nature would be intended to be applicable following any such termination or expiration. Any liabilities which have accrued prior to termination pursuant to the insurance and/or indemnification obligations set forth below shall survive the termination of this Agreement.

30. WAIVER. No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

31. FORCE MAJEURE. Non-performance of Contractor or the City shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, hurricane, flood, terrorism, governmental acts or orders or restrictions, or other similar reason where failure to ("Force Majeure"), provided that the non-conforming Party gives prompt notice of such conditions to the other Party and makes all reasonable efforts to perform.

32. NO CONTINGENT FEES. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

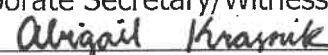
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IN WITNESS WHEREOF, the parties have executed this Agreement on the latest date(s) indicated below.

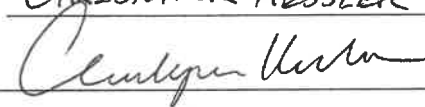
ATTEST:

CONTRACTOR
CliftonLarsonAllen LLP



Corporate Secretary/Witness


2nd Witness (If Not Incorporated)
ITS: PRINCIPAL

BY: CHRISTOPHER KESSLER


President (If Incorporated)

Date: 2/19/2024

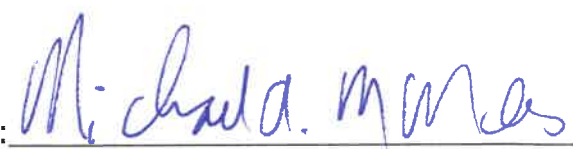
[Corporate Seal]

ATTEST:

OWNER:
CITY OF MARCO ISLAND
MARCO ISLAND, FLORIDA

BY: 

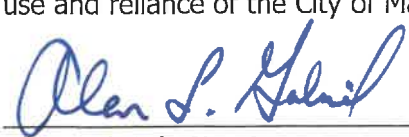
Joan Taylor, City Clerk
Date: 3/7/2024

BY: 

Michael A. McNees, City Manager

Permit

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



Alan Gabriel, City Attorney

EXHIBIT "A"
The Engagement Letter for the Fiscal Year _____