

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE PROFESSIONAL SERVICE AGREEMENT BETWEEN THE CITY AND CARDNO, INC., FOR CONSTRUCTION ENGINEERING AND INSPECTION (CEI) SERVICES FOR THE SOMBRERO BEACH RECONSTRUCTION PROJECT IN AN AMOUNT NOT TO EXCEED \$144,240.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon Council approved the Ranking of the RFQ for Construction Engineering and Inspection Services (CEI) for the Sombrero Beach Reconstruction Project (the "Project"); and

WHEREAS, staff has negotiated a service agreement with the highest rank firm, Cardno, Inc. for an amount not to exceed \$144,240.00; and

WHEREAS, staff recommends entering into a Construction Engineering and Inspection Services Contract for the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The contract attached hereto as Exhibit "A", together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the Contract and expend budgeted funds on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 26TH DAY OF FEBRUARY, 2019.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Cook, Gonzalez, Senmartin, Zieg, Bartus
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk
(City Seal)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



David Migut, City Attorney

AGREEMENT
PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON

AND

Cardno, Inc.

FOR

CEI Services for the Sombrero Beach Reconstruction Project

THIS AGREEMENT is made between Cardno, Inc., a Florida corporation, (hereinafter the “Consultant”), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for Construction Engineering and Inspection (“CEI”) Services for the Sombrero Beach Reconstruction Project (the “Project”); and

WHEREAS, the City desires to engage the Consultant to perform the services specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the City agree as follows:

1. **Scope of Services/Deliverables.**
 - 1.1 The Consultant shall furnish professional services to the City as set forth in the Scope of Services as specified in Exhibit “A,” attached to this Agreement and incorporated herein by this reference.
 - 1.2 The “Scope of Services” includes breakdown of tasks, timelines and deliverables to the City.

2. **Term/Commencement Date.**
 - 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through June 30, 2020 unless earlier terminated in accordance with Paragraph 8 herein or completion of the project. The City Manager may extend the term of this Agreement up to an additional 180 days by written notice to the Consultant.

2.2 The Consultant agrees that time is of the essence and the Consultant shall complete each deliverable for the Project within the timeframes set forth in the Project Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

3.1 The Consultant shall be compensated in accordance with Federal cost principals as indicated below:

 A lump sum amount of \$xxxxxxxx, regardless of the number of hours or length of time necessary for the Consultant to complete the Scope of Services. The Consultant shall not be entitled to any additional payment for any expenses incurred in completion of the Scope of Services. A breakdown of costs used to derive the lump sum amount, including but not limited to hourly rates, estimated travel expenses and other applicable rates, is specified in the Scope of Services. Upon completion of the work, the Consultant shall submit its bill[s] for payment in a form approved by the City. The bill[s] shall identify the services completed and the amount charged.

 On a time and material/expense basis to complete the Scope of Services, provided, however, that total payments to the Consultant shall not exceed \$xxxxxxx, without the prior written approval of the City. The Consultant shall submit its bills in arrears upon the completion of each task or deliverable in accordance with the Project Schedule or on a monthly basis in a form approved by the City. The bills shall show or include: (i) the task(s) performed; (ii) the time devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by this Agreement shall not be reimbursed.

 X Specific rates of compensation: Provides for reimbursement on the basis of direct labor hours at specified hourly rates, including direct labor costs, indirect costs, and fee or profit, plus any other direct expenses or costs, subject to an agreement maximum or not to exceed amount. Shall only be used when it is not possible to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy at the time of procurement. This method should be limited to contracts or components of contracts for specialized or support type services where the consultant is not in direct control of the number of hours worked, such as CEI services. Such rates are established in EXHIBIT B

- 3.2 The City shall pay the Consultant in accordance with the Florida “Prompt Payment Act.” FS CH 218 Part VII
- 3.3 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager, whose decision shall be final.
- 3.4 The Consultant hereby acknowledges that the computation of all overhead rate and direct salary wages comply with the requirements of 23 USC 112(b)(2)(C)-(D) and 23 CFR 172.7(b).

4. **Subconsultants.**

- 4.1 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Project.
- 4.2 Any subconsultants used on the Project must have the prior written approval of the City Manager or his designee.

5. **City's Responsibilities.**

- 5.1 The City shall furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by the Consultant, in possession of the City.
- 5.2 The City shall arrange for access to and make all provisions for the Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant (if applicable).

6. **Consultant's Responsibilities.**

- 6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by members of the same profession performing the same or similar services under similar circumstances (“Standard of Care”). If at any time during the term of this Agreement or within one year from the completion of the Project, it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the Standard of Care and the Scope of Services of the Project,

upon written notification from the City Manager, the Consultant shall at the Consultant's sole expense, immediately correct the work.

6.2 The Consultant shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Consultant during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

6.3 The consultant shall conform to all additional requirements stipulated in the attached Attachment A.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any City-related matter.

8. **Termination.**

8.1 The City Manager shall have the right at any time to: a) if without cause, terminate this Agreement upon thirty (30) days written notice to the Consultant; b) if with cause, immediately terminate this Agreement.

8.2 Upon receipt of the City's written notice of termination, Consultant shall stop work on the Project.

8.3 In the event of termination by the City, the Consultant shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4 herein.

8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format specified by the City within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City Manager. The

underwriter of such insurance shall be qualified to do business in the State of Florida and shall have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverage shall include a minimum of:

- 9.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.
- 9.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$500,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 9.3 Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. The insurance certificate shall indicate "per occurrence."
- 9.4 Professional Liability: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.
- 9.5 The Consultant shall furnish Certificates of Insurance to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. If the insurance policies expire during the term of the contract, a renewal certificate shall be furnished to the City thirty (30) days prior to the renewal date.

10. **Nondiscrimination.**

- 10.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and shall abide by all Federal and State laws regarding nondiscrimination.

11. **Attorneys' Fees and Waiver of Jury Trial.**

- 11.1 In the event of any litigation arising out of this Agreement, each party shall be responsible for their attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including

fees and expenses charged for representation at both the trial and appellate levels.

- 11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

- 12.1 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

- 12.2 To the fullest extent permitted by law, the Agency's contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity

- 12.3 The provisions of this section shall survive termination of this Agreement.

13. **PUBLIC ENTITY CRIMES ACT-** In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a contractor, who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Proposal on a contract to provide any goods or services to the City, may not submit a Proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit Proposals on leases or real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the City in excess of the threshold amount provided in Section 287.917, Florida Statutes, for Category Two for a period of 36 months form the date of being placed on the convicted vendor

list. Violation of this section by the Contractor shall result in rejection of the Proposal, termination of the contract, and may cause Contractor debarment.

14. **Notices/Authorized Representatives.**

14.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Chuck Lindsey, City Manager
 City of Marathon, Florida
 9805 Overseas Highway
 Marathon, Florida 33050

With a Copy to: City Attorney

 David Migut
 9805 Overseas Hwy
 Marathon, FL 33050

For The Consultant: _____

15. **Governing Law.**

15.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.

16. **Entire Agreement/Modification/Amendment.**

16.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

16.2 All conditions and related information in the RFQ titled "Request for Qualification for Construction Engineering and Inspection Services for

Sombrero Beach Hurricane Irma Recovery Project” for this project are hereby incorporated into and made part of this agreement.

- 16.3 All information and documentation and forms submitted by the consultant in response to the RFQ is hereby incorporated in this agreement.
- 16.4 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

17. **Ownership and Access to Records and Audits.**

- 17.1 All records, books, documents, maps, data, deliverables, papers and financial information (the “Records”) that result from the Consultant providing services to the City under this Agreement shall be the property of the City.
- 17.2 The “CONTRACTOR” as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
 - 1. Keep and maintain public records required by the City to perform the service.
 - 2. Upon request from the City Clerk, 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.
 - 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the City.
 - 4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the CONTRACTOR or keep and maintain public records required by the City to perform the service. If the CONTRACTOR transfers all public records to the City upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.

- 17.3 Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
- 17.4 Should the CONTRACTOR assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CONTRACTOR.
- 17.5 The CONTRACTOR consents to the City’s enforcement of the CONTRACTOR’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CONTRACTOR shall pay all court costs and reasonable attorney’s fees incurred by the City.
- 17.6 The CONTRACTOR’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the CONTRACTOR shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- 17.7 **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 305-743-0033, CITYCLERK@CLMARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

18. **Nonassignability.**

- 18.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Consultant, and such firm's familiarity with the City's area, circumstances and desires.

19. **Severability.**

- 19.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

20. **Independent Contractor.**

- 20.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City

with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

21. **Compliance with Laws.**

21.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

22. **Waiver**

22.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

23. **Survival of Provisions**

23.1 Any terms or conditions of this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

24. **Prohibition Of Contingency Fees.**

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

25. **Counterparts**

25.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

26. **Miscellaneous**

26.1 The services provided herein do involve the expenditure of federal funds, and Appendixes A through D to the Scope of Services are hereby incorporated into this Agreement as part hereof.

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by Consultant by and through its Corp President whose representative has been duly authorized to execute same.

Attest:

D. Clavier
Diane Clavier, City Clerk

CITY OF MARATHON
By: Chuck Lindsey
Chuck Lindsey, City Manager
Date: 3-1-19

CONSULTANT
By: P. S. Loring
Its: PRESIDENT
Date: 3/2/19

EXHIBIT A

Scope of Work

1.0 PURPOSE:

This scope of services describes and defines the Construction Engineering and Inspection (CEI) services which are required for contract administration, inspection, and materials sampling and testing for the construction projects listed below.

2.0 SCOPE:

Provide services as defined in this Scope of Services.

Descriptions: CEI Services for the Reconstruction of Sombrero Beach resulting from damage from hurricane Irma.

County: Monroe

Exercise independent professional judgment in performing obligations and responsibilities under this Agreement. The authority of the Consultant's lead person, such as the Senior Project Engineer, and the Consultant's Project Administrator shall be identical to the City's Construction Project Manager and shall be interpreted as such.

On a single Construction Contract, it is a conflict of interest for a professional firm to receive compensation from both the City and the Contractor either directly or indirectly.

The Consultant must perform to the satisfaction of the City's representatives for consideration of additional CEI services.

3.0 LENGTH OF SERVICE:

The services for each Construction Contract shall begin upon written notification to proceed by the City.

Track the execution of the Construction Contract such that the Consultant is given timely authorization to begin work. While no personnel shall be assigned until written notification by the City has been issued, the Consultant shall be ready to assign personnel within two weeks of notification. For the duration of the project, coordinate closely with the City and Contractor to minimize rescheduling of Consultant activities due to construction delays or changes in scheduling of Contractor activities.

For estimating purposes, the Consultant will be allowed an accumulation of fifteen (15) calendar days to perform preliminary administrative services prior to the issuance of the Contractor's notice to proceed on the first project and thirty (30) calendar days to demobilize after final acceptance of the last Construction Contract.

4.1 **DEFINITIONS:**

- A. **Agreement:** The Professional Services Agreement between the City and the Consultant setting forth the obligations of the parties thereto, including but not limited to the performance of the work, furnishing of services, and the basis of payment.
- B. **City:** The City of Marathon
- C. **Contractor:** The individual, firm, or company contracting with the City for performance of work or furnishing of materials.
- D. **Construction Contract:** The written agreement between the City and the Contractor setting forth the obligations of the parties thereto, including but not limited to the performance of the work, furnishing of labor and materials, and the basis of payment.
- E. **Construction Project Manager:** The City employee assigned to manage the Construction Engineering and Inspection Contract and represent the City during the performance of the services covered under this Agreement.
- F. **Consultant:** The Consulting firm under contract to the City for administration of Construction Engineering and Inspection services.
- G. **Consultant Project Administrator:** The employee assigned by the Consultant to be in charge of providing Construction Contract administration services for one or more Construction Projects.
- H. **Consultant Senior Project Engineer:** The Engineer assigned by the Consultant to be in charge of providing Construction Contract administration for one or more Construction Projects. This person may supervise other Consultant employees and act as the lead Engineer for the Consultant.
- I. **Consultant CEI Manager:** The City employee assigned to administer the Consultant Construction Engineering and Inspection (CCEI) Program in the District.
- J. **Engineer of Record:** The Engineer noted on the Construction plans as the responsible person for the design and preparation of the plans.
- K. **Public Information Office:** The City's office assigned to manage the Public Information Program.
- L. **Resident Compliance Specialist:** The employee assigned by the Consultant to oversee project specific compliance functions.
- M. **Resident Engineer:** The Engineer assigned to a particular County or area to administer Construction Contracts for the City.

5.1 ITEMS TO BE FURNISHED BY THE CITY TO THE CONSULTANT:

A. The City, on an as needed basis, will furnish the following Construction Contract documents for each project. These documents may be provided in either paper or electronic format.

1. Construction Plans,
2. Specification Package,
3. Copy of the Executed Construction Contract, and
4. Utility Agency's Approved Material List (if applicable).

6.1 ITEMS FURNISHED BY THE CONSULTANT:

6.2 Office Automation:

Provide all software and hardware necessary to efficiently and effectively carry out the responsibilities under this Agreement.

Provide each inspection staff with a laptop computer, as may be required, to perform the required scope of work.

All computer coding shall be input by Consultant personnel using equipment furnished by them.

All informational, contractual and other business required for this project will be through a system of paperless electronic means. When the specifications require a written submission of documentation, such documents must be submitted electronically.

All documents requiring a signature must be executed electronically by both parties in accordance with Chapter 668, Florida Statutes, and have the same force and effect as a written signature.

Ownership and possession of computer equipment and related software, which is provided by the Consultant, shall remain at all times with the Consultant. The Consultant shall retain responsibility for risk of loss or damage to said equipment during performance of this Agreement. Field office equipment should be maintained and operational at all times.

6.3 Field Office:

Consultant shall utilize its own facilities for a field office for this project. No additional compensation shall be made for a field office.

6.4 Vehicles:

Vehicles will be equipped with appropriate safety equipment and must be able to effectively carry out requirements of this Agreement. Vehicles shall have the name and phone number of the consulting firm visibly displayed on both sides of the vehicle.

6.5 Field Equipment:

Supply survey, inspection, and testing equipment essential to perform services under this Agreement; such equipment includes non-consumable and non-expendable items.

Hard hats shall have the name of the consulting firm visibly displayed.

Equipment described herein and expendable materials under this Agreement will remain the property of the Consultant and shall be removed at completion of the work.

Handling of nuclear density gauges shall be in compliance with their license.

Retain responsibility for risk of loss or damage to said equipment during performance of this Agreement. Field office equipment shall be maintained and in operational condition at all times.

6.6 Licensing for Equipment Operations:

Obtain proper licenses for equipment and personnel operating equipment when licenses are required. The license and supporting documents shall be available for verification by the City, upon request.

Radioactive Materials License for use of Surface Moisture Density Gauges shall be obtained through the State of Florida Department of Health.

7.0 LIAISON RESPONSIBILITY OF THE CONSULTANT:

For the duration of the Agreement, keep the City's Construction Project Manager in Responsible Charge informed of all significant activities, decisions, correspondence, reports, and other communications related to its responsibilities under this Agreement.

Facilitate communications between all parties (i.e. architectural, mechanical, materials, landscaping, local agencies, etc.) ensuring responses and resolutions are provided in a timely manner. Maintain accurate records to document the communication process.

Submit all administrative items relating to Invoice Approval, Personnel Approval, User IDs, Time Extensions, and Supplemental Amendments to the Construction Project Manager for review and approval.

8.1 PERFORMANCE OF THE CONSULTANT:

During the term of this Agreement and all Supplemental Amendments thereof, the City will review various phases of Consultant operations, such as construction inspection, materials sampling and testing, and administrative activities, to determine compliance with this Agreement. Cooperate and assist City representatives in conducting the reviews. If deficiencies are indicated, remedial action shall be implemented immediately. City recommendations and Consultant responses/actions are to be properly documented by the Consultant. No additional compensation shall be allowed for remedial action taken by the Consultant to correct deficiencies. Remedial actions and required response times may include but are not necessarily limited to the following:

- A. Further subdivide assigned inspection responsibilities, reassign inspection personnel, or assign additional inspection personnel, within one week of notification.
- B. Immediately replace personnel whose performance has been determined by the Consultant and/or the City to be inadequate.
- C. Immediately increase the frequency of monitoring and inspection activities in phases of work that are the Consultant's responsibility.
- D. Increase the scope and frequency of training of the Consultant personnel.

9.1 REQUIREMENTS OF THE CONSULTANT:

9.2 General:

It shall be the responsibility of the Consultant to administer, monitor, and inspect the Construction Contract such that the project is constructed in reasonable conformity with the plans, specifications, and special provisions for the Construction Contract.

Observe the Contractor's work to determine the progress and quality of work. Identify discrepancies, report significant discrepancies to the City, and direct the Contractor to correct such observed discrepancies.

Pursuant to Section 337.11(8)(a), Florida Statutes, the Consultant is hereby designated by the City to negotiate and approve Supplemental Agreements. Seek input from the City's Construction Project Manager relating to all Supplemental Agreement requests. Supplemental Agreements must be determined to be in accordance with Florida law by the City prior to approval by the Consultant. The City shall have the final say for any Supplemental Agreement. For any Supplemental Agreement which exceeds the thresholds, prepare the Supplemental Agreement as a recommendation to the City, which the City may accept, modify or reject upon review. Consult with the Construction Project Manager as necessary and direct all issues, which exceed delegated authority to the Construction Project Manager for City action or direction.

Inform the Construction Project Manager of any significant omissions, substitutions, defects, and deficiencies noted in the work of the Contractor and the corrective action that has been directed to be performed by the Contractor.

9.3 Survey Control: N/A

9.4 On-site Inspection:

Monitor the Contractor's on-site construction activities and inspect materials entering into the work in accordance with the plans, specifications, and special provisions for the Construction Contract to determine that the projects are constructed in reasonable conformity with such documents. Maintain detailed accurate records of the Contractor's daily operations and of significant events that affect the work.

Monitor and inspect Contractor's Work Zone Traffic Control Plan and review modifications to the Work Zone Traffic Control Plan, including Alternate Work Zone Traffic Control Plan, in accordance with the City's procedures. Consultant employees performing such services shall be qualified in accordance with the City's procedures.

9.5 Sampling and Testing:

Coordinate sampling and testing of component materials and completed work in accordance with the Construction Contract documents. The minimum sampling frequencies set out in the Contract Document's Materials Sampling, Testing and Reporting Guide shall be met. In complying with the aforementioned guide, provide daily surveillance of the Contractor's Quality Control activities and perform the sampling and testing of materials and completed work items for verification and acceptance.

The Consultant will coordinate inspection and sampling of materials and components at locations remote from the project site and the Consultant will coordinate testing of materials normally done in a laboratory remote from the project site.

Determine the acceptability of all materials and completed work items on the basis of either test results or verification of a certification, certified mill analysis.

The City will monitor the effectiveness of the Consultant's testing procedures through observation and independent assurance testing.

Sampling, testing and laboratory methods shall be as required by the Contract Specifications, Supplemental Specifications or as modified by the Special Provisions of the Construction Contract.

Documentation reports on sampling and testing performed by the Consultant shall be submitted during the same week that the construction work is done.

9.6 Engineering Services:

Coordinate the Construction Contract administration activities of all parties other than the Contractor involved in completing the construction project. Notwithstanding the above, the Consultant is not liable to the City for failure of such parties to follow written direction issued by the Consultant.

Services shall include maintaining the required level of surveillance of Contractor activities, interpreting plans, specifications, and special provisions for the Construction Contract. Maintain complete, accurate records of all activities and events relating to the project and properly document all project changes. The following services shall be performed:

- (1) Coordinate and attend a pre-construction meeting. Consultant shall coordinate with the City and all other appropriate agencies and firms to insure any and all potentially impacted and required entities attend.

- (2) Verify that the Contractor is conducting inspections, preparing reports and monitoring all storm water pollution prevention measures associated with the project. For each project that requires the use of the NPDES General Permit, provide at least one inspector who has successfully completed the "Florida Stormwater, Erosion, and Sedimentation Control Training and Certification Program for Inspectors and Contractors". The Consultant's inspector will be familiar with the requirements set forth in the FEDERAL REGISTER, Vol. 57, No. 187, Friday, September 5, 1992, pages 4412 to 4435 "Final NPDES General Permits for Storm Water Discharges from Construction Sites" and the Department's guidelines.

- (3) Analyze the Contractor's schedule(s) (i.e. baseline(s), revised baseline(s), updates, as-built, etc.) for compliance with the contract documents. Elements including, but not limited to, completeness, logic, durations, activity, flow, milestone dates, concurrency, resource allotment, and delays will be reviewed. Verify the schedule conforms with the construction phasing and MOT sequences, including all contract modifications.

- (4) Analyze problems that arise on a project and proposals submitted by the Contractor; work to resolve such issues, and process the necessary paperwork.

- (5) Monitor, inspect and document utility construction for conformance with Utility Agency's Standards and the Utility Agency's Approved Materials List. Facilitate coordination

and communication between Utility Agency's representatives, City's staff and Contractors executing the work. Identify potential utility conflicts and assist in the resolution of utility issues including City and Local Government owned facilities.

Identify, review, and track progress of Joint Project Agreements, and/or other City and utility agreements. Address work progress, track reimbursement activities, and address betterment and salvage determination. Prepare all necessary documentation to support reimbursement activities and betterment and salvage determination.

(6) Verify quantity calculations and field measure for payment purposes as needed to prevent delays in Contractor operations and to facilitate prompt processing of such information in order for the City to make timely payment to the Contractor.

(7) Prepare and make presentations for meetings and hearings before the Dispute Review Boards in connection with the project covered by this Agreement.

(8) Monitor each Contractor and Subcontractor's compliance with specifications and special provisions of the Construction Contract in regard to payment of predetermined wage rates in accordance with Departments procedures.

(9) Verify Contractor's compliance with Construction Contract requirements. Consultant is responsible for reviewing, monitoring, evaluating and acting upon documentation required for Construction Contract compliance, and maintaining the appropriate files thereof.

(10) The City will provide Public Information Services. Contractor shall prove the necessary information to the City for said information.

(11) Prepare and submit to the Construction Project Manager monthly, a Construction Status Reporting System (CSRS) report, in a format acceptable by the City.

(12) Provide a digital camera for photographic documentation of pre-construction state and of noteworthy incidents or events during construction.

These photographs will be filed and maintained on the Consultant's computer using a Digital Photo Management system.

Photographs shall be taken the day prior to the start of construction and continue as needed throughout the project. Photographs shall be taken the days of Conditional, Partial and Final Acceptance.

9.7 **Geotechnical Engineering:**

The prime Consultant shall coordinate the services of a geotechnical subconsultant, hired by the City, to perform some of the services indicated in this section. However, the prime Consultant will be responsible to the City for the coordination and timeliness of these services.

The prime Consultant will be required to interact with the City's Geotechnical Engineer (CGE) office and any geotechnical subconsultant assigned to the project by the CGE office under a separate contract with the City. All references to the CGE in the following sections implicitly include the CGE and his/her delegated representative on the project.

Become familiar with the existing site conditions and the contract documents. Observe and record the progress and quality of foundation work to determine that the foundations are constructed at the correct locations and elevations, identify discrepancies, and direct the Contractor to correct such observed discrepancies. Attend the Preconstruction Conference and/or special geotechnical meeting for the Construction Contract. Inspect and verify that the Contractor has performed the foundation work in accordance with Specification and other contract documents. Assure that any specialty work is completed as necessary to accomplish its intent.

1) Density Test:

Review the compaction of subgrade, base, and other material requiring a certain density to meet the standard specifications, and confirm all testing is acceptable.

10.1 PERSONNEL:

10.2 General Requirements:

Provide qualified personnel necessary to efficiently and effectively carry out its responsibilities under this Agreement. Method of compensation for personnel assigned to this project is outlined in Exhibit "B."

Unless otherwise agreed to by the City, the City will not compensate straight overtime or premium overtime for the positions of Senior Project Engineer, Project Administrator/Project Engineer, Contract Support Specialist and Assistant or Associate to any of these positions.

Estimated staffing of personnel to be assigned for each contract is outlined as follows:

- 1 Senior Project Engineer/Project Administrator/ Contract Support Specialist
- 1 Senior Inspectors
- 1 Secretary / Clerk

10.3 Personnel Qualifications:

Provide competent personnel qualified by experience and education. Submit in writing to the Construction Project Manager the names of personnel proposed for assignment to the project, including a detailed resume for each containing at a minimum: salary, education, and experience. The Consultant Action Request form for personnel approval shall be submitted to the Construction Project Manager at least two weeks prior to the date an individual is to report to work.

Personnel identified in the Consultant technical proposal are to be assigned as proposed and are committed to performing services under this Agreement. Personnel changes will require written approval from the City. Staff that has been removed shall be replaced by the Consultant within one week of City notification.

Before the project begins, all project staff shall have a working knowledge of the current CPAM and must possess all the necessary qualifications/certifications for fulfilling the duties of the position they hold. Cross training of the Consultant's project staff is highly recommended to achieve a knowledgeable and versatile project inspection team but shall not be at any additional cost to the City and should occur as workload permits. Visit the training page on the State Construction Office website for training dates.

Minimum qualifications for the Consultant personnel are set forth as follows. Exceptions to these minimum qualifications will be considered on an individual basis. However, a Project Administrator working under the supervision and direction of a Senior Project Engineer or an Inspector working under the supervision and direction of a Senior Inspector shall have six months from the date of hire to obtain the necessary qualifications/certifications provided all other requirements for such positions are met and the Consultant submits a training plan detailing when such qualifications/certifications and other training relative to the Department's procedures, Specifications and Design Standards will be obtained. The District Construction Engineer or designee will have the final approval authority on such exceptions.

CEI SENIOR PROJECT ENGINEER - A Civil Engineering degree and registered in the State of Florida as a Professional Engineer (or if registered in another state, the ability to obtain registration in the State of Florida within six months) and six (6) years of engineering experience [(two (2) years of which are in major road or for non-degreed personnel the aforementioned registration and ten (10) years of engineering experience (two (2) years of which are in major road). Qualifications include the ability to communicate effectively in English (verbally and in writing); direct highly complex and specialized construction engineering administration and inspection program; plans and organizes the work of subordinate and staff members; develops and/or reviews policies, methods, practices, and procedures; and reviews programs for conformance with Department standards. Also must have the following:

QUALIFICATIONS:

Attend the CTQP Quality Control Manager course and pass the examination.

CERTIFICATIONS:

FDOT Advanced MOT

OTHER:

A Master's Degree in Engineering may be substituted for one (1) year engineering experience.

CEI PROJECT ADMINISTRATOR/PROJECT ENGINEER - A Civil Engineering degree plus two (2) years of engineering experience in construction, or for non-degreed personnel eight (8) years of responsible and related engineering experience, two (2) years of which involved construction of major projects.

Receives general instructions regarding assignments and is expected to exercise initiative and independent judgment in the solution of work problems. Directs and assigns specific tasks to inspectors and assists in all phases of the construction project. Will be responsible for the progress and final estimates throughout the construction project duration. Must have the following:

CEI SENIOR INSPECTOR– High school graduate or equivalent plus four (4) years of experience in construction inspection, two (2) years of which shall have been in roadway construction inspection or a Civil Engineering degree and one (1) year of road CEI experience with the ability to earn additional required qualifications within one year.

Must have the following as required by the scope of work for the project: **QUALIFICATIONS:**
CTQP Concrete Field Technician Level I
CTQP Asphalt Roadway Level I

Responsible for performing highly complex technical assignments in field surveying and construction layout, making, and checking engineering computations, inspecting construction work, and conducting field tests and is responsible for coordinating and managing the lower level inspectors. Work is performed under the general supervision of the Project Administrator.

CEI SECRETARY/CLERK TYPIST- High school graduate or equivalent plus two (2) years of secretarial and/or clerical experience. Ability to type at a rate of 35 correct words per minute. Experienced in the use of standard word processing software. Should exercise independent initiative to help relieve the supervisor of clerical detail. Work under general supervision of the Senior Project Engineer and staff.

10.4 Staffing:

Once authorized, the Consultant shall establish and maintain appropriate staffing throughout the duration of construction and completion of the final estimate. Responsible personnel, thoroughly familiar with all aspects of construction and final measurements of the various pay items, shall be available to resolve disputed final pay quantities until the City has received a regular acceptance letter.

Construction engineering and inspection forces will be required of the Consultant while the Contractor is working. If Contractor operations are substantially reduced or suspended, the Consultant will reduce its staff appropriately.

In the event that the suspension of Contractor operations requires the removal of Consultant forces from the project, the Consultant will be allowed ten (10) days maximum to demobilize, relocate, or terminate such forces.

11.1 QUALITY ASSURANCE (QA) PROGRAM:

11.2 Quality Assurance Plan:

Within thirty (30) days after receiving award of an Agreement, furnish a QA Plan to the Construction Project Manager. The QA Plan shall detail the procedures, evaluation criteria, and instructions of the Consultant's organization for providing services pursuant to this Agreement. Significant changes to the work requirements may require the Consultant to revise the QA Plan. It shall be the responsibility of the Consultant to keep the plan current with the work requirements. The Plan shall include, but not be limited to, the following areas:

A. Organization:

A description is required of the Consultant QA Organization and its functional relationship to the part of the organization performing the work under the Agreement. The authority, responsibilities and autonomy of the QA organization shall be detailed as well as the names and qualifications of personnel in the quality control organization.

B. Quality Assurance Reviews:

Detail the methods used to monitor and achieve organization compliance with Agreement requirements for services and products.

C. Quality Assurance Records:

Outline the types of records which will be generated and maintained during the execution of the QA program.

D. Control of Subconsultants and Vendors:

Detail the methods used to control subconsultant and vendor quality.

11.3 Quality Records:

Maintain adequate records of the quality assurance actions performed by the organization (including subcontractors and vendors) in providing services and products under this Agreement. All records shall indicate the nature and number of observations made, the number and type of deficiencies found, and the corrective actions taken. All records shall be available to the City, upon request, during the Agreement term. All records shall be kept at the primary job site and shall be subject to audit review.

12.1 CERTIFICATION OF FINAL ESTIMATES:

12.2 Final Estimate and As-Built Plans Submittal:

Prepare documentation and records in compliance with the Agreement, Statewide Quality Control (QC) Plan, or Consultant's approved QC.

Submit the Final Estimate(s) and one (1) set of final "as-built plans" documenting the Contractor's work in accordance with the Review and Administration Manual.

Revisions to the Certified Final Estimate will be made at no additional cost to the City.

12.3 Certification:

Duly authorized representative of the Consultant firm will provide a notarized certification on a form pursuant to City's procedures.

12.4 Offer of Final Payment:

Prepare the Offer of Final Payment package. The package shall accompany the Certified Final Estimates Package. The Consultant shall be responsible for forwarding the Offer of Final Payment Package to the Contractor.

13.1 AGREEMENT MANAGEMENT:

13.2 General:

(1) When the Consultant identifies a condition that will require an amendment to the Agreement, the Consultant will communicate this need to the Construction Project Manager for acceptance. Upon acceptance, prepare and submit an Amendment Request (AR), and all accompanying documentation to the Construction Project Manager for approval and further

processing. The AR is to be submitted at such time to allow the City 12 weeks to process, approve, and execute the AR. The content and format of the AR and **accompanying** documentation shall be in accordance with the instructions and format to be provided by the City.

(2) The Consultant is responsible for performing follow-up activities to determine the status of each Amendment Request submitted to the City.

13.3 Invoicing Instructions:

Monthly invoices shall be submitted to the City in a format and distribution schedule defined by the City, no later than the 20th day of the following month.

If the monthly invoice cannot be submitted on time, notify the City prior to the due date stating the reason for the delay and the planned submittal date. Once submitted, the Consultant Project Principal or Senior Project Engineer shall notify the Construction Project Manager via e-mail of the total delay in calendar days and the reason(s) for the delay(s).

All invoices shall be submitted to the City in electronic and hard copy formats in accordance with District Construction and Consultant Invoice Transmittal System (CITS) procedures. The Construction Project Manager must receive hard copy documentation within three (3) workdays of electronic submittal or the electronic submittal will be rejected. (Saturday, Sunday, and City holidays are not considered workdays).

All charges to the individual project will end no later than thirty (30) calendar days following final acceptance; or where all items of work are complete and conditional/partial acceptance is issued; unless authorized in writing by the City.

A Final Invoice will be submitted to the City no later than the 60th day following Final Acceptance of the individual project or as requested by the City.

14.1 OTHER SERVICES:

Upon written authorization by the Construction Project Manager or designee, the Consultant will perform additional services in connection with the project not otherwise identified in this Agreement. The following items are not included as part of this Agreement, but may be required by the City to supplement the Consultant services under this Agreement.

- A. Assist in preparing for arbitration hearings or litigation that occurs during the Agreement time in connection with the construction project covered by this Agreement.
- B. Provide qualified engineering witnesses and exhibits for arbitration hearings or litigation in connection with the Agreement.
- C. Provide inspection services in addition to those provided for in this Agreement.

D. Provide services determined necessary for the successful completion and closure of the Construction Contract.

15.0 POST CONSTRUCTION CLAIMS REVIEW:

In the event the Contractor submits a claim for additional compensation and/or time after the Consultant has completed this Agreement, analyze the claim, engage in negotiations leading to settlement of the claim, and prepare and process the required documentation to close out the claim. Compensation for such services will be negotiated and effected through a Supplemental Amendment to this Agreement.

16.0 CONTRADICTIONS:

In the event of a contradiction between the provisions of this Scope of Services and the Consultant's proposal as made a part of their Agreement, the provisions of the Scope of Services shall apply.

17.0 THIRD PARTY BENEFICIARY

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms or provisions of this Agreement.

18.0 CITY AUTHORITY

The City shall be the final authority in considering modifications to the Construction Contract for time, money or any other consideration except matters agreed to by the Contractor through contract changes negotiated by the Consultant, as authorized in Section 9.1 herein.

EXHIBIT B

Estimated Staffing for CEI Services on Sombrero Key

Note: Estimated schedule

Project #	1
Letting Date	4/1/2019
CEI Start Date	4/1/2019
CEI End Date	11/17/2019
Construction Duration	180
Total Duration (days)	180
Calendar Months	7.5

Staff - (cal days)	2019 Hours per Month												TOTAL		
	J	F	M	A	M	J	J	A	S	O	N	D	Hourly \$	MH	Cost \$
Total Project															
Principle, Steve Hurley				24	24	24	24	24	24	24	12		220	180	39600
Sr. Proj. Engineer, Mike Irwin, P.E.				8	8	8	8	8	8	8	4		220	60	13200
Project Adm., Sr. Inspector, Erick Vargas				100	100	100	100	100	100	100	50		120	750	90000
Admin - 2				2	2	2	2	2	2	2	2		90	16	1440
														0	0
														0	0
														0	0
														0	0
														0	0
														0	0
Total				134	134	134	134	134	134	134	68			1656	144240

Attachment A

COMPLIANCE WITH LAWS – The parties shall comply with all applicable local, state, and federal laws and guidelines relating to the services that are subject to this Agreement. Federal regulations apply to all of the City of Marathon contracts using Federal funds as a source for the solicitation of goods and services. The following Federal requirements apply to this Agreement:

I. ACCESS TO RECORDS:

(1) The contractor agrees to provide MCSB, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

II. CLEAN AIR/WATER

Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the School Board and understands and agrees that the School Board will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the School Board and understands and agrees that the School Board will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

III. WORK HOURS/SAFETY STANDARDS ACT

(1) Overtime requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor

responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

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

(4) Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

IV. COPELAND ANTI-KICKBACK ACT

Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Dept. of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that Contractor or its subcontractors are prohibited from inducing, by any means, any person employed in the contracted work, to give up any part of the compensation to which he or she is otherwise entitled. The MCSB will report all suspected or reported violations to the federal awarding agency.

V. EQUAL EMPLOYMENT

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

VI. DEBARMENT/SUSPENSION

(1) This contract is a covered transaction for purposes of 2 C.F.R. part 180, and 2 C.F.R. part 3000. As such, Contractor is required to verify that none of the contractor, its principals, or its affiliates are excluded (as defined by 2 C.F.R. § 180.94) or disqualified (as defined by 2 C.F.R. § 180.935)

(2) Contractor must comply with 2 C.F.R. part 180, Subpart C and 2 C.F.R. part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier transaction it enters into.

(3) This certification is a material representation of fact relied upon by City. If it is later determined that Contractor did not comply with the provisions enumerated in subsection 2 of this paragraph, in addition to the remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

VII. BYRD ANTI-LOBBYING

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

VIII. FEMA FUNDING ACKNOWLEDGEMENT

This is an acknowledgment that FEMA financial assistance will be used to fund the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract. The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.