AGENDA FOR THE REGULAR MEETING OF THE CAPE CORAL CITY COUNCIL

March 30, 2015  4:30 PM  Council Chambers

PLEDGE OF CIVILITY
We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

VIDEO 1. MEETING CALLED TO ORDER

VIDEO A. MAYOR SAWICKI

VIDEO 2. INVOCATION/MOMENT OF SILENCE

VIDEO A. COUNCILMEMBER NESTA

VIDEO 3. PLEDGE OF ALLEGIANCE

VIDEO A. ADDISON SILVERMAN FROM PELICAN ELEMENTARY

VIDEO 4. ROLL CALL

VIDEO A. MAYOR SAWICKI, COUNCIL MEMBERS BURCH, CARIOSCIA, DONNELL, ERBRICK, LEON, NESTA, WILLIAMS

VIDEO 5. CHANGES TO AGENDA/ADOPTION OF AGENDA

VIDEO 6. RECOGNITIONS/ACHIEVEMENTS

A. None.

VIDEO 7. APPROVAL OF MINUTES

VIDEO A. Special Meeting - February 2, 2015
VIDEO B. Strategic Planning - March 11, 2015
VIDEO C. Regular Meeting - March 16, 2015

VIDEO 8. BUSINESS
A. PUBLIC COMMENT - CONSENT AGENDA

A maximum of 45 minutes is set for input of citizens on matters concerning the Consent Agenda; 3 minutes per individual.

B. CONSENT AGENDA


(2) Resolution 39-15 Redesignation Agreement for the 2015 Housing Opportunities for Persons with AIDS (HOPWA) Grant Program between the City of Cape Coral, US Department of Housing and Urban Development (HUD), and the State of Florida Department of Health. Dollar Value: N/A. Responsible Department: Community Development.

(3) Resolution 40-15 Acceptance of 2014 SaDIP Grant, $30,000 - No matching funds required (See Resolution for fiscal impact) Department: Police

C. CITIZENS INPUT TIME

A maximum of 45 minutes is set for input of citizens on matters concerning the City Government to include Resolutions appearing in sections other than Consent Agenda or Public Hearing; 3 minutes per individual.

D. PERSONNEL ACTIONS

(1) None.

E. PETITIONS TO COUNCIL

(1) None.

F. APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

(1) Charter School Governing Board - City Clerk

VIDEO 9. ORDINANCES/RESOLUTIONS

A. Public Hearings

(1) Ordinance 12-15 Final Public Hearing (Continued from March 23, 2015)

WHAT THE ORDINANCE ACCOMPLISHES:
The ordinance amends Chapter 3 of the Code of Ordinances to establish an extended hours of operation permit procedure for establishments in the South Cape Downtown District zoning district to allow additional hours of operation from 2:00 a.m. to 4:00 a.m. on Saturday and Sunday mornings pursuant to the provisions of the ordinance.

(2) Ordinance 8-15 Final Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:
Provides that an application for a Planned Development Project (PDP) amendment to a PDP be submitted by an owner of property within the PDP, or an owner may give written consent to a third party to apply for the PDP. Also, an applicant may grant authorization for an agent or attorney to represent them.

(3) Ordinance 9-15 Final Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:
A ordinance amending the Land Use and Development Regulations, Section 3.16, Marine Improvements, by eliminating the provisions for deviations allowing a second boat canopy for single-family residential properties.

(4) Ordinance 10-15 Second and Final Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:
A ordinance amending the Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .14, Institutional District (INST), by establishing additional permitted uses and special exception uses.

(5) Resolution 41-15 Final Public Input

A resolution authorizing the issuance of Special Obligation Refunding Revenue Bonds, Series 2015, in an amount not to exceed $55,000,000, in order to refund all or a portion of the City’s outstanding Special Obligation Revenue Bonds, Series 2006, in order to achieve debt service savings and to finance various capital improvements within the City.

B. Introductions

(1) None.

VIDEO 10. UNFINISHED BUSINESS

VIDEO A. Legislative Issues

VIDEO 11. NEW BUSINESS

VIDEO A. Resolution 34-15 Approve amendment to the contract amount for Paints and Coatings Inc. under the existing contract CON-UT14-15/TM Manhole and Liftstation Rehabilitation which piggybacks off the competitively bid City of Punta Gorda Agreement R201201/SVC-MHLSREHAB/1213 in the amount of $2,200,000 not to exceed budgetary limits for current and subsequent fiscal years and authorize the City Manager to execute the amendment. The City of Punta Gorda agreement was secured through a competitive bid and whose awarded cost was and is in a competitive range. Department: Utilities Est. Dollar value $2,200,000 (FY15 – $200,000: FY16-FY19 is $500,000 each Fiscal Year) (Water & Sewer Fund)

VIDEO B. Resolution 35-15 Approve contract CON-UT14-29/KR for the Underground Fire Line Improvement Project with TKW Consulting Engineers, Inc. of Fort Myers, FL. for Professional Engineering Services for Phase I to create a preliminary design, project
development and hydraulic modeling and authorize the City Manager to execute the contract. The intended firm was ranked #1 by the Selection Advisory Committee and the ranking approved by Council which allowed the City Manager to enter into negotiation. Utilities budgeted $500,000 per year for these utility conversions to be designed, permitted and constructed. Department: Utilities Dollar Value: $130,276 (Water & Sewer Fund).

VIDEO 12. REPORTS OF THE MAYOR AND COUNCIL MEMBERS

VIDEO 13. REPORTS OF THE CITY ATTORNEY AND CITY MANAGER

VIDEO 14. TIME AND PLACE OF FUTURE MEETINGS

VIDEO A. A Committee of the Whole Meeting is Scheduled for Wednesday, April 1, 2015 at 4:30 p.m. at 815 Nicholas Parkway, Conference Room A200

VIDEO B. A Regular City Council Meeting is Scheduled for Monday, April 6, 2015 at 4:30 p.m. in Council Chambers

VIDEO 15. MOTION TO ADJOURN

GENERAL RULES AND PROCEDURES REGARDING THE CAPE CORAL CITY COUNCIL AGENDA

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of the City Clerk at least forty-eight (48) hours prior to the date of the meeting. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

Persons wishing to address Council under Citizens Input or the Consent Agenda may do so during the designated times at each meeting. No prior scheduling is necessary. All speakers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

Any citizen may appear before the City Council at the scheduled PUBLIC HEARING/INPUT to comment on the specific agenda item being considered. No prior scheduling is necessary.

Members of the audience who address the City Council shall step up to the speaker's lectern and give his or her full name, address, and whom he or she represents. Proper decorum shall be maintained at all times. Any audience member who is boisterous or disruptive in any manner to the conduct of this meeting shall be asked to leave or be escorted from the meeting room.

Copies of the agenda are available in the main lobby of Cape Coral City Hall and in the City Council Office, 1015 Cultural Park Boulevard. Copies of all back-up documentation are also available for review in the lobby of Council Chambers. You are asked to refrain from removing any documentation. If you desire copies, please request they be made for you.

Copies are 15 cents per page. Agendas and back-up documentation are also available on-line on the City website (capecoral.net) after 4:00 PM on the Thursday prior to the Council Meeting.
In all public hearings for which an applicant or applicants exist and which would affect a relatively limited land area, including but not limited to PDPs, appeals concerning variances or special exceptions, and small-scale rezonings, the following procedures shall be utilized in order to afford all parties or their representatives a full opportunity to be heard on matters relevant to the application:

1. The applicant, as well as witnesses offering testimony or presenting evidence, will be required to swear or affirm that the testimony they provide is the truth.

2. The order of presentation will begin with the City staff report, the presentation by the applicant and/or the applicant's representative; witnesses called by the applicant, and then members of the public.

3. Members of the City Council may question any witness on relevant issues, by the applicant and/or the applicant's representative, City staff, or by any member of the public.

4. The Mayor may impose reasonable limitations on the offer of testimony or evidence and refuse to hear testimony or evidence that is not relevant to the issue being heard. The Mayor may also impose reasonable limitations on the number of witnesses heard when such witnesses become repetitive or are introducing duplicate testimony or evidence. The Mayor may also call witnesses and introduce evidence on behalf of the City Council if it is felt that such witnesses and/or evidence are necessary for a thorough consideration of the subject.

5. After the introduction of all-relevant testimony and evidence, the applicant shall have the opportunity to present a closing statement.

6. If a person decides to appeal any decision made by the City Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
TITLE:
Special Meeting - February 2, 2015

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
   If Yes, Priority Goals Supported are listed below.
   If No, will it harm the intent or success of the Strategic Plan?

Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

SOURCE OF ADDITIONAL INFORMATION:

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<td>February 2, 2015 Special Meeting Minutes</td>
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TITLE:
Strategic Planning - March 11, 2015

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
   If Yes, Priority Goals Supported are listed below.
   If No, will it harm the intent or success of the Strategic Plan?

Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:
Division -
Department -

SOURCE OF ADDITIONAL INFORMATION:

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TITLE:
Regular Meeting - March 16, 2015

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
   If Yes, Priority Goals Supported are listed below.
   If No, will it harm the intent or success of the Strategic Plan?

Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:
Division -
Department -

SOURCE OF ADDITIONAL INFORMATION:

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MINUTES FOR THE REGULAR MEETING OF THE
CAPE CORAL CITY COUNCIL

March 16, 2015

Council Chambers 4:30 p.m.

Meeting called to order by Mayor Sawicki at 4:30 p.m.

Invocation/Moment of Silence - Councilmember Erbrick

Pledge of Allegiance

Roll Call: Mayor Sawicki, Council Members Burch, Carioscia, Donnell, Erbrick, Leon, Nesta, and Williams were present.

CHANGES TO AGENDA/ADOPTION OF AGENDA

Mayor Sawicki welcomed Boy Scout Troop 34 who were working on their citizenship and community badge. She also announced that Resolution 32-15 would be moved to New Business.

Councilmember Burch moved, seconded by Councilmember Erbrick to approve the agenda as amended.

Council polled as follows: Erbrick, Leon, Nesta, Sawicki, Williams, Burch, Carioscia, and Donnell voted “aye.” Eight “ayes.” Motion carried 8-0.

RECOGNITIONS/ACHIEVEMENTS

Service Awards

5 Years
Phyllis Mesich/Finance

10 Years
Harry Phillips, IV/Public Works

APPROVAL OF MINUTES

Regular Meeting - February 23, 2015

Councilmember Carioscia moved, seconded by Councilmember Nesta to approve the minutes for the February 23, 2015 regular meeting as presented. Voice Poll: All “ayes.” Motion carried.

Regular Meeting - March 2, 2015

Councilmember Burch moved, seconded by Councilmember Erbrick to approve the minutes for the March 2, 2015 regular meeting as presented. Voice Poll: All “ayes.” Motion carried.

BUSINESS

PUBLIC COMMENT - CONSENT AGENDA

Dan Sheppard spoke about the opportunity to save money by publishing the newsletter only on the website and not spending the money to mail it.

Councilmember Donnell discussed the number of people that viewed the newsletter and he would be supporting it.
Councilmember Williams stated there are a number of people throughout the City that were not able to view the information online.

Councilmember Burch believed the newsletter was informative and provided valuable tips and information to the residents.

CONSENT AGENDA

(1) Resolution 27-15 Approve the Contract Renewal CON-CM12-12/CH, to The Breeze Newspapers, the vendor selected was the lowest responsive responsible bidder, for Printing and Mailing of On The Move Quarterly Newsletter for the City Manager’s Office and authorize the City Manager to execute the First Renewal and additional renewals. Department: City Manager/Public Information Total Estimated Dollar Amount $75,000 (General Fund)

(2) Resolution 32-15 Approve the Joint Project Agreement - Utility Installation by Highway Contractor between Lee County and the City of Cape Coral. Department: Utilities Est. Dollar Value: N/A – MOVED TO NEW BUSINESS

Councilmember Erbrick moved, seconded by Councilmember Carioscia to approve item B (1) as presented.

Councilmember Leon questioned if the On the Move newsletter was on the website and if it was emailed to a group. Public Information Officer Barron stated it was on the website; it was not emailed to a group. It was also part of the City’s flood rating with the information provided to the residents and helped save the citizens money with the City’s rating.

Council polled as follows: Erbrick, Leon, Nesta, Sawicki, Williams, Burch, Carioscia, and Donnell voted “aye.” Eight “ayes.” Motion carried 8-0.

CITIZENS INPUT TIME

David Carr spoke about the plan for Council for the following year and the variety of topics being taken on, tourism, and historic sites in the City; Dan Sheppard talked about the Sands Boulevard median maintenance for the trees installed.

Councilmember Leon stated there were a number of issues and initiatives the Council was discussing. He requested the City Manager look into the issue on Sands Boulevard. City Manager Szerlag stated he would provide a report of the status of the maintenance and the contract information.

Councilmember Williams discussed how there were several areas in the City that need to be looked into. He believed an audit of the various contracts was needed.

Public Works Director Neff stated this was a serious issue; noted during last fall a contractor was asked to step down and was replaced by the other contractor.

Councilmember Burch believed that monitoring was needed to save trees before they die.

PERSONNEL ACTIONS

None.

PETITIONS TO COUNCIL

None.

APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

None.

ORDINANCES/RESOLUTIONS
Public Hearings

Ordinance 10-15 Set
Second and Final Public Hearing for March 30, 2015

WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending the Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .14, Institutional District (INST), by establishing additional permitted uses and special exception uses.

City Clerk van Deutekom read the title of the Ordinance.

City Clerk van Deutekom announced the final public hearing would be held on March 30, 2015.

Planner Boyko explained what the Ordinance would accomplish. He provided a presentation outlining the changes.

Public Hearing opened.

No speakers.

Public Hearing closed.

Resolution 16-15 Final Public Input
WHAT THE RESOLUTION ACCOMPLISHES:
Adopting the 2015 Joint Regional Analysis of Impediments to Fair Housing Choice

City Clerk van Deutekom read the title of the Resolution.

Housing Coordinator Yearsley explained what the Resolution would accomplish. She reviewed her power point presentation on the Analysis of Impediments to Fair Housing Choice.

Public Input opened.

No speakers.

Public Input closed.

Councilmember Burch moved, seconded by Councilmember Donnell to approve Resolution 16-15 as presented.

Council polled as follows: Erbrick, Leon, Nesta, Sawicki, Williams, Burch, Caroscia, and Donnell voted “aye.” Eight “ayes.” Motion carried 8-0.

Introductions

Ordinance 8-15
Set Public Hearing Date for March 30, 2015

WHAT THE ORDINANCE ACCOMPLISHES:
Provides that an application for a Planned Development Project (PDP) amendment to a PDP be submitted by an owner of property within the PDP, or an owner may give written consent to a third party to apply for the PDP. Also, an applicant may grant authorization for an agent or attorney to represent them.

City Clerk van Deutekom read the title of the Ordinance.

The public hearing date was scheduled for March 30, 2015 at 4:30 p.m., in Council Chambers.
Planning Manager Burr provided a brief explanation on what the ordinance accomplished.

Ordinance 9-15
Set Public Hearing Date for March 30, 2015

WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending the Land Use and Development Regulations, Section 3.16, Marine Improvements, by eliminating the provisions for deviations allowing a second boat canopy for single-family residential properties.

City Clerk van Deutekom read the title of the Ordinance.

The public hearing date was scheduled for March 30, 2015 at 4:30 p.m., in Council Chambers.

Planner IV Daltry stated he was available to answer questions, but would make a presentation at the Public Hearing.

UNFINISHED BUSINESS
Legislative Issues

Councilmember Burch stated he would be leaving for Tallahassee Tuesday. He believed this Legislative Session would have significant effects on local government and home rule than any he had seen in awhile.

City Manager Szerlag discussed the Legislative Item related to utility line relocations. He noted how they needed to have 10 cities and was looking for specific examples of lines needed to be moved and the costs associated.

Mayor Sawicki stated she had met with and discussed the issue with Senators Simpson, Benacquisto, and Abruzzo.

City Manager Szerlag stated he had spoken with lobbyist Bell Peebles over the past weekend; Mr. Peebles asked him to attend the session next week, and City Manager Szerlag invited the Mayor to accompany him.

Councilmember Burch discussed the fact that cities were allowed to be reimbursed and there should be no need to defend this since the law allowed for it.

Councilmember Erbrick stated that she and Councilmember Leon would also be in Tallahassee next week; she stated there may be a need to send someone on Monday to address that item.

City Manager Szerlag stated you could contact the lobbyist in order to set up meetings with legislators. He asked for Council to provide any example of line relocations where reimbursements were needed.

NEW BUSINESS

Resolution 25-15 Approve the waiver of the bid process for the Weir 11 Modification for the City of Cape Coral, due to the time constraint to start construction based on the County’s revision to the construction phase (change from North to South), and authorize the City Manager to execute the contract. Department: Utilities. Est. Dollar value $250,000 (Water & Sewer Fund)

Utilities Director Pearson explained what the Resolution would accomplish. He discussed the County’s phasing plan and the change due to TRIP Funding the County received. He stated the short term plan was a 4 lane and the long term plan was a 6 lane for Burnt Store Road. There was a need to relocate the weir control panel and quotes would need to be obtained for that purpose before the County opened the
project in July, 2015. There are funds in the Weir 4 project and the funds could be used to fund this since Weir 4 was not currently a priority. He requested approval to move forward on Weir 11.

Councilmember Williams questioned why there was urgency in moving forward so quickly. Utilities Director Pearson discussed the need to be able to raise and lower the weirs for storage purposes. Councilmember Williams questioned the amount of time it would take to get the bids. Utilities Director Pearson stated they would like to be done before rainy season, and they wished to complete it prior to the County’s project.

Councilmember Nesta moved, seconded by Councilmember Carioscia to approve Resolution 25-15 as presented.

Council polled as follows: Erbrick, Leon, Nesta, Sawicki, Williams, Burch, Carioscia, and Donnell voted “aye.” Eight “ayes.” Motion carried 8-0.

Resolution 28-15 Interlocal Agreement Between City of Cape Coral and Florida Governmental Utility Authority (FGUA)

Utilities Director Pearson stated he had a powerpoint presentation. He also introduced Andy Burnham from Burton and Associates, Steve Spratt from FGUA/GSG, and Kevin Grace with FGUA/GSG, and Pam Keyes, Lee County Utility Director.

City Manager Szerlag suggested tabling the item. Staff had spoken with the FGUA about the agreement and believed it was short on the capital outlay for the preferred route. The City was seeking a 50/50 split and a longer contract time frame; FGUA advised that they could not consider that at this meeting, but would bring the request back to the FGUA Board of Directors. He asked Council to consider those items while hearing the presentation.

Utilities Director Pearson provided a power point presentation on the Florida Governmental Utility Authority Interlocal Agreement including the agreement specifics of a 20 year agreement and the discounted rate of .31/1000 gals or $0.279. He displayed an aerial map of the proposed route alignment. He reviewed the next steps if the agreement was approved and what would be needed if the City did not approve the agreement.

Councilmember Donnell stated he believed tabling the item for two weeks was preferable to determine the following: preferred route, 50/50 split, 10% discount, and length of contract. He suggested bringing it back on March 30th.

Steve Spratt stated they just learned of the counter proposal; they had not had an opportunity to bring it in front of their board. He discussed the benefit to the customers and the authority related to the costs. The FGUA would be meeting later this week and requested a motion, with the specific request in that motion, which he could bring back to the FGUA Board.

Discussion held regarding the timeframe to bring this to the FGUA.

Councilmember Donnell stated it was a win-win opportunity. He asked whether it was a problem to delay this item for two weeks. Utilities Director Pearson stated they would need to know FGUA’s timeline before taking it back to the Board and whether the draft can be approved.

Discussion held concerning the timeframe.

Mr. Sprat requested a formal decision by Council, which he would bring to the FGUA, and then provide their decision back to Council.

Andy Burnham, Burton and Associates, discussed the financial dynamics with a $1,000,000 of capital contributions. He stated it would create an average savings of
$3.1 million each year. This was not only a cost avoidance, but also a revenue generator for the City.

Mr. Spratt requested that an amount of contribution be specified in the motion.

City Attorney Menendez questioned if the March 30th meeting would allow enough time for the FGUA to approve the new agreement. Mr. Spratt stated they should have their decision by March 26th.

City Manager Szerlag stated additional changes they were requesting were: preferred route, capital cost of project 10% discount, and possible extension on the length of the contract. If the FGUA did not agree, they would move forward with constructing a deep injection well.

Councilmember Nesta questioned the 50/50 split on capital and preferred route. Utilities Director Pearson showed a map of the preferred route and advised the cost was $3.5 million; which would be $1.75 million with the 50/50 split. Councilmember Nesta questioned the negotiated contract versus the requested changes. City Manager Szerlag also recommended the extension of the contract length.

Councilmember Nesta stated he agreed with moving this to March 30th in order to be able to review the changes. He discussed the proposed route and the ability to use City owned property, the capital outlay, and the return of the water discount rate the City would get. He believed the contract could be modified more, and Council was being asked to make a decision in a short time frame.

Discussion held regarding the cost and the savings that would be seen by the City.

City Manager Szerlag stated this has been discussed for the last few years. It was the FGUA’s urgency and not the City’s. He believed the agreement could be more favorable to Cape Coral.

Councilmember Nesta stated he felt the City could do better. Mr. Spratt clarified that GSG was contracted with the FGUA; the FGUA was a governmental entity. Councilmember Nesta questioned the time length before a secondary well would have to be placed anyways. Mr. Spratt stated they had to be able to amortize the investment with the City’s system; and they had to have a benefit of time to show ratepayers they were receiving an on-going benefit from the investment; he indicated it could be as far out as 20 years on their $1.8 million investment.

Councilmember Burch stated he would not support the agreement due to the last minute nature of receiving the information. He believed there were several options and the City did not need the water at this time. He reviewed several scenarios related to the money paid by the City and the recouping of costs by the City and the FGUA. He did not feel the City was getting the correct amount. He discussed the cleanup and remediation included in the agreement and the details of the contract. He believed the permits for clean water needed to be tied to the contract, and the cost needed to be adjusted and be in control of the rates for the next 20 years.

Councilmember Leon stated he agreed with the longer contract, locking in a lower rate, a 50/50 share, and the preferred route in order to ensure the best deal for the residents.

Utilities Director Pearson stated the DEP requirements were the same for FGUA and the City.

Councilmember Donnell discussed the value of water and the ability to position the City in the long term.

Councilmember Williams agreed with Councilmember Burch and suggested working with DEP for an extension in order to have time to work out the contract. He clarified that this had nothing to do with the North RO plant.
Councilmember Burch stated the question was, did Council want to enter into an agreement. If yes, how do they get to that agreement?

Councilmember Erbrick stated at some point, the line would need to be run; the rate needed to be worked on, and the City needed to move forward. She questioned if the budget contained the funds to complete this. Utilities Director Pearson stated it was a Strategic decision, and the funds were in the budget.

Councilmember Burch stated negotiating the rate was necessary.

City Manager Szerlag asked Council to consider a 50/50 split, identify the preferred route, extension of contract, and a discount rate, which was equitable to both FGUA and Cape Coral.

Councilmember Erbrick moved, seconded by Councilmember Donnell to work with our consultant on the 50/50 split, identifying the preferred route, the extension of the contract, and a discount rate, which was equitable to both FGUA and Cape Coral.

Council polled as follows: Erbrick, Leon, Nesta, Sawicki, Williams, Burch, Carioscia, and Donnell voted “aye.” Eight “ayes.” Motion carried 8-0.

Resolution 32-15 Approve the Joint Project Agreement - Utility Installation by Highway Contractor between Lee County and the City of Cape Coral. Department: Utilities Est. Dollar Value: N/A

Utilities Director Pearson explained what the Resolution would accomplish which was to install casing crossings under Burnt Store Road. Their dollar amount was not yet identified but would be done in conjunction with a Lee County project. The design would be incorporated into the Burnt Store Road Phase 1. The City could achieve a discount through economies of scale. It was anticipated Burnt Store Road would be widened, and these casings would survive a six-laning of the roadway. It was intended to save money on future expansion projects. When Lee County bid the project, he would bring the item back to Council for approval.

Councilmember Williams questioned where the money was coming from for putting in the casings. Utilities Director Pearson stated the treatment and transmission lines would be part of the Utilities Project and the transmission lines, which were not assessed; instead, they were recouped through the CIAC fees. There were funds budgeted in two different business units. There were no estimates or designs at this time for Phase II and III. As the project progresses, the costs could be determined.

Councilmember Burch agreed it should be done. He requested that once the casings were put in they should be surveyed and note the location and depth of the lines. Utilities Director Pearson stated they would make sure they did that.

Councilmember Williams moved, seconded by Councilmember Burch to approve Resolution 32-15 as presented.

Council polled as follows: Erbrick, Leon, Nesta, Sawicki, Williams, Burch, Carioscia, and Donnell voted “aye.” Eight “ayes.” Motion carried 8-0.

Councilmember Donnell stated on Friday, May 1st there was a mandatory Ethics Training in Sanibel. He stated there was an online option, and he requested the ability to take the online class, which was $85, and he requested Council’s permission.

Councilmember Leon questioned if Councilmember Donnell needed to take the Training since it was his last year. Councilmember Donnell stated yes.

It was the consensus of Council to allow Councilmember Donnell to take the


**online training.**

**REPORTS OF THE MAYOR AND COUNCIL MEMBERS**

Councilmember Erbrick – discussed Strategic Planning last week; stated Charter Review met each week on Thursday at 4:00 pm. (except the last Thursday of the month); Bimini Basin tomorrow; would be attending the SW Regional Tallahassee Days; and wished everyone a happy St. Patrick’s Day.

Councilmember Leon – no report.

Councilmember Nesta – gave kudos to the Cape Coral Oasis Municipal School system and kudos to the girls from the Cape Coral Ovation Show Choir that won 1st place at the National Competition held in Orlando, arts in school important.

Councilmember Williams – attended the ribbon cutting at Lee Tran Facility in Fort Myers; Strategic Planning Session on March 11th, and the CCCIA Membership Dinner Meeting.

Councilmember Burch – attended the SW Regional Planning Council Meeting; discussed the DRI Bill, which was still pending; and announced it was National Surveyors Week.

Councilmember Carioscia – reminded Council when it came to vouchers and bill paying, that the Council members obtained the consensus necessary to approve the vouchers and bill payments; on March 18th the SW Neighborhood Association would be holding a meeting regarding the Sunset Pointe development at the Oasis Cafeteria.

Councilmember Donnell – enjoyed the Strategic Planning Session and thanked the City Manager for facilitating that meeting.

Mayor Sawicki – attended the Governor’s Mansion Dinner last week and met with three Senators; Chamber Luncheon; Fit de Cape - fitness challenge would be starting; Strategic Planning Session; discussed the Bimini Basin and connecting the canals and she spoke with a representative of the DEP regarding the connecting of those two canals; attended the memorial service for Ed Prince; announced her Mayor’s Night Out on March 31st from 5:00 to 7:00 pm at Chester Street Resource Center; Mayors Scholarship Event, Theater night; and announced the Joint MPO meeting on Friday March 20th in Collier County.

**REPORTS OF THE CITY ATTORNEY AND CITY MANAGER**

City Attorney – no report.

City Manager – briefed Council on Bimini Basin schedule.

**TIME AND PLACE OF FUTURE MEETINGS**

A regular City Council meeting was scheduled for Monday, March 23, 2015 at 4:30 p.m. in Council Chambers.

**MOTION TO ADJOURN**

There being no further business, the meeting adjourned at 6:43 p.m.

Submitted by,

Rebecca van Deutekom, MMC
City Clerk
TITLE:
Resolution 34-15 Approve amendment to the contract amount for Paints and Coatings Inc. under the existing contract CON-UT14-15/TM Manhole and Liftstation Rehabilitation which piggybacks off the competitively bid City of Punta Gorda Agreement R201201/SVC-MHLSREHAB/1213 in the amount of $2,200,000 not to exceed budgetary limits for current and subsequent fiscal years and authorize the City Manager to execute the amendment. The City of Punta Gorda agreement was secured through a competitive bid and whose awarded cost was and is in a competitive range. Department: Utilities Est. Dollar value $2,200,000 (FY15 – $200,000: FY16-FY19 is $500,000 each Fiscal Year) (Water & Sewer Fund)

REQUESTED ACTION:
Approve or Deny

STRATEGIC PLAN INFO:
1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? Yes
   If Yes, Priority Goals Supported are listed below.
   If No, will it harm the intent or success of the Strategic Plan?

PRIORITY GOAL #3: INVEST IN COMMUNITY INFRASTRUCTURE INCLUDING UTILITIES EXPANSION IMPROVEMENTS TO ENHANCE THE CITY'S ABILITY TO MEET THE NEEDS OF ITS CURRENT AND FUTURE RESIDENTS.

Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:
1. The FY2014 Capital Improvements Plan included a specific line item for manhole and lift station rehabilitation throughout the City wide wastewater collection system on an as needed basis. The manholes and minor lift station work is generally rehabilitated in place eliminating the need to open cut City streets, business parking lots, and citizen’s yards. The work consists of sand or hydro-blasting of the interior, an evaluation of the interior structure, repairs or rebuilding as necessary, and application of the selected final coating system in the City wide waste water collection system.
2. On JUNE 13, 2013 the City of Punta Gorda opened 5 proposals for manhole and lift station repair and rehabilitation services.
3. On AUGUST 13, 2013 the City of Punta Gorda signed an Agreement # R2012101/SVC-MHLSREHAB/1213 for Professional Services generally described as manhole and lift station repair and rehabilitation services with Paints & Coatings, Inc.
4. On DECEMBER 27, 2013 the City of Cape Coral’s Utilities Department conducted a price comparison and determined that utilizing Paints & Coating, Inc. was cost effective and recommended entering into a multi-year contract with Paints & Coatings, Inc.

5. On March 24, 2014, Council approved the contract CON-UT14-15/TM for work including Professional Manhole and Lift station Repair & Rehabilitation services at the unit prices bid plus any renewal for a not to exceed amount of $600,000 ($200,000 per fiscal year to complete the work of the previous three years) with a 5% city controlled contingency for FY14 in the amount of $30,000 for a total of $630,000.

6. The Utilities Department is requesting continuing with and amending the contract amount to include the approved budget amount for FY15-$200,000 and the projected estimated amount for FY2016 through 2019 of $500,000 per Fiscal Year not to exceed budgetary limits.

7. Funding Information:
Account: FY15 is BU 4050061.662601 and FY16 - FY19 is BU 4050130-4050133.662601 (Wastewater Collection System, Manhole & Lift Station Repair and Rehabilitation)

LEGAL REVIEW:
Amendment was reviewed and approved by the City Attorney’s office.

EXHIBITS:
Resolution 34-15
Department Recommendation

PREPARED BY:
Wanda Roop  Division  Procurement  Department  Finance

SOURCE OF ADDITIONAL INFORMATION:
Jeff Pearson, Utilities Director

ATTACHMENTS:

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<td>Map - Manhole Rehab</td>
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On April 3, 2014 the City of Cape Coral entered into a Contract (CON-UT14-15/TM) with Paints & Coatings, Inc. for manhole and lift station rehabilitation services as needed. This Contract was based on a piggy-back on the City of Punta Gorda’s Agreement, Contract #R2012101/SVC-MHLSREHAB/2013 for Professional Services generally described as manhole and lift station rehabilitation. The City of Punta Gorda’s Contract was competitively bid. The present Contract term expires August 12, 2016 based on the corresponding terms of the City of Punta Gorda’s Contract; however, the initial funding for the project was only authorized for FY14.

Therefore the Utilities Department hereby requests that the City approve the FY15 Contract funding and allow the City Manager to approve subsequent funding for FY16; the FY16 contract amount being subject to FY16 Utilities Capital Improvements Project budget approval. This will allow the City to continue the existing Contract with Paints & Coatings, Inc. for the same time period in accordance with the terms of the City of Punta Gorda’s Contract. The Contract amount for this fiscal year (FY15) is $200,000.00 based on the present approved FY15 Department budget. The FY16 contract amount will be based upon the approved FY16 Utilities Capital Improvements Project budget. The work will take place at various locations throughout the City as determined through onsite investigations performed by the various divisions within the Utilities Department. This ongoing Contract has proven to be very beneficial to the City as numerous deficient/deteriorated manholes have been structurally refurbished and lined to significantly reduce infiltration and minimize future deterioration. The Contract prices will remain in effect and were substantially justified as a part of the existing Contract approval.
Should you have any questions please give Bill Sperry a call at extension 4729.

☐ Approved  ☐ Not Approved

Victoria Bateman, Financial Services Director

C: Jim Diviesta, Contract Specialist
RESOLUTION 34-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING AMENDMENT #1 TO CONTRACT #CON-UT14-15/TM FOR MANHOLE AND LIFT STATION REHABILITATION SERVICES BETWEEN PAINTS AND COATINGS, INC., AND THE CITY OF CAPE CORAL IN ORDER TO INCREASE THE CONTRACT AMOUNT BY $2,200,000; AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT AMENDMENT #1 TO CONTRACT #CON-UT14-15/TM; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 24, 2014, the City Council approved Contract #CON-UT-14-15/TM with Paints and Coatings, Inc., in accordance with City of Punta Gorda Agreement #R2012101/SVC-MHLSREHAB/1213, for Manhole and Lift Station Repair and Rehabilitation services in the total amount of $630,000 for FY2014; and

WHEREAS, the Utilities Department has requested an amendment to Contract #CON-UT-14-15/TM to increase the contract amount by $2,200,000 in order to include the approved budgeted amount for FY2015 plus the projected estimated amount for FY2016-2019 for manhole and lift station rehabilitation services; and

WHEREAS, the City Manager recommends amending Contract #CON-UT-14-15/TM with Paints and Coatings, Inc., to increase the contract amount by $2,200,000, not to exceed budgetary limits, for manhole and lift station rehabilitation services for FY2015-2019.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby approves amending the contract with Paints and Coatings, Inc., for manhole and lift station rehabilitation services in the amount of $2,200,000, not to exceed budgetary limits, and authorizes the City Manager to execute Amendment #1 to Contract #CON-UT-14-15/TM with Paints and Coatings, Inc. Amendment #1 to Contract #CON-UT-14-15/TM is attached hereto as Exhibit A.

Section 2. This Resolution shall take effect immediately upon its adoption.


______________________________
MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI
BURCH
CARIOSCIA
NESTA
LEON
ERBRICK
WILLIAMS
DONNELL

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF ______________, 2014.

______________________________
REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:

______________________________
DOLORES D. MENENDEZ
CITY ATTORNEY

Amend Contract-Paints & Coatings
03/18/15
CONTRACT AMENDMENT #1
MANHOLE AND LIFT STATION REHABILITATION SERVICES
CONTRACT # CON-UT14-15/TM

Reference is made to the contract entered into between the CITY OF CAPE CORAL and PAINTS AND COATINGS, INC Contract # CON-UT14-15/TM for manhole and lift station rehabilitation throughout the Citywide wastewater collection system, that piggybacks off the City of Punta Gorda Agreement R201201/SVC-MHLSREHAB/1213. All terms, conditions and specifications of the aforementioned Contract and the Contractor’s offer are incorporated herein by reference in full force and effect.

By mutual agreement between the Contracting Parties, this Contract is hereby amended to increase the contract amount by $2,200,000 to fund the life of the contract including all renewals, for a total contract amount of $2,830,000 not to exceed current or subsequent fiscal year budgetary limits.

All other terms and conditions will remain as stated in the original contract.

(CITY SEAL)
ATTEST:

Signature: ____________________________
Typed Name: Rebecca van Deutekom
Title: Master Municipal Clerk

CITY:
City of Cape Coral, Florida

Signature: ____________________________
Typed Name: A. John Szerlag
Title: City Manager

Date: ____________________________

CONTRACTOR:

Paints and Coatings, Inc.

Signature: ____________________________
Typed Name: Jeff Yingling
Title: VP
Date: 3/16/15

CITY LEGAL REVIEW:

Williame Breyon
Dolores Menendez, City Attorney
03/17/15

Exhibit A
This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapping areas, errors and omissions may occur. Therefore, The City of Cape Coral cannot be held liable for incidents that may result due to improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations.

MANHOLE AND LIFT STATION
REHABILITATION SERVICES
SOUTH CAPE CORAL

SPECIFIC MANHOLES AND LIFT STATIONS DESIGNATED FOR REPAIR WILL BE BASED ON STAFF RECOMMENDATIONS AND AVAILABLE FUNDING

LOCATION MAP
TITLE:
Resolution 35-15 Approve contract CON-UT14-29/KR for the Underground Fire Line Improvement Project with TKW Consulting Engineers, Inc. of Fort Myers, FL. for Professional Engineering Services for Phase I to create a preliminary design, project development and hydraulic modeling and authorize the City Manager to execute the contract. The intended firm was ranked #1 by the Selection Advisory Committee and the ranking approved by Council which allowed the City Manager to enter into negotiation. Utilities budgeted $500,000 per year for these utility conversions to be designed, permitted and constructed. Department: Utilities Dollar Value: $130,276 (Water & Sewer Fund).

REQUESTED ACTION:
Approve or Deny

STRATEGIC PLAN INFO:
1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? Yes
   If Yes, Priority Goals Supported are listed below.
   If No, will it harm the intent or success of the Strategic Plan?

PRIORITY GOAL #3: INVEST IN COMMUNITY INFRASTRUCTURE INCLUDING UTILITIES EXPANSION IMPROVEMENTS TO ENHANCE THE CITY'S ABILITY TO MEET THE NEEDS OF ITS CURRENT AND FUTURE RESIDENTS.

Planning & Zoning Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:
2. One (1) firm responded to the RFQ. The firm is TKW Consulting Engineers, Inc. of Fort Myers, FL.
3. The firms, who requested the RFQ, were contacted to research reasons behind non-submittal, which range from not offering the service, not interested due to firm workload or to not having proper expertise.
4. On September 9, 2014, the Selection Advisory Committee (SAC) reviewed the recommendation of the evaluation committee and met with TKW Consulting Engineers, Inc. The SAC based on their evaluation, recommended entering into negotiations with TKW Consulting Engineers, Inc.
5. On September 29, 2014, City Council approved the SAC ranking. Upon City Council approval of the ranking, staff began negotiations with TKW Consulting Engineers, Inc.
6. Utilities Department recommends awarding contract to TKW Consulting Engineers, Inc. for Phase I which includes preliminary design, project development and hydraulic modeling.
7. Phase II will require completion of Phase I and includes design, permitting, bid support and construction phase engineering services for individual fire line improvement sub-projects. Phase II will require negotiation of subsequent agreement(s) and Council Approval before proceeding.
8. The Utilities Department has budgeted $2,835,710 for FY15-19' for this project.

LEGAL REVIEW: 
Contract was reviewed and approved by Legal

EXHIBITS: 
Resolution 35-15 
Department Recommendation

PREPARED BY: 
Wanda Roop Division Procurement Department Finance

SOURCE OF ADDITIONAL INFORMATION: 
ATTACHMENTS: 

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TO: Wanda Roop, Procurement Manager
FROM: Jeff Pearson, Utilities Director
Gino Notarianni, Project Manager
DATE: March 17, 2015
SUBJECT: Underground Fire Line Improvement Project -- Phase 1 (Multi-Year)

Project Background:

The City of Cape Coral desires to improve the reliability of its fire protection services by implementing a 5-year project to provide adequately sized potable water mains, to convert fire services (water supply to building fire sprinkler systems) and fire hydrants from connections to the City’s non-potable irrigation system to the City’s potable water system. The objective of this project is to improve the reliability of fire protection system flow and pressure. This will be accomplished by converting fire protection services to adequately sized potable water mains which will serve the various multi-family and commercial customers which are currently connected to the City’s non-potable irrigation system. The City’s Fire Department has identified approximately 60 buildings which will require conversion of the water supply for fire protection from the City’s non-potable irrigation water system to the City’s more reliable potable water system. TKW Consulting Engineers, Inc. (Engineer) has been selected by the City to provide the professional engineering services to develop and implement this project. It is anticipated that the implementation of this Project will require professional services that include: project development; hydraulic modeling; preliminary design; cost projections; project specific detailed design and development of construction documents; permitting services; post-design and construction phase services; record documentation and GIS data updates.

Scope of Work:

The Engineer will perform professional services in two phases. Phase 1 will be project development and Phase 2 will be the detailed design and post-design services for individual projects selected for implementation. Because the services needed in Phase 2 of the Project are not well defined at this time, the scope of services, fee, and schedule for individual projects anticipated in Phase 2 services generally described herein may be negotiated separately and authorized in a separate subsequent authorization, or multiple authorizations, on completion of the Phase 1 services for project development.
Phase 1 – Tasks:
1. Project Development, Data Collection & Research, & Kickoff Meeting
2. Hydraulic Modeling of Potable Water Distribution System
3. Preliminary Design Report (PDR)

Phase 2 - Tasks: (to be negotiated under future contract)
It is anticipated that as established in the PDR (Phase 1) 30 project sites will be organized, by priority, into five separate bid or procurement packages for implementation year by year over a five-year period. The intent is for the City to bid and construct at least one of these separate fire line improvement packages (Sub-Projects) each year. Anticipated Services needed to complete the project to be authorized separately include:
1. Project Management
2. Design Surveys
3. Geotechnical Investigations
4. Subsurface Utility Locations
5. Design and preparation of Construction Documents with reviews at the 60%, 90% and final completion stages
6. Permitting
7. Bid Support
8. Post-Design and Services During Construction

Budget:
The Phase 1 engineering services for the Underground Fire Line Project has a Not-to-Exceed (NTE) amount of $130,276.00 will come out of the Utilities Construction Capital Improvements Project ADM-38 Fire Sprinkler Conversions for FY14 (JDE Account Number 4050051.662601) which has an unencumbered balance of $465,710.00. Phase 2 engineering and service will be negotiated under a separate contract for Council approval after Phase 1 has been completed and will be based on the FY15-19 approved Utilities Department budget.

Please feel free to contact me directly at 573-3039 if you should require any additional information or if you have any additional questions or concerns.

☑ Approved  ☐ Not Approved

Victoria Bauman, Financial Services Director

JP/GN: (Underground Fire Line Improvement Project) – Phase 1 (Multi-Year)

Attachment (1- SAC Recommendation Memo)

Cc: James Diviesta, Contract Specialist
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING AGREEMENT CON UT14-29/KR FOR PROFESSIONAL ENGINEERING SERVICES FOR PHASE I OF THE UNDERGROUND FIRE LINE IMPROVEMENTS PROJECT BETWEEN THE CITY OF CAPE CORAL AND TKW CONSULTING ENGINEERS, INC.; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT BY THE CITY MANAGER; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 23, 2014, the City issued Request for Qualifications RFQ UT14-29/TM from qualified Engineering/Consulting professionals to perform as the City’s Engineer of Record and to provide professional services; and

WHEREAS, the City received one (1) proposal on August 13, 2014; and

WHEREAS, on September 9, 2014, the SAC reviewed the recommendation of the evaluation committee, met with the firm, and recommended the firm: TKW Consulting Engineers, Inc.; and

WHEREAS, based on the SAC ranking, which was approved by City Council on September 29, 2014, staff began negotiations with TKW Consulting Engineers, Inc.; and

WHEREAS, based on the negotiations, the City Manager recommends the approval of Agreement CON UT14-29/KR between the City of Cape Coral and TKW Consulting Engineers, Inc., for an amount of $130,276.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA:

Section 1. The City Council hereby approves Agreement CON UT14-29/KR between the City of Cape Coral and TKW Consulting Engineers, Inc., for Professional Engineering Services for Phase I of the Underground Fire Line Improvements Project for an amount of $130,276, and authorizes the City Manager to execute Agreement CON UT14-29/KR. A copy of the Agreement is attached hereto as Exhibit A.

Section 2. Effective Date. This resolution shall take effect immediately upon its adoption by the Cape Coral City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF ________________, 2015.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI
BURCH
CARIOCSIA
NESTA
LEON
ERBRICK
WILLIAMS
DONNELL
ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF ____________, 2015.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:

[Signature]
DOLORES D. MENENDEZ
CITY ATTORNEY

rex/Approve Contract-TKW Consulting Engineers
03/18/15
CITY OF CAPE CORAL

AGREEMENT BETWEEN CITY AND ENGINEER

CON-UT14-29/KR

March 5, 2015

Exhibit A
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Schedule "A" Scope of Professional Services  
Schedule "B" Engineer's Work Schedule  
Schedule "C" Personnel Qualifications  
Schedule "D" Personnel Hourly Rates  
Schedule "E" Schedule of Values  
Schedule "F" Sworn Application for Payment  
Exhibit "A" Total Project Costs (NTE)  
Exhibit "B" Performance Bond - NOT USED  
Exhibit "C" Drug Free Workplace Certification  
Exhibit "D" MWBE Statement

City:  
Engineer:  
March 5, 2015
PROFESSIONAL SERVICES AGREEMENT

ARTICLE 1

RECITALS

1.1 THIS AGREEMENT is made and entered into this ___ day of ___, 2015, by and between the City of Cape Coral, Florida, a municipal corporation of the State of Florida, hereinafter referred to as the “City”, and TKW Consulting Engineers, Inc. hereinafter referred to as “Engineer.”

WITNESSETH:

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

WHEREAS, the City intends to construct Underground Fire Line Improvements, and

WHEREAS, the City desires to contract with the Engineer to provide professional engineering services for the following items:

Per Attached - SCHEDULE A - Scope of Professional Engineering Services - Phase I
(One) Program Development, Hydraulic Modeling and Preliminary Design.

Phase II (Two) will be defined upon completion of Phase I design and program development. Phase II may result in a multiple year project, with separate agreement(s) requiring negotiation and council approval.

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

WHEREAS, Engineer has reviewed the professional services required pursuant to this Agreement and is qualified, willing and able to provide and perform all such services in accordance with the provisions, conditions and terms hereinafter set forth; and

WHEREAS, the selection and engagement of the Engineer has been made by the City in accordance with the provisions of the Consultant’s Competitive Negotiation Act, Chapter 287.055, Florida Statutes and in accordance with the provisions of all City procurement standards.

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

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

City_________

Engineer Due

March 5, 2015
ARTICLE 2
DEFINITIONS

2.1 City: The term “City” shall mean the City of Cape Coral.

2.2 Owner: The term “Owner” shall also mean the City of Cape Coral.

2.3 Engineer: The term “Engineer” shall mean TKW Consulting Engineers, Inc.

2.4 Contract Documents: The term “Contract Documents” shall mean this Agreement, the City’s Request for Qualifications (“RFQ”), the Engineer’s responses and submissions to the RFQ, and all drawings and specifications prepared and/or adopted by Engineer and its sub-consultants. Any Special Conditions, together with all Written Amendments, Change Orders, Work Change Directives or Field Orders. In the event of conflict between any provision of any other document referenced herein as part of this Agreement, the terms of this Agreement shall control.

2.5 Work: The term “Work” shall mean everything expressly or implicitly required to perform as the City’s Engineer of Record and Professional Geologist to provide professional services to assist the City in accomplishing the following general project elements. This represents a general outline of anticipated services and may change or include other specific services as required.

Schedule A. “Scope of Professional Services” attached hereto.

2.6 Project: The term “Project” shall mean the Underground Fire Line Improvements Project.

2.7 Project Area: The term “Project Area” shall mean the established geographical boundaries within the City of Cape Coral. There are thirty (30) service parcel connections serving approximately sixty (60) buildings and related areas. Additional conversions and conversion connections will include fire hydrants, as needed.

ARTICLE 3
SCOPE OF PROFESSIONAL SERVICES

Engineer hereby agrees to provide and perform the professional services required and necessary to complete the services and Work as set forth in Schedule “A,” entitled Scope of Professional Services as indicated in said schedule which is attached hereto and made a part of this Agreement (“Professional Services”). Engineer shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks and work set forth in the Scope of Professional Services attached here to as Schedule “A.”

ARTICLE 4
CONTRACT MODIFICATIONS

The City reserves the right to make any contract modifications it so desires. All contract modifications shall be performed in accordance with the terms and conditions of this Agreement. No extra Work shall be performed unless ordered in writing by the City prior to the installation of such Work and upon the terms agreed to in advance by the City.

ARTICLE 5
ADDITIONAL PROFESSIONAL SERVICES

The City may, without invalidating this Agreement, require that Engineer perform professional services (“Additional Professional Services”) in addition to those identified as Professional Services in this Agreement. If the Engineer believes a professional service to be beyond those included in the Professional Services, Engineer shall notify the City in writing, and obtain the City’s written authorization to proceed with such service as an Additional Professional Service for such service to be considered an Additional Professional Service. These Additional Professional Services shall be provided by the Engineer if directed and authorized by the City.

March 5, 2015
in advance, in writing, by the City and if Engineer is reasonably qualified to provide the services. Additional Professional Services shall be performed under and governed by the terms and provisions of this Agreement. The City shall pay Engineer for all Additional Professional Services directed and authorized in writing and in advance by the City, except that the City shall not be obligated to pay for any such Additional Professional Services or any other services which result from or are caused by Engineer's breach of its obligations under this Agreement.

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

5.1 Contingency: In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the work.

5.2 Change Order Proposal Time and Change Directives: The Engineer's proposals for changes in the Agreement amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Engineer to proceed with the changes without waiting for the Engineer's proposal or for the formal change order to be issued. In the case of an unacceptable Engineer proposal, the Owner may direct the Engineer to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Engineer by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Agreement.

5.3 Accurate Change Order Pricing Information: Engineer (subcontractor or sub-sub contractor) agrees that it is responsible for submitting accurate cost and pricing data to support its Change Order Proposals or other Agreement price adjustments during the Agreement. Engineer further agrees to submit change order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the Agreement with respect to pricing of change orders. Engineer agrees that any "buy-out savings" on change orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Engineer with a subcontractor or a material supplier after receiving approval of a change order amount that was designated to be paid to a specific subcontractor or supplier for the approved change order work.

5.4 Right to Verify Change Order Pricing Information: Engineer, subcontractor and sub-sub-contractor agrees that any designated Owner's representative will have the right to examine (copy or scan) the records of the Engineer, subcontractor or sub-sub contractor's records (during the contract period and up to three years after final payment is made on the contract) to verify the accuracy and appropriateness of the pricing data used to price all change order proposals and/or claims. Engineer agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the Agreement regarding pricing of change orders, an appropriate contract price adjustment will be made. Such post-approval Agreement price adjustments will apply to all levels of contractors and/or subcontractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders. This provision survives the expiration of this Agreement.

City_________________________

Engineer_____________________

March 5, 2015
5.5 **Requirements for Detailed Change Order Pricing Information:** Engineer agrees to provide and require all Subcontractors and sub-subcontractors to provide a breakdown of allowable labor cost information as outlined in this Article 5. This information will be used to evaluate the potential cost of labor related to change order work. It is intended that this information represent an accurate estimate of the Engineer's actual labor cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

**ARTICLE 6**

**TIME FOR PERFORMANCE**

6.1 Following the execution of this Agreement by both parties and after Engineer has complied with the insurance and bonding requirements set forth herein, the City shall issue to Engineer a written notice to proceed. Following the issuance of such a written notice to proceed, Engineer shall be authorized to commence Work and Engineer thereafter shall commence Work promptly and shall carry on all such services and Work within 14 calendar days in a timely and diligent manner to completion.

6.2 Should Engineer be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of Engineer, or its sub-consultants and/or subcontractors and not due to their fault or neglect, Engineer shall notify the City, in writing, within five (5) calendar days after the commencement of such delay stating the cause(s) thereof and requesting an extension of Engineer's time of performance. Upon receipt of Engineer's request for an extension of time, the City shall grant the extension if the City, in its sole discretion, determines that the delay(s) encountered by Engineer or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

6.3 Engineer shall be required as a condition of this Agreement to prepare and submit to the City an Engineer's Work schedule which is attached hereto as Schedule "B". The Engineer's Work schedule shall set forth in an understandable fashion the schedule for all of the various phases and/or tasks required to perform and complete all of the services set forth or described in Schedule "B." The Engineer's Work schedule of planned and actual Work progress shall be updated and submitted by Engineer to the City no later than the 10th day of each month, commencing with the issuance of the notice to proceed.

6.4 Engineer's services shall be performed as is consistent with professional skill and care in the orderly progress of the Project. Engineer represents to the City that it shall deliver its services in accordance with the schedule established for the Project which is attached hereto as Schedule "B" and shall appropriately adjust the delivery of its services if necessary and approved by the City, as the Project proceeds. Engineer acknowledges that time is of the essence with respect to the delivery of its services hereunder and that the time limits set forth in the City's schedule shall not, except for a written determination by the City that reasonable cause exists for the schedule to be exceeded by Engineer.

6.5 **NOTwithstanding Anything Contained Herein To The Contrary Engineer Shall Not Be Entitled To Recover Any Monetary Damages It May Sustain As A Result Of Any Delay Caused By The City, Any Separate Design Professional Employed By The City, Contractor Or Any Other Causes Whathsoever. Engineer Further Agrees That It Shall Make No Claim For Compensation For Such Delays And Will Accept In Full Satisfaction For Such Delays Any Extensions Of Time Which Are Granted To It By The City.**

City____________________

Engineer___________________

March 5, 2015
6.6 Unless sooner terminated as provided in Article 21 of this Agreement, this Agreement shall remain in force for the period required for the completion of the Work as defined in Schedule A, “Scope of Professional Services”, including extra work and any required extension.

ARTICLE 7
QUALITY CONTROL

7.1 Engineer shall develop and employ a comprehensive quality control program designed to protect the City from patent or latent defects in any Work related to the Project.

ARTICLE 8
ENGINEER’S PERSONNEL

8.1 Licensing. Engineer agrees to obtain and maintain throughout the period this Agreement is in effect, all such licenses as are required to do business in the State of Florida, Lee County, Florida and the City of Cape Coral, including but not limited to, licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by Engineer pursuant to this Agreement. Engineer is required to notify City within 5 calendar days of any pending, or newly initiated, disciplinary or other actions imposed on Engineer or its sub-consultants by any regulatory or licensing authority.

8.2 Qualified Personnel. Engineer agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all Basic Professional Services and Additional Professional Services to be provided pursuant to this Agreement. Personnel performing services under this Agreement, whether personnel of Engineer or Engineer’s sub-consultants or subcontractors, shall have achieved the minimum qualifications as set forth on Schedule “C” attached hereto for the respective position being performed by the personnel.

8.3 Engineer’s Project Manager. Engineer agrees to employ and designate in writing, a qualified, and if required by law, a licensed professional to serve as the Engineer’s Project Manager. Engineer’s Project Manager shall be authorized and responsible to act on behalf of Engineer with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement. Engineer’s Project Manager shall have full authority to bind and obligate Engineer on any matters arising under this Agreement unless substitute arrangements have been furnished and agreed to with the City in writing. Engineer agrees that the Project Manager shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by Engineer throughout the entire period this Agreement is in effect. The person selected to serve as Engineer’s Project Manager shall be subject to the prior approval and acceptance of the City.

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

8.5 Additional and Replacement Personnel. Engineer agrees that additional or replacement personnel will be subject to prior City approval. Such personnel will be equally or better qualified and at the same or lower rates as identified in Schedule D and Schedule E, appropriately.

City

Engineer

March 5, 2015
ARTICLE 9

SUB-CONSULTANTS AND SUBCONTRACTORS

9.1 Definition. A sub-consultant or subcontractor is a person or organization who has a direct contract with Engineer to perform any part of the Work associated with the Project. Nothing contained in this Agreement shall create any type of contractual relationship between the City and any subcontractor and/or sub-consultant.

9.2 Engineer’s Selection of Sub-consultants and Subcontractors. Engineer, within 14 calendar days after execution of this Agreement, shall furnish, in writing to the City, the names of persons or entities proposed to be sub-consultants and/or subcontractors on the Project (referred to in this paragraph as “sub-consultants”), along with copies of proposals and contracts between Engineer and such sub-consultant(s). The City shall promptly reply to Engineer in writing whether or not the City, after due investigation, has reasonable objections to any such proposed person or entity. Failure of the City to reply within fourteen (14) days after its receipt of such information shall constitute notice of no reasonable objection. All sub-consultants shall be duly licensed pursuant to any applicable requirements and regulations of the State of Florida. Engineer shall use its best efforts to propose and retain sub-consultants appropriately qualified locally based (Cape Coral - Fort Myers-Lee County, Florida) and/or minority owned and operated firms with experience in the Lee County area. Engineer shall not, without reasonable cause and after obtaining the approval of the City (which approval shall not be unreasonably withheld) change a sub-consultant or its role which has been previously selected and approved by the City. Engineer shall be responsible to the City for the damages to the extent caused by the negligent acts or omissions of, or services provided by or through its sub-consultants. The City’s review, approval or rejection of proposed sub-consultants or their respective proposals or contracts will not relieve Engineer of its responsibilities under this Agreement, or for the actions or omissions of such sub-consultants.

9.3 Sub-contractual Relations. By an appropriate written agreement, Engineer shall require each subcontractor or sub-consultant, to the extent of the Work to be performed by the subcontractor or sub-consultant, to be bound to Engineer by the terms of this Agreement and to assume toward Engineer all obligations and responsibilities which Engineer, by this Agreement, assumes towards the City. Engineer shall make available to each proposed subcontractor or sub-consultant prior to the execution of any such agreement, a copy of this Agreement.

9.4 Responsibilities for Acts and Omissions. Engineer shall be responsible to the City for the acts and omissions of its employees and agents and its subcontractors and/or sub-consultants, their agents and employees, and all other persons performing any Work or supplying any service under a contract with Engineer.

ARTICLE 10

COOPERATION WITH PROJECT PARTICIPANTS

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

10.2 Engineer will assume primary coordination of its Work with the work of other City consultants and contractors. As part of said service, Engineer shall be primarily responsible for the coordination and compilation of all design documents pertaining to the Project.

City: ______________________
Engineer: ___________________

March 5, 2015
10.3 In the event of a dispute between Engineer and the City's separate consultants or contractors, Engineer and the City's separate consultants or contractors shall present their dispute to the City, who shall make a decision with respect to the matter in dispute. Engineer agrees to proceed with the furnishing of its services in accordance with any decision which is rendered by the City.

**ARTICLE 11**

**COMPENSATION**

11.1 **Basic Compensation.** Subject to the Not to Exceed Price and the satisfaction of the conditions precedent set forth in paragraph 11.5 below, and in exchange for the proper performance of the Basic Professional Services, including all Task deliverables, Engineer shall be compensated on an hourly basis in conformity with that rate schedule attached hereto as Schedule "D" for the performance of the Professional Services contemplated hereunder and wherein such rates are fixed for the duration of this contract. Schedule "D" shall set forth the name and the identity of each individual, whether personnel of Engineer or Engineer's sub-consultants and subcontractors, performing services on the Project for which compensation shall be paid to Engineer by the City together with the corresponding billable rate for each individual. The City shall not be liable to Engineer for payment of services performed by any individual not identified on Schedule "D" absent written approval by the City prior to the individual performing services. The billable rate for each individual who is an employee of Engineer is based upon actual hourly rate of compensation paid by Engineer to the employee as set forth on Schedule "D".

11.2 **Not to Exceed Price.** In no event shall the professional fees associated with the performance of the Professional Services, and any third party or other expenditures made or to be made by Engineer in connection with the performance of Professional Services exceed the Not to Exceed Price of $130,276 ("NTE")-Phase I. Engineer shall not be entitled to compensation or reimbursement for any cost or expense which exceeds the Not to Exceed Price. Engineer and Engineer alone shall be financially responsible for any sums in excess of the Not to Exceed Price should the professional fees to be paid Engineer in connection with the Professional Services, any third party or other expenditure made or to be made by Engineer in connection with the performance of Professional Services exceed the Not to Exceed Price, as adjusted by any City approved change orders.

11.3 **Schedule of Values.** Engineer's billing shall be based on that Schedule of Values establishing a separate and distinct not to exceed amount for each Task of the Engineer's Work contemplated in Schedule "E" of this Agreement. In no event shall Engineer be entitled to receive compensation in excess of the amount ascribed to any particular Task. The Schedule of Values to be used for the Project establishing the not to exceed amounts for each Task is attached hereto as Schedule "E." The not to exceed amounts set forth on Schedule "E" include not only the fees to be paid Engineer for its services to be performed in that particular Task but also any third party costs associated with a particular Task.

11.4 **Monthly Billings.** Engineer shall submit a monthly application for payment to the City on or before the tenth (10th) day of each month. Provided all conditions precedent are satisfied, the City shall pay said application on or before the thirtieth (30th) day of the following month. Engineer's monthly application for payment shall itemize all fees, costs and expenses incurred by Engineer, including back-up copies of any charges during the preceding month unless, within a fifteen (15) day period, City notifies Contractor in writing of its objection to the amount of such invoice, together with City's determination of the proper amount of such invoice. City shall pay any undisputed portion of such invoice on or before the 30th day of the following month. If City shall give such notice to the Contractor within such fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, City shall promptly pay the Contractor the amount so determined, less any amounts previously paid by City with respect to such invoice. In the event it is determined that City has overpaid such invoice, the Contractor shall promptly refund to the City the amount of such overpayment.

City__________

Engineer___

March 5, 2015

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11.5 Conditions Precedent to Payment. As express conditions precedent to the making of any payments hereunder, Engineer shall furnish to the City the following items:

11.5.1 An itemized, sworn application for payment by Engineer for all services rendered. In said statement, Engineer shall affirmatively and unconditionally represent to the City that it has completed all Work associated with the Task of the Project for which it is seeking payment. An exemplar of the sworn application for payment to be utilized by the Engineer for each Task of the Project is attached hereto as Schedule “G.”

11.5.2 Engineer shall furnish all documents or electronic data that the City may reasonably require pertaining to the particular Task for which Engineer is making application for payment or for any prior Tasks.

11.6 Payment Without Approval. The payment of any sums hereunder by the City, including the final payment, does not constitute approval or acceptance of that part of the Project to which such payment relates nor does it relieve engineer of any of its obligations hereunder, nor shall such payment constitute a waiver of any claim which the City may then have or thereafter discover.

11.7 Payments Withheld. The City may decline to pay an application for payment submitted by Engineer, in whole or in part, to the extent reasonably necessary to protect the City if:

11.7.1 Engineer is not entitled to payment in the amount specified in the application for payment;
11.7.2 Engineer is in default of its obligations hereunder;
11.7.3 Appropriate backup data and documentation required by the City is not submitted with the application for payment;
11.7.4 The application for payment is not otherwise appropriately substantiated;
11.7.5 Any known or alleged, willful, wanton or negligent act, error or omission of Engineer which gives rise to a claim by the City or by some other party against the City; or
11.7.6 Any other reason the City is permitted to withhold payment under any other provision of this Agreement.

11.7.7 Interest. In the event of a bona fide dispute by the City for any sums for which payment has been requested, no interest shall be due on such disputed sums until the dispute is resolved, provided that all undisputed sums shall have been paid in due course.

Compensation for Additional Professional Services. For Additional Professional Services of Engineer directed and authorized in writing and in advance by the City, as described in Article 5, the City shall pay to Engineer the Not To Exceed Amount, as mutually agreed upon in writing by the parties which shall be the sole and exclusive compensation payable to Engineer in connection with the performance of such Additional Professional Services. In the event of the parties, after good faith negotiations, are unable to agree on an NTE Amount for particular Additional Professional Services directed and authorized in writing in advance by the City, then the City shall compensate Engineer for such Additional Professional Services based on the time reasonably spent by Engineer’s principals or employees, at those hourly rates set forth in Schedule “D” hereto. The hourly rates reflected on Schedule ”D” shall remain fixed, without modification, for the term of this Agreement.

ARTICLE 12
INSURANCE

Engineer shall, at all times during the performance of this Agreement, provide and maintain the following types of insurance protecting the interests of the City and Engineer with coverage and limits of liability not less than those set forth below:

City

Engineer

March 5, 2015
12.1 **Workers Compensation Insurance.** Engineer shall maintain workers compensation insurance, insuring its liability under the Workers Compensation and Occupational Disease Laws of the State of Florida, with limits of liability not less than the minimum statutory limits imposed by applicable State and Federal laws. The workers compensation insurance policy must include employer’s liability with a minimum limit of $1,000,000.00 for each accident.

12.2 **Comprehensive General Liability Insurance.** Engineer shall maintain comprehensive general liability insurance which shall be written on an "occurrence" basis and afford the following coverage:

12.2.1 Premises - operation
12.2.2 Explosion, collapse and underground property damage (XCU).
12.2.3 Products/completed operations
12.2.4 Blanket contractual liability
12.2.5 Personal injury
12.2.6 Advertising injury
12.2.7 Premises medical payments
12.2.8 Property damage
12.2.9 Additional insured - employees and temporary workers
12.2.10 Newly acquired organizations
12.2.11 Property damage liability
12.2.12 Independent contractor
12.2.13 The commercial general liability insurance to be maintained by Engineer must include products and completed operations, and contractual liability. The City shall be named as an additional insured on the comprehensive general liability policy. The limits of liability associated with Engineer’s comprehensive general liability policy shall not be less than the following:

- $1,000,000.00 each occurrence
- $2,000,000.00 aggregate

12.2.14 Notwithstanding anything contained herein to the contrary, the coverage under the comprehensive general liability policy to be furnished by Engineer must be afforded on a policy form no more restrictive than the last edition of the commercial general liability policy filed by the Insurance Services Office.

12.3 **Vehicular Liability Insurance.** Engineer shall maintain business vehicular liability insurance covering all owned, non-owned, and hired vehicles used in connection with the Work to be provided hereunder with combined minimum limits of $1,000,000.00 single limit for bodily injury and property damage per occurrence/aggregate.

12.4 **Excess Liability Insurance.** Engineer shall maintain excess liability insurance in an amount not less than $5,000,000.00 combined single limit bodily injury/property damage, in excess of the general liability insurance described above.

12.5 **Professional Liability Insurance.** Engineer shall maintain professional liability insurance with a minimum level of liability coverage of not less than $1,000,000.00 per occurrence/$2,000,000.00 in aggregate insuring the City against losses arising out of the delivery of professional services by Engineer and its sub-consultants. Engineer shall also ensure that each of its sub-consultants shall maintain professional liability insurance with minimum limits of liability coverage not less than $1,000,000.00 per occurrence/$2,000,000.00 in aggregate insuring the City against losses arising out of the provision of professional services by each in connection with the Project. The deductibles associated with the professional liability insurance policies to be furnished by Engineer and its sub-consultants shall not exceed $100,000.00 per claim. Engineer shall provide to the City certificates reflecting the City as a certificate holder with respect to the professional liability insurance policies maintained by Engineer and Engineer’s subconsultants.

City ___________________________

Engineer ___________________________

March 5, 2015
12.6 **Property Insurance.** It is Engineer's responsibility to carry its own property insurance including insurance on equipment that will not become an integral part of the Project.

12.7 **Certificate of Insurance.** Prior to performing any services hereunder, Engineer shall file with the City a certificate of insurance in a form acceptable to the City. The certificate of insurance shall reflect the City as an additional insured on Engineer's comprehensive general liability, excess liability, and business vehicular liability policies. In addition, the City shall be reflected as the certificate holder with respect to Engineer's professional liability and workers compensation insurance. The certificate of insurance furnished by Engineer shall contain a provision that the coverage afforded under the policy described thereon will not be cancelled until at least thirty (30) days prior written notice has been given to the City.

12.8 **Ratings of Companies.** All companies issuing the policies provided for herein shall be licensed or approved by the Department of Insurance, State of Florida, and shall have a financial rating no lower than II and a policy holder surplus rating no lower than (A) as listed in A.M. Best TK Rating Guide, current edition or interim report. Companies with ratings lower than those specified herein will be acceptable only upon the written consent of the City.

12.9 **Primary Coverage.** The insurance required hereunder is primary and direct and shall apply to any loss prior to any insurance coverage carried by the City or any other party.

12.10 **Extent of Coverage.** The insurance coverage referred to above are set forth in full in their respective policy forms. The foregoing descriptions of such policies are not intended to be complete or to limit any provision of the actual policies and should said description be narrower than the coverage afforded under the actual policies of insurance, the provisions of the actual policies of insurance shall govern.

12.11 **Waiver of Subrogation.** Engineer's insurance policies shall be endorsed to provide that the insurers waive their rights of subrogation against the City and also to provide that the policies afford primary coverage over any other applicable insurance coverage.

12.12 **Sub-consultant/Subcontractor Insurance Requirements.** Except as otherwise specified herein, Engineer shall require that all subcontractors and sub-consultants performing Work on the Project to maintain the same coverage and policy limits as Engineer is required to furnish hereunder. An insurance provision, including waivers of subrogation, identical to the provisions of paragraph 12.11 of this Agreement shall be included by Engineer in each written subcontract or sub-consultant agreement issued by it in conjunction with the Project.

**ARTICLE 13**

**INDEMNIFICATION**

In consideration of the first One Hundred and No/100 Dollars ($100.00) to be paid hereunder and to the fullest extent permitted by law, Engineer agrees to indemnify, hold harmless the City, its agents, servants and employees, from and against any and all claims, costs, expenses, damages, or liability (including reasonable attorneys' fees and costs of defense where recoverable by law) caused by, attributable to, arising out of, or resulting from Engineer's negligent acts, errors, or omissions in the performance of professional services under this Agreement and those of its sub-consultants, subcontractors, agents, servants and employees. Engineer is not obligated to indemnify the City in any manner whatsoever for the City's own negligence. Engineer's monetary limitation under this indemnity provision shall be limited to the sum of One Million and No/100 Dollars ($1,000,000.00). The parties agree that the foregoing

City________________

Engineer[DUE]________________

March 5, 2015
sum bears a reasonable relationship to this Agreement. This indemnity provision shall be considered a material part of the specifications governing Engineer’s performance under this Agreement. This indemnity provision is intended to comply with Florida laws on indemnity and, specifically, to comply with Sections 725.06 and 725.08, Florida Statutes, and is to be interpreted in such a manner as to be enforceable.

ARTICLE 14
DRAFTING FORMATS AND STANDARDS

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

ARTICLE 15
COPYRIGHTS AND LICENSES

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

ARTICLE 16.
DISCLOSURE OF INFORMATION

16.1 The Contractor, its subcontractors, employees and others under its employ, will not proactively or otherwise voluntarily disclose information gained in the pursuit of Contractor's obligations under this Agreement to any other Parties, not withstanding however the Contractor's responsibilities under Florida's Public Records Act, FS 119.0701.

When in receipt of any request for a public record in accordance with FS 119.0701, the Contractor must immediately notify the City of such request prior to responding to such request. Failure to comply with this Article 16 may result in penalties, damages or other assessments as solely determined by the City.

16.2 The Contractor will immediately notify the City of any existing or new Agreements, Contracts, Jobs, Projects or other such activities it is conducting of a same or similar nature or scope, PRIOR to receiving a “Notice of Award” and/or a “Notice to Proceed” from the City.

The Contractor will immediately notify the City of any new Agreements, Contracts, Jobs, Projects or other such activities it is conducting of a same or similar nature or scope, entered into by TKW Consulting Engineers, Inc. AFTER having received a “Notice of Award” and/or a “Notice to Proceed” from the City. If such new Agreements, Contracts, Jobs, Projects or other such activities represents, in the City’s sole determination, cause a potential conflict of interest, or other negative impact upon the project, future related City projects, or City operations, the City may cancel this Agreement with no fee or penalty, and is only liable to pay for Work conducted and correctly invoiced at the time of cancellation.

City

[Signature]

Engineer

[Signature]

March 5, 2015
16.3 **Record Keeping** The awarded bidder shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City of Cape Coral reserves the right to determine the record-keeping method in the event of non-conformity. If a Public Construction Bond is required records shall be maintained for ten (10) years, after final payment has been made and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.

Records of the Contractor's personnel, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

Contractor shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Contractor shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Contractor on the Project. Contractor shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

16.4 **Public Records**

The City is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;
- Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in chapter 119, FS, or as otherwise provided by law;
- Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law;
- Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the City shall enforce the Default.

**ARTICLE 17**

**CITY'S RESPONSIBILITIES**

17.1 **The City's Representative.** The City shall designate a Project Representative who shall be fully acquainted with the Project and shall define the lines of City authority to approve changes in the Project. He or she shall render decisions promptly and furnish information expeditiously.

17.2 **Lines of Authority.** The City shall establish and maintain lines of authority for its personnel and shall provide this definition to the Engineer and all other affected parties.

City_____________

Engineer ______________

March 5, 2015
17.3 **Existing Design.** The City shall provide to Engineer all design documentation in its possession pertaining to the Existing Design.

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

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**ARTICLE 18**

**ENGINEER'S REPRESENTATIONS**

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

18.1 Engineer has reviewed and confirmed that the basis and approach taken by the City in its Project planning represents sound programming and provides an adequate basis for the performance of Engineer's services hereunder.

18.2 Engineer has familiarized itself with the Existing Design and the nature and extent of the Work to be performed, local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner affect costs, progress or performance of the work.

18.3 Engineer represents that the Project can be completed within the time frames contemplated in the Engineer's Work schedule, a copy of which is attached hereto as Schedule “B.”

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**ARTICLE 19**

**BUSINESS ETHICS EXPECTATIONS**

19.1 During the course of pursuing contracts with Owner and while performing contract work in accordance with this agreement, Engineer agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner's best interests.

19.2 Engineer shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations shall apply to the activities of Engineer's employees, agents, subcontractors, subcontractor employees, consultants of Engineer, etc.

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

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

19.3 Engineer agrees to notify a designated Owner representative within 48 hours of any instance where the Engineer becomes aware of a failure to comply with the provisions of this article.

19.4 The e-mail address and/or telephone number to report any concerns related to any possible violations of the Owner's Business Ethics Expectations are as follows:

E-mail: krose@capecoral.net    Telephone: 239-242-3679

City____________________

Engineer__________________

March 5, 2015
19.5 Upon request by Owner, Engineer agrees to provide a certified Management Representation Letter executed by selected Engineer representatives in a form agreeable to Owner stating that they are not aware of any situations violating the business ethics expectations outlined in this contract or any similar potential conflict of interest situations.

19.6 Engineer agrees to include this clause in all contracts with subcontractors and material suppliers receiving more than $25,000 in funds in connection with the Owner’s project.

19.7 Engineer shall permit interviews of employees, reviews and audits of accounting or other records by Owner representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Engineer’s employees, agents, representatives, vendors, subcontractors, and other third parties paid by Engineer in their relations with Owner’s current or former employees or employee relatives. This provision survives the expiration of this Agreement.

19.8 Engineer agrees to implement a program requiring their employees sign acknowledgements that they have read and understand Owner’s Business Ethics Expectations and the related obligations outlined in this contract exhibit.

**ARTICLE 20**

**ACCURACY, TECHNICAL SUFFICIENCY OF SERVICES PROVIDED BY ENGINEER**

20.1 Notwithstanding anything contained herein to the contrary, it is understood and agreed between the parties that the City is not examining any Contract Documents for accuracy and technical sufficiency, and is not under any obligation to inspect the Project. Furthermore, it is understood and agreed between the parties that neither the review, approval, nor acceptance by the City of data, surveys, studies, designs, specifications, calculations, plans, drawings, or any other documents furnished hereunder by Engineer shall in any way relieve Engineer of responsibility for the adequacy, completeness, and accuracy of its work, and in no event shall the City's review, approval, acceptance of or payment for such services be construed to operate as a waiver of any of the City’s rights under this Agreement or of any cause of action it may have, arising out of the performance of this Agreement.

20.2 Engineer hereby acknowledges that the City does not make any representations or warranties to Engineer by virtue of the information contained in the Request for Proposals, Existing Design, or program descriptions. Engineer further acknowledges that it, alone, is responsible for the accuracy, completeness, and technical sufficiency of all Work performed under this Agreement, and that the information contained in the City's Request for Proposals, Existing Design, and program descriptions does not relieve, release, or in any way whatsoever diminish the Engineer's ultimate responsibility for the accuracy, completeness, and technical sufficiency of the Project and any work performed hereunder.

20.3 Engineer agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, adoption and coordination of all data, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments and other services, work and materials performed, provided and/or furnished by Engineer or by any sub-consultant and/or subcontractor retained or engaged by Engineer pursuant to this Agreement. Engineer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services or materials resulting from the negligent act, errors or omissions or any intentional misconduct of Engineer or any sub-consultants and/or subcontractors engaged by Engineer.

City

Engineer

March 5, 2015
ARTICLE 21
TERMINATION OR SUSPENSION OF AGREEMENT

21.1 The City reserves the right to terminate this Agreement without cause and without regard to fault or breach upon ten (10) calendar day’s written notice to Engineer, effective immediately, unless otherwise provided in said notice. In the event of a termination for the City’s convenience, the Engineer shall only be due those sums which are due for Work performed as of the date of termination. Upon Engineer’s receipt of such payment, the parties shall have no further obligation hereunder. It is understood and agreed that no fee or other compensation or payment shall be due and payable to Engineer for unperformed Work associated with this Agreement. Such termination shall only be issued by the City of Cape Coral’s City Manager or his designee.

21.2 If the City fails to make payment on conforming or non-disputed invoices when due for Engineer’s services and expenses, Engineer may, upon ten (10) calendar days written notice to the City, suspend performance of services under this Agreement. Unless payment in full is received by Engineer within ten (10) calendar days from the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, Engineer shall have no liability to the City for delay or damages caused the City because of such suspension of services. Should the City fail to satisfy the payment due Engineer within sixty (60) calendar days from the date the payment was originally due, Engineer shall be entitled to terminate this Agreement for cause.

21.3 If Engineer fails to perform the services described herein or fails to respond with responsible promptness to the City, the City, without waiving the City’s right to terminate as a result thereof, may suspend performance of the City’s obligations under this Agreement (including, but not limited to, the City’s obligation to make payment) on ten (10) calendar days written notice to Engineer.

Notwithstanding anything contained herein to the contrary, the City shall be entitled to terminate this Agreement for cause should Engineer fail to perform the services contemplated herein, perform any of its obligations hereunder, or otherwise fail to respond with reasonable promptness to the requests of the City. In the event of such a termination for cause, the City shall be entitled to recover from Engineer such additional costs as it incurs in procuring performance of Engineer’s remaining obligations hereunder.

ARTICLE 22
SPECIAL PROVISIONS

22.1 Engineer accepts the relationship of trust and confidence established between it and the City by this Agreement. Engineer covenants with the City to furnish its best skill and judgment and to cooperate with the City, City’s contractors, and other City consultants in furthering the interests of the City.

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

22.3 Any person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract or subcontract with a public entity, for construction or repair of a public building or public work, may not submit bids or leases of real property to a public entity, may not be awarded or perform any Work a contractor, supplier, subcontractor, or engineer under a contract with any public entity.

City

Engineer

March 5, 2015
and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY 2 for a period of thirty-six (36) months from the date of being placed on the Convicted Vendors List. Engineer agrees not to use any sub-consultants or subcontractors whose names appear on the Convicted Vendors List.

22.4 Engineer affirmatively represents to the City that it is experienced in civil engineering design and contract administration and that it will perform its services under this Agreement in a skillful and competent manner in accordance with good and sound civil engineering practices.

22.5 Engineer represents that it presently has no interest and shall acquire no interest either direct or indirect, which would conflict in any manner with the performance of services required hereunder. Engineer further agrees that no person having any such interest shall be employed or engaged by Engineer for said performance. If Engineer for itself or on behalf of its sub-consultants, is about to engage in representing another client, which it in good faith believes would result in a conflict of interest with the Work being performed by Engineer or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the City’s attention, in writing. The City will advise Engineer in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines there is a conflict of interest, Engineer or such sub-consultant shall decline the representation upon written notice by the City. If the City determines that there is not such a conflict of interest, then the City shall give its written consent to such representation. If Engineer or sub-consultant accepts such a representation without obtaining the City’s prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the Work being performed by Engineer or such sub-consultant under this Agreement, then Engineer or such sub-consultant agrees to promptly terminate such representation. Engineer shall require each of its sub-consultants to comply with the provisions of this section. Should Engineer fail to advise or notify the City as provided herein above, of representation which could, or does, result in a conflict of interest, or should Engineer fail to discontinue such representation, the City may consider such failure a justifiable cause to terminate this Agreement.

22.6 Engineer agrees to maintain the business ethics expected by the City and as identified in Article 19.

22.7 Engineer, by execution of this Agreement, represents that it possesses that degree of care, learning, skill, ability and is properly licensed and qualified to perform the Basic Professional Services and any Additional Professional Services (as directed and approved in Article 5 hereof and that it and its sub-consultants and/or subcontractors will undertake to use the degree of skill and care of performance of obligations under this Agreement, which are utilized by professionals in the same field performing the same or similar services under the same or similar circumstances for similar infrastructure projects. Engineer acknowledges that all professional services provided under this Agreement will meet or exceed the requirements of this Agreement, including without limitation, the standard of care required by this Agreement; that any design documents prepared by Engineer with respect to the Project will meet or exceed the City’s Project requirements as specified in this Agreement or otherwise provided by the City to Engineer. Engineer agrees to use the services of competent, qualified personnel, and, when required by law, properly licensed sub-consultants and other professionals for the execution of its services. Engineer will use commercially reasonable efforts and skill to endeavor to protect the interests of the City and the City’s residents at all times.

ARTICLE 23
ENGINEER’S RECORDS

23.1 Records of the Engineer’s personnel, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

23.2 Engineer shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Engineer shall review with and obtain the City’s approval of the

\[ \text{City} \]

Engineer

March 5, 2015
accounting procedures and records to be utilized by the Engineer on the Project. Engineer shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

23.3 The City is a public agency subject to Chapter 119, Florida Statutes. The Engineer shall comply with Florida’s Public Records Law. Specifically, the Engineer shall:

23.3.1 Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;

23.3.2 Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in chapter 119, FS, or as otherwise provided by law;

23.3.3 Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law;

23.3.4 Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Engineer upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the agency.

The failure of Engineer to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the City shall enforce the Default in accordance with the provisions set forth in Article 21.

ARTICLE 24
RIGHT OF AUDIT - EXAMINATION OF RECORDS

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

24.2 Engineer’s “records” as referred to in this Agreement shall include any and all information, materials, and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the City’s judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document.

Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets, payroll registers, payroll records; cancelled payroll checks, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.);

City

Engineer

March 5, 2015
original bid estimates; estimating worksheets; correspondence; change order files (including documentation covering negotiated settlements); back-charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other Engineer records which may have a bearing on matters of interest to the City in connection with the Engineer's dealings with the City (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any and all of the following:

24.2.1 Compliance with contract requirements for deliverables;
24.2.2 Compliance with approved plans and specifications;
24.2.3 Compliance with the City's business ethics expectations;
24.2.4 Compliance with contract provisions regarding the pricing of change orders;
24.2.5 Accuracy of Engineer's representations regarding the pricing of invoices; and
24.2.6 Accuracy of Engineer's representations related to claims submitted by Engineer or any of its payees.

24.3 Engineer shall require all payees (examples of payees include sub-consultants, subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Engineer and payee. Engineer will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this Agreement. This provision survives the expiration of this Agreement.

24.4 Owner authorized representative(s) shall have reasonable access to Engineer's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with this article. This provision survives the expiration of this Agreement.

24.5 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges to the City (of any nature) by Engineer and/or Engineer's subcontractors and/or sub-consultants the City shall be entitled to adjustment and reimbursement or recovery in the amount of such overpricing or overcharging. If the amount of the overpricing or overcharging is determined to be in excess of One Hundred Thousand and No/100 Dollars ($100,000.00), in addition to making adjustments for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by Engineer. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Engineer's invoices and/or record shall be made within a reasonable amount of time (not to exceed forty-five (45) calendar days) from presentation of the City's findings to Engineer. This provision survives the expiration of this Agreement.

City ____________________________
Engineer ________________________

March 5, 2015
24.6 In addition to the normal paperwork documentation Engineer typically furnishes to the City, in order to facilitate efficient use of the City's resources when reviewing and/or auditing Engineer's billings and related reimbursable cost records, Engineer agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

<table>
<thead>
<tr>
<th>Type of Record</th>
<th>PC Readable File Format</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly Job Cost Detail</td>
<td>.pdf and Excel</td>
</tr>
<tr>
<td>Detailed Job Cost History to Date</td>
<td>.pdf and Excel</td>
</tr>
<tr>
<td>Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)</td>
<td>.pdf and Excel</td>
</tr>
<tr>
<td>Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)</td>
<td>.pdf and Excel</td>
</tr>
<tr>
<td>Employee Time sheets documenting time worked by all individuals who charge reimbursable time to the Project</td>
<td>.pdf</td>
</tr>
<tr>
<td>Daily Foreman Reports listing names and hours and tasks of personnel who worked on the Project</td>
<td>.pdf</td>
</tr>
<tr>
<td>Daily Superintendent Reports</td>
<td>.pdf</td>
</tr>
<tr>
<td>Detailed subcontract/sub-consultant status reports (showing original subcontract value, approved subcontract/sub-consultant change orders, subcontractor/sub-consultant invoices, payment to subcontractors/sub-consultants/ etc.)</td>
<td>.pdf/Excel</td>
</tr>
<tr>
<td>Copies of executed subcontracts with all subcontractors/sub-consultants</td>
<td>.pdf</td>
</tr>
<tr>
<td>Copies of all executed change orders issued to subcontractors/sub-consultants</td>
<td>.pdf</td>
</tr>
<tr>
<td>Copies of all documentation supporting all reimbursable job costs (subcontractor/sub-consultant payment applications, vendor invoices, internal cost charges, etc.)</td>
<td>.pdf</td>
</tr>
</tbody>
</table>

City

Engineer

March 5, 2015
ARTICLE 25
CLAIMS AND DISPUTES

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

25.2 The City and Engineer agree that any litigation between them arising out of, resulting from, or relating to this Agreement or the Project shall be of venue in a state court of competent jurisdiction in Lee County, Florida.

25.3 In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including a reasonable attorney’s fee.

ARTICLE 26
DAMAGE TO PROPERTY

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

ARTICLE 27
EQUAL EMPLOYMENT OPPORTUNITY

During the term of the Agreement, Engineer agrees it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age or national origin. Engineer shall comply with all aspects of the Americans with Disabilities Act ("ADA") during the performance of this Agreement.

City

Engineer

March 5, 2015
ARTICLE 28

PROPRIETARY INFORMATION

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

ARTICLE 29

COMPLIANCE WITH LAWS

If made applicable by the use of Federal and/or State Grant funds in the Project, or any other requirement as set out below, Proposers and any Sub-contractors included as part of project teams shall, at their sole cost and expense and without increase in the Contract price, comply with the following enactments, rules, regulations, orders, and statutes:

29.1 Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or sub-grantees).


29.3 Davis-Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and sub-grantees when required by Federal grant program legislation).

29.4 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 701 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded in excess of $2000 awarded by grantees and sub-grantees when required by Federal grant program legislation).

29.5 All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7606), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and sub grants of amounts in excess of $100,000).

29.6 Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871).

Contractor, upon Owner’s request, shall furnish evidence satisfactory to Owner that the foregoing obligations have been fulfilled.

ARTICLE 30

COMPLIANCE WITH IMMIGRATION LAWS

The City will not intentionally award contracts to any party who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 A(e) Section 274 A(e) of the Immigration and Nationality Act (“INA”). The City may consider the employment by Engineer of unauthorized aliens to be a violation of Section 274 A(e) of the INA. Such violation by Engineer of the employment provisions contained in Section 274 A(e) of the INA shall be grounds for unilateral termination of this Agreement by the City. Engineer affirmatively represents to the City that it is fully compliant with all applicable immigration laws, including but not limited to, the 1986 Immigration Act and subsequent amendments.

City _____________________________

Engineer ___________________________

March 5, 2015
ARTICLE 31
OBSERVANCE OF LAWS, RULES, REGULATIONS, CODES AND ORDINANCES

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

ARTICLE 32
PUBLICITY

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

ARTICLE 33
MISCELLANEOUS

33.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

33.2 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, signed by the parties against whom the enforcement of such modification, waiver, amendment, discharge, or change is sought.

33.3 Nothing contained in this Agreement shall create a contractual relationship or cause of action in favor of a third party against either the City or Engineer.

33.4 This Agreement and the schedules attached hereto constitute the entire Agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.

33.5 This Agreement shall be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

33.6 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person(s) or entity may require.

33.7 In the event of any conflict between the terms of this Agreement and any other Contract Documents including Specifications for the Project, the provisions of this Agreement shall govern and control.

33.8 If any provision or any portion of any provision of this Agreement or the application of any such provision or portion thereof to any person or circumstance shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement, or the application of such provision held invalid, or unenforceable to persons or circumstances other than those to which it has been invalid or unenforceable, shall not be affected thereby.

City
Engineer

March 5, 2015
33.9 In the event of any dispute as to the precise meaning of any term contained herein, the principles of construction and interpretations that written instruments be construed against the drafter shall not apply.

33.10 Engineer shall not assign, subcontract or transfer any interest in this Agreement without the prior written consent of the City.

33.11 The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

33.12 All articles, titles, or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement and shall not affect the meaning or interpretation of this Agreement.

33.13 If Engineer is comprised of more than one (1) entity, each such entity shall be jointly and severally liable hereunder.

33.14 All notices, demands, or other communications made pursuant to this Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid at the following address:

If to the City: Kathy Rose, CPIM
Contract Specialist, City of Cape Coral
PO Box 150027
Cape Coral, FL 33915

With a copy to: Dolores D. Menendez, Esq.
Attorney for the City of Cape Coral
PO Box 150027
Cape Coral, FL 33915

If to Engineer: Mike McGee, P.E.
Senior Project Manager

With a copy to: Gino Notarianni
Project Manager

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

33.15 The parties hereto shall, at any time and from time to time following the execution hereof, execute and deliver all such further instruments and take all such further action as may be reasonably necessary or appropriate in order to carry out more effectively the purposes of this Agreement.

33.16 Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and shall not be strictly construed for or against any party.

City

Engineer

March 5, 2015
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

Signed, sealed, and delivered in the presence of:

(CITY SEAL)

ATTEST:

OWNER:

CITY OF CAPE CORAL

CONTRACTOR:

TKW Consulting Engineers, Inc.

Name: Douglas H. Bortmann
Title: Chief Operations Officer
Date: 5/6/2015

CITY LEGAL REVIEW:

Name: Dolores Mendoza
Title: City Attorney
Date: 03/10/15

March 5, 2015
### ATTACHED SCHEDULES & EXHIBITS

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;A&quot;</td>
<td>Scope of Professional Services</td>
</tr>
<tr>
<td>&quot;B&quot;</td>
<td>Engineer's Work Schedule</td>
</tr>
<tr>
<td>&quot;C&quot;</td>
<td>Personnel Qualifications</td>
</tr>
<tr>
<td>&quot;D&quot;</td>
<td>Personnel Hourly Rates</td>
</tr>
<tr>
<td>&quot;E&quot;</td>
<td>Schedule of Values</td>
</tr>
<tr>
<td>&quot;F&quot;</td>
<td>Sworn Application for Payment</td>
</tr>
<tr>
<td>&quot;A&quot;</td>
<td>Total Project Costs - Not to Exceed - Phase I</td>
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<tr>
<td>&quot;B&quot;</td>
<td>Performance Bond NOT USED</td>
</tr>
<tr>
<td>&quot;C&quot;</td>
<td>Drug Free Workplace Certification</td>
</tr>
<tr>
<td>&quot;D&quot;</td>
<td>MWBE Statement</td>
</tr>
</tbody>
</table>
SCHEDULE A - SCOPE OF PROFESSIONAL ENGINEERING SERVICES

City of Cape Coral – Utilities

Underground Fire Lines Improvements Project

GENERAL

The City of Cape Coral – Utilities Department (City) intends to improve the reliability of its fire protection services by implementing a 5-year project to provide adequately sized potable water mains to convert fire services (water supply to building fire sprinkler systems) and fire hydrants from connection to the City’s non-potable irrigation system to the City’s potable water system. The objective of this project is to improve the reliability of fire protection system flow and pressure. This will be accomplished by converting fire protection services to adequately sized potable water mains which will serve the various multi-family and commercial customers which are currently connected to the City’s non-potable irrigation system. The City’s Fire Department has identified approximately 60 buildings which will require conversion of the water supply for fire protection from the City’s non-potable irrigation water system to the City’s potable water system. Additional conversions and conversions of connections for City fire hydrants may be identified as the project advances. TKW Consulting Engineers, Inc. (Engineer) has been selected by the City to provide the professional engineering services to develop and implement this project (Project). It is anticipated that implementation of Project will require professional services that include: project development; hydraulic modeling; preliminary design; cost projections; project specific detailed design and development of construction documents; permitting services; post-design and construction phase services; record documentation and GIS data updates.

SCOPE OF WORK

The Engineer will perform professional services in two Phases. Phase 1 will be project development and Phase 2 will be the detailed design and post-design services for individual projects selected for implementation. Because the services needed in Phase 2 of the Project are not well defined at this time, the scope of services, fee, and schedule for individual projects anticipated in Phase 2 services generally described herein may be negotiated separately and authorized in a separate subsequent authorization, or multiple authorizations, on completion of the Phase 1 services for project development.
PHASE 1
PROJECT DEVELOPMENT

Phase 1 Project Development and Preliminary Design

Task 1.1: Project Development, Data Collection & Research, & Kickoff Meeting

Engineer will provide project management services to develop and implement this 5-year project for these selected fire line improvements projects. It is anticipated that this project may encompass fire line improvements to as many as sixty separate building structures over the project duration.

Engineer will provide project management, including coordination with the City and Fire Department Staff. This task includes one Kickoff Meeting with the Fire Department and City to identify and confirm the various multi-family and commercial buildings and their priorities, as well as to confirm the City’s goals and objectives for Project. This task also includes coordination with the Fire Department to review the existing fire line permits and any other required site specific information such as size of existing fire line services and the number of floor levels of each of the building structures. In advance of this Kickoff Meeting, Engineer will develop and deliver a request for information list to the City and the Fire Department, as well as a preliminary schedule for implementing this project. Meeting minutes from the Kickoff Meeting will be prepared and delivered to City’s Project Manager.

In addition to the Kickoff Meeting, this task includes up to 6 (six) additional coordination meetings for the duration of Phase 1 of the Project.

Engineer will prepare and submit monthly a schedule update and status report.

Task 1.2: Hydraulic Modeling of Potable Water Distribution System

Engineer will perform hydraulic modeling of the connecting potable water system components to determine sufficient flow capacity for the fire line connections or alternatively to identify needed improvements to the potable water distribution system to provide adequate fire flow.

1.2.1 Hydraulic Modeling Kickoff Meeting

One Kickoff Meeting with the City will be conducted to initiate the hydraulic modeling task. Engineer will confirm modeling criteria, constraints, assumptions, minimum fire flow
requirements, criteria for distribution system improvements, and modeling details and document them in a written meeting summary.

1.2.2 Hydraulic Model & GIS Data Collection & Research

City will provide the Engineer with potable water distribution hydraulic modeling files. City will also provide the Engineer with available GIS system maps, in GIS electronic format, of portions of the City's service area and the associated existing underground utilities in each of the Project areas. The intent is to use the GIS potable water infrastructure information (such as transmission main infrastructure and pipeline diameters and material of construction information)) to facilitate development of the model structure for evaluating the system water main extensions and loops that may be needed to adequately serve individual fire line improvement project.

1.2.3 Update Distribution System Model

Engineer will make updates to the City Transmission System Model in InfoWater Version 10.0 Software. Using the existing hydraulic model, Engineer will provide a hydraulic model simulation that provides the available fire flow capacity of the water mains adjacent to all of the thirty project parcels. This large-area modeling simulation will include all of the sixty structures which are located on the thirty project parcels, and will be based on the criteria established in the Hydraulic Modeling Kickoff Meeting. Engineer will load the fire flow demands and check the updated model for current maximum day demands, based on the model current (2009) Maximum Day Demands (MDD).

Based on the results of this first simulation of available fire flow capacity, Engineer will develop figures that show the proposed transmission main extensions and loops, if appropriate, for each of the 30 project parcels.

It is assumed that the proposed fire line improvements will consist of branch water main extensions for 20 of these project parcels, and therefore these particular parcels will not require further updates to the model structure. In other words, it is assumed that the initial modeling scenario described above will be sufficient to determine the pipe diameter of the proposed fire line improvements for 20 of these project parcels. However, the budget for this task assumes that the proposed improvements for up to 10 of these project parcels will need to be added to the model structure to simulate the proposed fire line in order to determine the pipe diameters. Engineer will modify the existing InfoWater model to include proposed piping changes/improvements and determine the pipe diameters required for the fire flow demand of up to 10 project parcels.
1.2.4 Evaluate Hydraulic Model Scenarios

For each of the 10 project parcels that require further modeling evaluation, Engineer will run model scenarios for current-day maximum day demands, and proposed additional fire flow demands associated with serving fire sprinkler systems and fire hydrants from the associated potable water distribution system. Scenarios for evaluation will be:

Maximum Day Demand plus Fire Flow (MDD+FF)

Based on the results and findings of pressures and flows, the Engineer will identify if additional potable water system upgrades are required to provide the proposed fire flow per the City minimum standards. Engineer will discuss any issues with the City and make recommendations using figures to identify which additional system upgrades will be evaluated. Engineer will perform additional model simulations to determine the pipe diameters for the additional system upgrades selected by the City for evaluation.

1.2.5 Hydraulic Model Report

Engineer will prepare a report summarizing the results of the modeling evaluation and make recommendations for upsizing potable water mains if needed to provide adequate fire flow. One meeting will be conducted with the City to review the report and recommendations. If needed, Engineer will revise and finalize the report based on review comments by City staff.

Task 1.3: Preliminary Design Report (PDR)

Engineer will develop preliminary designs and a Preliminary Design Report (PDR) which will include plan layouts of the piping improvements and sizing of lines. With routing and sizing established in the PDR Engineer will make reasonably accurate cost projections for each of the thirty project parcels. The PDR will include cost projections, identify sub-projects based on priorities and develop a phasing plan. It is anticipated that individual sub-projects will be implemented over a 5-year period based on the phasing plan. The implementation of individual projects is anticipated to be performed in a second phase of project development (Phase 2). In Phase 2 it is anticipated that the individual sub-projects developed in the PDR will be further developed with final design for construction and an appropriate method for project delivery will be established. Engineer’s services for Phase 2 of the Project development are anticipated to be authorized in a subsequent authorization with the scope of services to be established based on the findings of the PDR development (Phase 1). Specific elements of the PDR to be developed by
the Engineer are described in the following sections:

1.3.1 Preliminary Design of Each Fire Line Improvement

Engineer will confirm and establish the design criteria to be used in routing and sizing of new water lines. The report will include 30% level design drawings depicting the preliminary design of the proposed fire line improvement projects. The report will define the permitting requirements associated with each proposed fire line improvements project. The report and 30% design drawings will identify easements required to construct the fire line improvement projects.

1.3.2 Preliminary Engineering Opinion of Probable Construction Cost

Based on the 30% level of design, Engineer will develop a preliminary engineering level opinion of probable construction cost for each of the sub-projects.

1.3.3 Assist the City in defining “Availability” of potable water supply for use in preparing notices to property owners for eventual hookups to the new potable water-sourced fire line improvement transmission mains. This includes working with the City Utilities and Legal staffs to define “adequate supply” and “availability.” This task is based on the City’s stated objective of extending potable water fire line transmission mains to the property, and that the property owner will provide backflow preventers and will hookup to this new City source anticipated to be located in the public right of way or located in a City utility easement fronting the particular property.

1.3.4 Prepare the PDR (including Recommendations for Project Delivery, and Updated Project Schedule in Gantt chart format)

The PDR will include recommendations for Project Delivery, as applicable, for individual projects. This subtask includes updating and summary of the Project Schedule in Gantt chart format. One PDR review meeting will be conducted with the City to discuss this report, and the report will be revised to reflect City comments.

Engineer will submit four hardcopies of the Final PDR, signed and sealed, and an electronic copy to the City.

1.3.5 Prepare and deliver a public presentation on the Project to City Council summarizing and presenting the findings of the PDR.

The scope of services that will be required to complete the design and advance the Project is dependent on the findings of the PDR and on the project phasing recommended by Engineer and accepted by City under Phase 1 scope of services. The following additional services are anticipated to be authorized separately once the Project phasing of sub-projects is developed and
sub-projects are prioritized. It is anticipated that the project delivery will be done in phases over a 5-year period.

**COMPENSATION – Phase 1**
The City agrees to compensate Engineer for this scope of services on a time and material basis as shown in SCHEDULE E Schedule of Values. Compensation will be in accordance with SCHEDULE D Personnel Hourly Rates. Engineer’s invoices will be submitted monthly.

**SCHEDULE – Phase 1**
Schedule for professional services will be in accordance with SCHEDULE B Engineer’s Work Schedule.

**ASSUMPTIONS- Phase 1**
The following assumptions have been made in developing the SCOPE OF SERVICES, COMPENSATION, and SCHEDULE

1. In Task 1.2.2 it is assumed that the City provided model is fully calibrated and will include pump curves and storage tank capacities, as well as existing average day, maximum day and peak hour demand information, as well as existing fire flows, fire hydrant demands, and fire hydrant elevations currently being served by the existing potable water distribution system. The City will provide operational information regarding typical levels of service and minimum system pressures and flows simulated in the City’s calibrated hydraulic model.

2. In Task 1.2.3 no additional model updates are required for new development or system changes made since the City’s model was last calibrated.

3. In Task 1.2.3 the model update efforts do not include updates or changes of demands other than the fire flow demands at the project parcels. Model updates do not include any new calibration efforts.

4. In Task 1.2.4, for the project parcels that require further modeling evaluation, it is assumed that approximately ten separate fire line improvement projects will be simulated in the model. For each of these ten projects, one modeling scenario will be evaluated at the conditions of maximum day plus fire flow, such that the budget for this task encompasses a total of approximately ten separate hydraulic modeling scenarios which will be performed
to determine the proposed diameter of the respective pipelines for the proposed fire line improvements.

5 In Task 1.2 the model updates and evaluations are for the City’s potable system only, and therefore do not include any modeling or evaluation of the private potable, irrigation or fire sprinkler systems.

6 It is assumed that the City comments on the draft report do not include performing model simulations for different system upgrades than the additional system upgrades selected by the City and Engineer and evaluated under Task 1.2.4.

RESPONSIBILITIES OF CITY – Phase 1

1 City will designate a Project Manager to act as City’s representative in dealings with the Engineer related to the Project. City’s designated Project Manager will have the authority to transmit instructions, receive information, interpret and define City’s policies and decisions with respect to Engineer’s professional services for the Project. Engineer will be entitled to rely on the direction received from City’s Project Manager.

2. Engineer will be entitled to rely on information provided by the City and the Fire Department relevant to the Project without independent review and verification.

PHASE 2
DESIGN SERVICES – TO BE NEGOTIATED UNDER A FUTURE CONTRACT

Phase 2 Design, Permitting, Bid Support, and Construction Phase Engineering Services for Each Fire Line Improvement Sub-Project

It is anticipated that as established in the PDR (Phase 1) 30 project sites will be organized, by priority, into five separate bid or procurement packages for implementation year by year over a five-year period. The intent is for the City to bid and construct at least one of these separate fire line improvement packages (Sub-Projects) each year. Services anticipated to be needed to complete the Project to be authorized separately include:

1. Project Management

2. Design Surveys
3. Geotechnical Investigations
4. Subsurface Utility Locations
5. Design and preparation of Construction Documents with reviews at the 60%, 90% and final completion stages
6. Permitting
7. Bid Support
8. Post-Design and Services During Construction
# Schedule B

## CITY OF CAPE CORAL

### U/G FIRE LINE IMPROVEMENTS PROGRAM

<table>
<thead>
<tr>
<th>ID</th>
<th>Task Name</th>
<th>Start Date</th>
<th>Finish Date</th>
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<tbody>
<tr>
<td>1</td>
<td>PHASE 1 SERVICES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>PROGRAM DEVELOPMENT</td>
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<td>2</td>
<td>MEET WITH FIRE MARSHALL &amp; UT STAFFS-I.D. STRUCTURE PRIORITIES, FF RECS &amp; GOALS</td>
<td>Mon 2/9/16</td>
<td>Fri 2/12/16</td>
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<td>I.D. SPECIFIC PROJECT DELIVERY METHODS WHICH WILL MEET ANNUAL BUDGETS</td>
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<td>6</td>
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<td>Thu 3/17/16</td>
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<td>HM SCENARIOS - MAX DAY PLUS FIRE FLOWS</td>
<td>Thu 3/17/16</td>
<td>Wed 3/23/16</td>
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<td>PRELIMINARY ENG OPINION OF PROBABLE CONSTRUCTION COSTS</td>
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<td>BID PHASE &amp; AWARD CONTRACT</td>
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<td>CONSTRUCTION</td>
<td>Thu 10/16/19</td>
<td>Wed 10/23/19</td>
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Page 1
## Schedule C. Personnel Qualifications

**TKW Consulting Engineers, Inc.**

<table>
<thead>
<tr>
<th>Position</th>
<th>Min Yrs of Exp</th>
<th>Licensure Requirements</th>
<th>Role Synopsis and Progression</th>
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</thead>
<tbody>
<tr>
<td>Regional expert in a specified discipline of engineering. Provides high level Quality Assurance and engineering leadership. Prepares contract documents.</td>
<td>20</td>
<td>PE</td>
<td>Meets requirements of ASCE Professional Grade VII</td>
</tr>
<tr>
<td>Principal Engineer</td>
<td>20</td>
<td>PE</td>
<td>Coordinates and leads project team. Responsible for budgets and schedule. Manages contracts and change orders. Provides project administration, responsible for client communications.</td>
</tr>
<tr>
<td>Senior Project Manager</td>
<td>15</td>
<td>PE</td>
<td>Significant additional experience in design specialty. Mentors less experienced engineers. Performs independent review of work by other engineers. Applies creative solutions to challenging technical problems.</td>
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<tr>
<td>Senior Engineer II</td>
<td>10</td>
<td>PE</td>
<td>Leads design teams. Works independently on design tasks. Prepares calculations, plans and technical specifications.</td>
</tr>
<tr>
<td>Senior Engineer I</td>
<td>5</td>
<td>PE</td>
<td>Works under the direction of Project Managers and Senior Design Engineers, applies accepted engineering practices, perform research for cost projections.</td>
</tr>
<tr>
<td>Project Engineer</td>
<td>3</td>
<td>EI</td>
<td>Works under the direction of licensed professional engineers, performs research and computations for review by senior level engineers.</td>
</tr>
<tr>
<td>Assistant Engineer III</td>
<td>10</td>
<td>EI</td>
<td>Advanced CAD designer with expertise in graphic data analysis, overlays and links to data sources.</td>
</tr>
<tr>
<td>Senior Designer</td>
<td>10</td>
<td>EI</td>
<td>Preparers drawings using computer based design and drawing tools. Works with engineers and surveyors to incorporate data and layout systems. Prepares final construction drawings for review by professional staff.</td>
</tr>
<tr>
<td>Designer / CAD Technician</td>
<td>5</td>
<td>EI</td>
<td>Performs CAD design, layout of components, coordination of survey data and routine computations for review of professional staff. Resolves design conflicts, prepares final construction drawings. May use 3D modeling and Building Information design tools.</td>
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<tr>
<td>Administrative Assistant</td>
<td>5</td>
<td>Receives direction &amp; review from project team members to assist with administrative tasks; under direction of professional staff organizes and prepares exhibits and deliverables, including reports and permit applications</td>
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<tr>
<td>--------------------------</td>
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<td>------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Clerical</td>
<td>2</td>
<td>Performs general office duties to assist professional staff, edits specifications based on directions from professional staff, makes copies and distributes reports and drawings. Aids communications of project team.</td>
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## SCHEDULE D. PERSONNEL HOURLY RATES
*TKW Consulting Engineers, Inc.*

<table>
<thead>
<tr>
<th>Employee Name</th>
<th>Billing Title</th>
<th>Billable Rate</th>
<th>Task(s) Associated</th>
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<tbody>
<tr>
<td>Douglas H. Eckmann, P.E., BCEE, D.WRE</td>
<td>Principal Engineer</td>
<td>$241</td>
<td>QA/QC / Specifications / Cost 1.1 / 1.2 / 1.3</td>
</tr>
<tr>
<td>Patrick Day, P.E., BCEE</td>
<td>Principal Engineer</td>
<td>$241</td>
<td>Utility Design / QC / Permitting 1.1 / 1.2 / 1.3</td>
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<tr>
<td>Mike McGee, P.E.</td>
<td>Senior Project Manager</td>
<td>$190</td>
<td>Project Manager / Utility Design 1.1 / 1.2 / 1.3</td>
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<tr>
<td>Carl Edquist, P.E.</td>
<td>Senior Engineer II</td>
<td>$177</td>
<td>Utility Design 1.1 / 1.2 / 1.3</td>
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<td>Jinsheng Huo, Ph.D., P.E., BCEE</td>
<td>Senior Engineer II</td>
<td>$177</td>
<td>Hydraulic Modeling of Potable Water Distribution System 1.2</td>
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<tr>
<td>Tim Denger, P.E.</td>
<td>Project Engineer</td>
<td>$148</td>
<td>Utility Design 1.3</td>
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<tr>
<td>Chris Conti, E.I.</td>
<td>Assistant Engineer III</td>
<td>$111</td>
<td>Utility Design / Plans Preparation 1.3</td>
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<tr>
<td>Maureen Tomlinson,</td>
<td>GIS Specialist</td>
<td>$117</td>
<td>Plans Preparation / Permitting 1.1 / 1.3</td>
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<tr>
<td>Steve Cyr</td>
<td>Senior Designer</td>
<td>$117</td>
<td>Utility Design / Plans Preparation 1.3</td>
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<tr>
<td>Blaine Lind</td>
<td>Designer</td>
<td>$98</td>
<td>Plans Preparation 1.3</td>
</tr>
<tr>
<td>Stephanie St. Onge</td>
<td>Administrative Assistant</td>
<td>$77</td>
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<td>Isaac Holowell, EIT</td>
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SCHEDULE F. SWORN APPLICATION FOR PAYMENT

To Owner: City of Cape Coral  
Project: Underground Fire Line Improvements  

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TOTAL DUE THIS PERIOD ______________________

ENGINEER'S CERTIFICATE FOR PAYMENT
The undersigned Engineer certifies that to the best of the Engineer's knowledge, information and belief the Work covered by this Application For Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Engineer for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

ENGINEER ____________________________
State of Florida, County of Lee
DATE ____________ Subscribed and sworn to before me this ___ day of ________, 2015

Notary Public ____________________________ My Commission Expires: ____________________________
## Exhibit A – Total Project Costs

### City of Cape Coral - Utilities

**Underground Fire Lines Improvements Program - Phase 1 Program Development & Preliminary Design**

#### Project Task/Level of Effort Spreadsheet

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<th>Task Description</th>
<th>Principal</th>
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<th>Senior Designer</th>
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EXHIBIT B - NOT USED

PERFORMANCE AND PAYMENT BOND
EXHIBIT C
CITY OF CAPE CORAL
DRUG FREE WORKPLACE CERTIFICATION

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

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

2. Inform employees about the dangers of drug abuse in the workplace, the business’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

3. Give each employee engaged in providing the commodities or contractual services that are under bid/proposal a copy of the statement specified in subsection (1).

4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid/proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty, or nolo contendere, to any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.

5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee’s community, by any employee who is so convicted.

6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

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

TKW Consulting Engineers, Inc.  
Company Name (please print)  
Authorized Signature  
February 24, 2014  
Date
EXHIBIT D.

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

I, TKW Consulting Engineers, Inc., the Contractor, agrees to adopt the following policies with respect to the services rendered pursuant to the terms and conditions of this Agreement.

This organization will and will cause its contractors and subcontractors to take good faith action which encourages participation in the Work by Minority and Women-Owned Business Enterprises, including Veteran-Owned business enterprises by taking the following steps:

1. Active and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs.
2. Ensure that plans, specifications, quotations, requests for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MWBEs.
3. Document and maintain records of bid solicitations, including those to MWBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward identifying potential MWBE participants.
4. Ensure that progress payments (if applicable) to MWBEs are made on a timely basis so that undue financial hardship is avoided.

Agreed to this 24th day of February, 2015

By: ____________________________

Print: Douglas H. Eckmann, P.E., BCEE Title: Chief Operating Officer

* TKW is a certified State of Florida WMBE (Woman Owned/Minority Business Enterprise) firm and a SBE (Small Business Enterprise) with South Florida Water Management District (SFWMD). Certificates are attached. (Initial)
Ms. Trudi K. Williams, President
TKW Consulting Engineers Inc.
5621 Banner Drive
Fort Myers, FL 33912

Dear Ms. Williams:

Congratulations, the South Florida Water Management District (District) has certified your firm as a Small Business Enterprise (SBE). This certification is valid for three (3) years and may only be applied when business is conducted in the following area(s):

Professional Engineering and Surveying and Mapping Services

Your submission of bids or proposals to supply other products or services outside of the specialty area(s) noted above will not count toward SBE participation. If you require certification in other specialty areas, please contact the Procurement Bureau, SBE Section, for additional information.

Renewal is required every three (3) years and should be requested a minimum of 45 days prior to the above expiration date.

If any changes occur within your company during the certification period such as ownership, affiliate company status, address, telephone number, licensing status, gross revenue, or any information that relates to your SBE Certification status, you must notify this office in writing immediately. It is imperative that we maintain current information on your company at all times. FAILURE TO REPORT CHANGES MAY RESULT IN DECERTIFICATION.

Certification is not a guarantee that your firm will receive work, nor an assurance that your firm will remain in the District's vendor database.

We look forward to a mutually beneficial working relationship.

Sincerely,

Colleen M. Robbs
Sr. Compliance Specialist
Procurement Bureau

3301 Gun Club Road, West Palm Beach, Florida 33409 • (561) 686-8800 • FL WATS 1-800-632-2045
Mailing Address: P.O. Box 36693, West Palm Beach, FL 33416-6693 • www.sewmid.gov
State of Florida

Minority, Women & Florida Veteran Business Certification

TKW Consulting Engineers, Inc.

Is certified under the provisions of 287 and 295.187, Florida Statutes for a period from:

01/23/2014 to 01/23/2016

Craig J. Nichols, Secretary
Florida Department of Management Services

Office of Supplier Diversity • 4050 Esplanade Way, Suite 380 • Tallahassee, FL 32399 • (850) 487-0915 • www.osd.cms.state.fl.us
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Ames & Gough
8300 Greensboro Drive
Suite 980
McLean, VA 22102

INSURED

TKW Consulting Engineers, Inc.
5621 Banner Drive
Fort Myers, FL 33912

COVERAGE SCHEDULE

CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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<td>DAMAGE TO RENTED PREMISES (EX occurrence): $300,000</td>
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<td>MED EXP (Any person): $10,000</td>
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<td>PERSONAL &amp; ADV INJURY: $1,000,000</td>
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<td>GENERAL AGGREGATE: $2,000,000</td>
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<td>PRODUCTS-COMP/OP AGG: $2,000,000</td>
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<td></td>
<td>B</td>
<td>AUTOBRELIABILITY</td>
<td></td>
<td>4031256893</td>
<td>01/01/2015 01/01/2016</td>
<td>COMBINED SINGLE LIMIT (Ex accident): $1,000,000</td>
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<td>BODILY INJURY (Per person):</td>
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<td>BODILY INJURY (Per accident):</td>
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<td>PROPERTY DAMAGE (Per accident):</td>
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<td>EACH OCCURRENCE: $5,000,000</td>
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<td>AGGREGATE: $5,000,000</td>
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<td>C</td>
<td>WORKERS COMPENSATION</td>
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<td>5094905002</td>
<td>01/01/2015 01/01/2016</td>
<td>E.L. EACH ACCIDENT: $1,000,000</td>
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<td>ANY EXECUTIVE</td>
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<td>E.L. DISEASE - EA EMPLOYED: $1,000,000</td>
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<td>OFFICER/MEMBER EXCLUDED?</td>
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<td></td>
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<td>E.L. DISEASE - POLICY LIMIT: $1,000,000</td>
</tr>
<tr>
<td></td>
<td>D</td>
<td>DUTY</td>
<td></td>
<td>105807408</td>
<td>07/11/2014 07/11/2015</td>
<td>Aggrett: $1,000,000</td>
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<td>LIABILITY</td>
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<td>165807408</td>
<td>07/11/2014 07/11/2015</td>
<td>Per Claim: $1,000,000</td>
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES: (ACORD 191, Additional Remarks Schedule, may be attached if more space is required)

RE: RFQ-UT14-19/TM Underground Fire Line Improvements Project (V#14928.00)

Certificate Holder is included as additional insured with respect to General Liability, Auto Liability, and Umbrella Liability when required by written contract. General Liability is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and when required by written contract. Auto Liability, General Liability, and Worker's Compensation policies include waiver of subrogation in favor of the additional insureds where permissible by state law and when required by written contract.

CERTIFICATE HOLDER

City of Cape Coral
Kathy Rose, CPIM
Contract Specialist
1015 Cultural Park Boulevard
Cape Coral, FL 33990

CANCELATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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