

**RESOLUTION NO. 23-122**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT AND TASK ORDER WITH CLEMONS, RUTHERFORD & ASSOCIATES, INC., RELATING TO ENGINEERING AND SURVEYING SERVICES FOR THE PUBLIC WORKS SAFE ROOM PROJECT, IN THE AMOUNT OF \$110,080.**


**BE IT RESOLVED that:**

1. The appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Professional Services Agreement with Clemons, Rutherford & Associates, Inc. relating to Engineering and Surveying Services, for the Public Works Building Safe Room and Generator Project, in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.
2. The appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Task Order 2023-02 for design services for the Public Works Building Safe Room and Generator Project, in the amount of One Hundred Ten Thousand, Eighty Dollars and No Cents (\$110,080.00), in substantially the form **attached** as Exhibit B and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 23<sup>rd</sup> day of February, 2023.

**CITY OF PANAMA CITY BEACH**

By:   
Mark Sheldon, Mayor

**ATTEST:**

  
Lynne Fasone, City Clerk



## ATTACHMENT 'A'

February 13, 2023

Ms. Lillian Mulligan  
Public Works Engineer  
City of Panama City Beach  
116 South Arnold Rd  
Panama City Beach, FL 32413

**RE: Fee Proposal for  
Public Works Safe Room  
RFQ – #PCB23-06R  
HMGP – Contract #H0737  
FEMA Project #4399-051-R**

Dear Ms. Mulligan:

Thank you for utilizing Clemons, Rutherford & Associates for your architectural and engineering needs. We are pleased to offer the following proposal for the enhancement of the existing Public Works building to create a Hurricane/Tornado Safe Room. Our proposed scope of work and fees are below for your review and approval.

### **General Project Description:**

- **Building Type/Use:** Existing Office Building and with portion enhanced to a Safe Room
- **Size/Stories:** +/- 10,000 s.f. / one story structure with +/- 2,800 s.f. to be enhanced
- **Space Functions/Types:** Offices, Toilets, Breakroom, Storage
- **Location:** Wastewater Plant at 200 N Gulf Blvd., Panama City Beach
- **AHJ's:** City of Panama City Beach, FDEM, FEMA
- **Codes and Standards:** FBC, P-361, ICC 500, FDEP Rule 62-346, City of Panama City Beach Land Development Code, Uniform Federal Accessibility Standards, Design Wind Speed 200 MPH, protection from 500-year flood event
- **Emergency Power:** To be provided with wind protection (coordinate with existing systems)
- **Preliminary Owner Project Budget:** \$650,000

### **A/E General Scope of Services:**

#### **Phase I**

- Meet with Client to confirm goals and objectives of project and discuss concerns and options for approach to complete scope.
- Evaluate and investigate existing conditions.
- Prepare preliminary concept/approach documents and preliminary cost estimate for City review and approval.
- Design services to include: Architectural, Mechanical, Electrical, and Structural.
- Prepare construction bid documents and specifications with milestone deliverables for owner review and approval at 30%, 60%, 90%, and final.
- Prepare submittal and submit to AHJ(s) for review and respond to any comments.
- Assist City in the bidding process.

#### **Phase II**

- Provide construction contract administration services during construction to help ensure contract

- requirements are being met.
- Attend regularly scheduled Owner, Architect, Contractor meetings and site visits.
- Review submittals and shop drawings
- Review contractor's pay applications.
- Review closeout documents.
- Complete substantial and final inspections for contract compliance and prepare Certificate of Substantial Completion.

**Assumptions/Clarifications**

- No Civil design or survey is required.
- There is no involvement with hazardous materials.
- No geotechnical engineering/soil boring is required.
- The architect will submit documents to AHJ but understand the general contractor will obtain required permits.
- No destructive investigation is included and No specialized nondestructive investigation such as GPR or X-ray is included.
- An allowance of \$8,000 is included for Threshold Inspections. Please note that CRA has little control over how many inspections the general contractor may request/require. As such the actual cost may be more or less than the allowance. Owner will be notified prior to accruing additional costs/fees, if needed.
- Unless specifically stated as included all other scope is excluded.

**Preliminary Design Schedule**

- NTP
- Kickoff meeting, scoping review: ..... 1-2 weeks
- Investigations: ..... 2 weeks
- 30% Design Documents/Order of magnitude cost estimate: ..... 4 weeks
- Owner review and approval: ..... 1 week
- 60% Design Documents:..... 4 weeks
- Owner review and approval/Third Party review:..... 1 weeks
- 90% Design Documents:..... 2 weeks
- Owner review and approval: ..... 2 weeks
- 100% Design Documents:..... 1 weeks ..... 19 weeks
- Owner review and approval: ..... 2 weeks
  - o Concurrent with owner review, review by Authority Having Jurisdiction
- FDEM/FEMA review and approval:..... 4 weeks
- Conformance/Bid Documents:..... 2 weeks ..... 27 weeks
- Advertise for Bid/receipt of bids: ..... 6 weeks

**Owner Responsibilities**

- Provide available documentation of existing buildings, site, and utility infrastructure in print or CAD/Revit when possible.
- Owner to provide Flood Certificate to confirm scope area is outside of 500-year flood zone/elevation.
- Provided required information regarding the Tower adjacent to the building.
- Contract for third party design review and oversight. It is recommended that a cursory review be completed at the 60% submittal and final review at 100%.
- Pay all application and/or AHJ review fees.
- Utility location services if documents locating utilities are not available.

| <b>Design Fees</b>   | <b>Resp. Party</b> | <b>Phase I</b> | <b>Phase II</b> | <b>Total I &amp; II</b> |
|--|--------------------|----------------|-----------------|-------------------------|
| <b>Basic Services:</b>                                       | CRA/H2E/JAE        | \$ 80,435.50   | \$ 14,194.50    | \$ 94,630.00            |
| <b>Proposed Additional Services</b>                          |                    |                |                 |                         |
| Documentation of existing conditions                         | CRA/H2E/JAE        | \$ 3,500.00    |                 | \$ 3,500.00             |
| Survey - Limited Land Survey                                 | NP                 |                |                 | \$ -                    |
| Geotechnical - Assumed shallow footings                      | NP                 |                |                 | \$ -                    |
| Civil Design   | NP                 |                |                 | \$ -                    |
| Verification location outside 500 yr flood                   | Owner              |                |                 | \$ -                    |
| HVAC Commissioning   | NP                 |                |                 | \$ -                    |
| Interior Design - Color board and selections                 | NP                 |                |                 | \$ -                    |
| Record Drawings - CAD drawings with GC redlines incorporated | CRA                |                | \$ 1,000.00     | \$ 1,000.00             |
| Post-contract Warranty Inspection                            | NP                 |                |                 | \$ -                    |
| Energy Forms   | NP                 |                |                 | \$ -                    |
| Travel Expenses  | CRA/H2E/JAE        | \$ 300.00      | \$ 750.00       | \$ 1,050.00             |
| Printing Expenses  | CRA                | \$ 800.00      | \$ 100.00       | \$ 900.00               |
| Threshold Plan and Inspections                               | JAE/TBD            | \$ 1,000.00    | \$ 8,000.00     | \$ 9,000.00             |
| Fire Flow Test   | NP                 |                |                 | \$ -                    |
| <b>Total Design/CA Fees</b>                                  |                    | <b>Phase I</b> | <b>Phase II</b> | <b>Total I &amp; II</b> |
| Basic Service and Add Services - Stipulated Sum              |                    | \$ 86,035.50   | \$ 24,044.50    | \$ 110,080.00           |

Future additional services if requested and approved in writing by the parties after execution of this agreement will be compensated as follows unless negotiated otherwise.

Services provided in house by the architect - hourly at hourly rates per agreement.

Services provided by consultants - Cost to the architect plus 15%.

If you need any additional information concerning this proposal, please do not hesitate to contact me.

Sincerely,



James H. Lewis  
Production Manager / Architect  
LEED AP

Attachments: Exhibit 'D' – Hourly Rates  
Exhibit 'G' – Certification Regarding Debarment

# EXHIBIT D



**CLEMONS, RUTHERFORD & ASSOCIATES, INC.**  
ARCHITECTS | PLANNERS | INTERIOR DESIGNERS | CONSTRUCTION MANAGERS  
2027 Thomasville Road, Tallahassee, Florida 32308  
p: 850-385-6153 | f: 850-386-8420 | www.craarchitects.com

## HOURLY RATES

The basic hourly rates for all architectural and interior design disciplines are listed below.

|                                  |          |
|----------------------------------|----------|
| Principal-In-Charge.....         | \$250.00 |
| Project Manager/Architect .....  | 185.00   |
| Assisting Project Manager .....  | 140.00   |
| Project Designer .....           | 165.00   |
| Project Interior Designer .....  | 160.00   |
| Construction Administrator ..... | 145.00   |
| Plans Review and Inspection..... | 140.00   |
| Estimator .....                  | 145.00   |
| Educational Surveyor .....       | 130.00   |
| Specification Writer.....        | 125.00   |
| BIM / 3D Drafting:.....          | 115.00   |
| Drafting:     Senior .....       | 100.00   |
| Junior .....                     | 80.00    |
| Clerical/Support Services.....   | 80.00    |

Rates are reviewed and adjusted on an annual basis January 1<sup>st</sup> of each year.

EXHIBIT G

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**Certification Regarding Debarment, Suspension, Ineligibility  
And Voluntary Exclusion**

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**Subcontractor Covered Transactions**

The prospective subcontractor, Clemons, Rutherford & Assoc. Inc., of the Sub-Recipient certifies, by submission of this document, that neither it, its principals, nor affiliates are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this transaction by any Federal department or agency.

**SUBCONTRACTOR**

Clemons, Rutherford & Assoc. Inc.

By: 

Signature

William D. Rutherford, President

Name and Title

2027 Thomasville Rd

Street Address

Tallahassee, FL 32308

City, State, Zip

February 8, 2023

Date

City of Panama City Beach

Sub-Recipient's Name

H0737

DEM Contract Number

4399-051-R

FEMA Project Number

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
CITY OF PANAMA CITY BEACH AND  
CLEMONS, RUTHERFORD & ASSOCIATES, INC.  
RELATING TO  
PROFESSIONAL ARCHITECTURAL & ENGINEERING SERVICES  
FOR PUBLIC WORKS BUILDING SAFE ROOM AND GENERATOR**

**THIS AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 2023, by and between the **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation ("City") and **CLEMONS, RUTHERFORD & ASSOCIATES, INC.** ("Architect/Engineer").

**PREMISES**

WHEREAS, the City desires to have Architect/Engineer assist the City with programming and design, construction administration on request (not guaranteed on all construction) and other related, miscellaneous tasks for the construction of retrofit activities for the public works building at 200 N Gulf Blvd which will serve as a safe room for hurricane and/or tornado events (generally in this Agreement the "Project"); and

WHEREAS, the City desires to employ the Architect/Engineer for those purposes upon the terms and conditions in this Agreement, and the Architect/Engineer is desirous of obtaining such employment and has represented that it is qualified and competent to perform such services upon said terms and conditions.

**1. SCOPE OF PROFESSIONAL SERVICES:**

A. City retains Architect/Engineer to diligently, competently, and timely perform the "Professional Services" on as as-needed basis. Upon request, Architect/Engineer will prepare a detailed, project specific scope of work for each task and phase of work to be undertaken in accordance with the general scope of services described in this agreement and in the request for statements of qualification which led to this Agreement. The proposed scope of work shall include a schedule for the work and, separately stated, a proposed fee. The proposed fee shall be a: (i) stipulated sum; (ii) stipulated sum plus one or more specified allowances which may be authorized by City Manager or his designee; (iii) a fee determined on a time-involved basis at the hourly rates specified on Exhibit A which shall include a maximum cost. Unless otherwise expressly set forth separately in the applicable fee proposal, the proposed fee shall be assumed to include all compensation which City will owe Architect/Engineer for the subject services, including all reimbursable expenses.



B. If accepted by City, the proposed scope of work shall be incorporated into a task order in materially the form attached as Exhibit B (each a "Task Order"). Each Task Order shall be numbered and dated, incorporate this Agreement and any additional terms related to that specific Task Order, and shall be signed both by the City and by the Architect/Engineer. If a term in this Agreement conflicts with a term in a Task Order, the term in the Task Order shall control to the extent of such conflict, but only for that Task Order.

C. The general scope of services described in the request for statements of qualification which led to this Agreement is:

Provide planning, design, and construction administration services for construction of retrofit activities at the public works building which will serve as a safe room. The project shall be designed by the criteria contained in the standards of the Department of Homeland Security, Federal Emergency Management guidance manual P-361, Design and Construction for Community Safe Room, to provide near-absolute protection to occupants during and after extreme weather events. Minimum design wind speed will be 200 mph. A significant percentage of this project is being funded with Hazard Mitigation Grant Program (HMGP) grant funds and the A/E firm will be subject to all related compliance matters during the course of the project.

D. Notwithstanding anything herein to the contrary, City is not required under this Agreement to authorize Architect/Engineer to perform any services, and nothing herein shall be construed as entitling Architect/Engineer to any work under this Agreement, except and to the extent such work is specifically authorized hereafter by City in a properly executed Task Order.

E. Architect/Engineer represents to City that it has expertise in the type of professional services that will be required. City's consent or approval of any services provided by Architect/Engineer in no manner or way will relieve Architect/Engineer of its obligations and duties hereunder. Additionally, City's consent or approval of any services of Architect/Engineer shall not constitute a waiver of any rights City may have pursuant to this Agreement or by law. Notwithstanding any consents or approvals by City, Architect/Engineer remains responsible for all defects, errors, omissions, or inconsistencies in its services performed pursuant to this Agreement.

## **2. COMPENSATION AND PAYMENT:**

A. The hourly rates and other factual unit costs to be used for determining compensation are set forth in Exhibit A, which is attached hereto and incorporated herein, and are to remain fixed, subject to adjustment only by the express prior written approval of City. Architect/Engineer's total compensation for the services authorized by any particular Task Order shall be set forth exclusively in that Task Order. Hourly compensation shall be determined in increments of one-tenth (1/10) of an hour.

B. Reserved.

C. Upon written instruction by the City, the Architect/Engineer shall perform additional work necessary or convenient to complete the services for which a Task Order is entered, and which are mentioned or referenced in this Agreement. The Architect/Engineer shall be entitled to additional compensation unless such work is required as a result of error, omission, or negligence by the Architect/Engineer. The additional compensation shall be computed by the Architect/Engineer on a revised fee quotation proposal and submitted to the City for written approval. If the parties cannot agree, Architect/Engineer's initial compensation will be such amount as the City shall determine in good faith to be the fair value of such services, and such amounts shall be paid to Architect/Engineer in monthly installments as set forth elsewhere in this Agreement. In the event the City shall unilaterally determine the amount to be paid for such services, Architect/Engineer shall have the right, to be exercised by written notice delivered to the City within twenty (20) days after the City Council shall unilaterally determine such amount, to have the value of such services determined by binding arbitration pursuant to the Florida Arbitration Code and in accordance with the rules of the American Arbitration Association. The Architect/Engineer and the City each shall select one arbitrator and those two shall select a third. Each arbitrator shall be familiar by trade or occupation with Architecture/ Engineering. The decision of any two (2) arbitrators shall be conclusive and may be enforced in any court of competent jurisdiction in the State of Florida. Each party shall promptly pay when billed, including in advance, one-half of all arbitration fees and costs. The prevailing party shall recover from the other its reasonable attorney's fees and costs, including fees and costs incurred in arbitration and in any action in any court of competent jurisdiction in the State of Florida to enforce the arbitration award, including appeal. Should the arbitrators award Architect/Engineer an amount equal to or less than the amount that the City has unilaterally determined, Architect/Engineer shall nonetheless be paid the amount unilaterally determined by the City, but the City shall be deemed the prevailing party and Architect/Engineer shall pay the City's reasonable attorney's fees.

D. In the event that additional outside services are required due to unknown or unforeseen conditions, the Architect/Engineer shall:

1) Obtain a written proposal from the firm designated to render the required services, and submit such proposal to the City for written approval.

2) If the services are such that registration is required to perform them, the Architect/Engineer shall select a firm that is registered in the State of Florida.

3) If the proposal is approved in writing by the City, the Architect/Engineer shall enter into a contract with the firm for the furnishing of such services in accordance with the proposal.

4) The Architect/Engineer shall submit a minimum of five (5) printed copies and one digital copy of deliverable for all required services to the City, unless otherwise directed by the City.

5) Upon approval by the City of such reports, the City shall reimburse the Architect/Engineer for the actual cost of such services.

6) Services rendered by the Architect/Engineer in connection with the coordination of these additional services shall be considered within the scope of the basic contract, and no additional fee shall be due the Architect/Engineer except as stated in immediately preceding subsection 2.D.5.

E. At the end of each month during which a Task Order shall be outstanding, Architect/Engineer shall submit a separate invoice for services rendered during that month with respect to each Task Order as follows:

- 1) Where a stipulated sum is specified, City shall pay Architect/Engineer in monthly installments based upon the percentage of satisfactory completion. In support of payment, Architect/Engineer shall submit monthly a request for payment describing the work done, percentage of completion and amount requested to be paid, all by reference to line items in the scope of services where available.
- 2) Notwithstanding anything in the Agreement or any Task Order to the contrary, City reserves the right to withhold payment to Architect/Engineer in part or in full to the extent reasonably necessary to protect City's interests.
- 3) Architect/Engineer shall be required to provide such supporting documentation for its invoice as may be required by City.

3. **SCHEDULE:** The time schedule for Architect/Engineer's performance of the required services under any particular Task Order, shall be set forth in that Task Order.

4. **CITY'S RESPONSIBILITY:** As reasonably requested by Architect/Engineer, City shall furnish Architect/Engineer with such existing data, plans, profiles, and other information available and useful in connection with the subject Task Order that is within City's possession and can be located, which shall be returned to City upon the completion of the services to be performed by Architect/Engineer, unless such data, plans, profiles, and other data are necessary for daily operations; then such forms of information shall be promptly duplicated by Architect/Engineer and the originals returned to City. Unless otherwise noted, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of any information supplied by the City.

5. **CITY'S DESIGNATED REPRESENTATIVE:** It is understood and agreed that City designates the City Engineer or his/her designated representative to represent City in all technical matters pertaining to and arising from the work and performance of this Agreement. Provided however, neither the City Engineer nor his/her designated representative shall have the authority to authorize any verbal or written orders or instructions that would have the effect, or be interpreted to have the effect, of adjusting, modifying or changing in any way whatsoever 1) the time to complete any of Architect/Engineer's required services, 2) the amount of compensation City is obligated or committed to pay Architect/Engineer, or 3) the scope or quality of services to be

provided and performed by Architect/Engineer. The City Engineer and/or his/her designated representative shall have, but not be limited to, the following responsibilities:

A. Examination of all reports, sketches, drawings, cost estimates, proposals and other documents presented by Architect/Engineer, and rendering in writing decisions pertaining thereto within a reasonable time so as not to materially delay the work of Architect/Engineer.

B. Transmission of instructions, receipt of information, interpretation, and definition of City policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.

C. Give prompt written notice to Architect/Engineer whenever the City Engineer or his designated representative observes or otherwise becomes aware of any defects or changes necessary in the project.

## **6. ADDITIONAL SERVICES/CHANGES IN SCOPE:**

A. As referenced in Section 2.C of this Agreement, City has retained the right to make changes to the scope of work authorized by any Task Order. Accordingly, from time to time, at City's option and in City's sole discretion, Architect/Engineer may be directed or authorized to perform additional services ("Additional Services") City deems necessary or convenient with respect to any particular Task Order that has been issued. Provided however, City will not be responsible for the costs of any Additional Services commenced by Architect/Engineer without City's express prior written approval or direction. If Architect/Engineer reasonably believes that any services required by City (including any changes directed by City) constitutes Additional Services, then Architect/Engineer shall provide prompt written notice to City of any such circumstance before commencing such services. In the event City disagrees with Architect/Engineer's notice of Additional Services and City directs Architect/Engineer to proceed with such services, Architect/Engineer must submit a written claim to City within seven (7) calendar days of City's directive to proceed. Failure to obtain either City's prior written approval for Additional Services or failure to submit a written claim within said seven (7) day period after being directed by City to proceed with services that Architect/Engineer believes constitutes Additional Services, waives Architect/Engineer's claim that it performed Additional Services and instead such services will be deemed to be part of the original services otherwise required of Architect/Engineer under the applicable Task Order. The compensation for Additional Services will be an amount mutually agreed upon or if the parties fail to reach agreement on the compensation, then Architect/Engineer's compensation will be based upon the rates established in the attached Exhibit A and the actual time and out-of-pocket costs incurred by Architect/Engineer to provide such Additional Services as reasonably determined by City.

B. Architect/Engineer hereby waives all claims for consequential and indirect damages against City arising out of or relating to this Agreement.

## **7. TERMINATION:**

A. Either party hereto shall have the right and option to terminate this Agreement as set forth in this section. City shall have the right to terminate this Agreement and any Task Order in effect, in whole or in part, without cause upon seven (7) calendar days written notice to Architect/Engineer. Architect/Engineer shall have the right to terminate this Agreement in its entirety without cause upon ninety (90) calendar days written notice to City with respect to future services and work not already authorized under any particular Task Order; provided however, any services to be performed by Architect/Engineer under a previously issued Task Order shall proceed to completion unless otherwise expressly terminated by City. Nothing in this Section shall be construed to allow Architect/Engineer to terminate any Task Order previously issued and in effect prior to Architect/Engineer's notice of termination for convenience. In the event of a termination for convenience by City, Architect/Engineer's sole and exclusive recovery against City shall be limited to that portion of Architect/Engineer's compensation earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Architect/Engineer that are directly attributable to the termination. In the event of such termination for convenience by Architect/Engineer, Architect/Engineer's sole and exclusive recovery against City shall be limited to that portion of Architect/Engineer's compensation earned through the date of termination for work performed plus any withheld retainage. In no event shall Architect/Engineer be entitled to any other or further recovery against City, including, but not limited to, anticipated fees or profit on work not performed.

B. Architect/Engineer shall be considered in default of this Agreement and such default shall be considered cause for City to terminate this Agreement in whole or in part upon written notice to Architect/Engineer if Architect/Engineer fails to diligently, competently and timely perform any of the work, fails to cooperate with others associated with the work, or otherwise fails to perform or observe any material covenant, representation or warranty contained in this Agreement. If City determines that Architect/Engineer is in default, Architect/Engineer shall have seven (7) calendar days following receipt by Architect/Engineer of said written notice to remedy and cure the default. If such default is not remedied or cured by Architect/Engineer within those seven (7) calendar days, then City may terminate this Agreement in whole or in part. In the event of such termination by City, Architect/Engineer's sole and exclusive recovery against City shall be limited to that portion of Architect/Engineer's compensation earned through the date of termination, plus any withheld retainage; provided, however, no such amounts shall be due and payable until such time as City determines its damages as a result of such default by Architect/Engineer. City has the right to offset all damages it suffers as a result of Architect/Engineer default from any and all amounts it may owe Architect/Engineer under this Agreement and any Task Order. Further, in the event such damages exceed the amount owed Architect/Engineer, Architect/Engineer shall pay City such excess within ten (10) days of Architect/Engineer's receipt of written demand from City for such excess amount.

C. City shall be considered in default of this Agreement and such default shall be considered cause for Architect/Engineer to terminate any particular Task Order upon

written notice to City if City fails to perform or observe any material covenant required of it with respect to such Task Order. In no event does Architect/Engineer have the authority to terminate any Task Order for which the subject default does not apply. If Architect/Engineer so notifies City in writing that City is in default, City shall have thirty (30) calendar days following receipt by City of said written notice to remedy and cure the default. If such default is not remedied or cured by City within those thirty (30) calendar days, then Architect/Engineer may terminate the subject Task Order. In the event of such termination by Architect/Engineer, and subject to the terms of this Agreement, Architect/Engineer shall be entitled only to the same rights and recovery provided to it as a result of a termination for convenience by City per Section 7.A above.

D. If, after notice of termination of this Agreement or any Task Order or any portion of either by City as provided for in Section 7.B above, it is determined for any reason that City wrongfully terminated this Agreement or any Task Order or any portion of either or otherwise was not entitled to terminate for cause, then the notice of termination given pursuant to Section 7.B above shall be deemed to be the notice of termination for convenience by City provided for in paragraph 7.A above and Architect/Engineer's remedies against City shall be the same as and limited to those afforded Architect/Engineer under Section 7.A above.

E. Upon any termination and at no additional cost to City, Architect/Engineer shall deliver to City all papers, records, documents, drawings, calculations, models, and other materials in Architect/Engineer's possession or under its control arising out of or relating to this Agreement as directed by City. The delivery of all such items to City being a condition precedent to any further payment obligations of City under this Agreement. Architect/Engineer may make a copy of any or all such items for its file, at its own cost and expense.

**8. TERM:** Unless terminated sooner pursuant to the provisions of the "TERMINATION" clauses contained in Section 7 of this Agreement, and subject to the availability of appropriated funds, this Agreement shall take effect immediately upon its execution by the parties, and shall continue thereafter for an initial term of 4 years or the completion of all outstanding Task Orders, whichever is later; provided, however, the term of this Agreement shall be amendable and renewable by City, at its sole discretion, for two consecutive extended terms of two years each, by written notice delivered to the Architect/Engineer at least 30 days prior to expiration of the current term.

**9. INDEMNIFICATION:**

A. To the maximum extent permitted by law, Architect/Engineer shall defend, indemnify and hold harmless the agency, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the contract. The provisions of this Section 9 shall survive termination of this Agreement. This indemnification obligation shall not be construed to

negate, abridge, or reduce any other rights or remedies which otherwise may be available to an indemnified party described in this paragraph.

B. The duty to defend under this Section 9 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Architect/Engineer, City, or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Architect/Engineer. Architect/Engineer's obligation to indemnify and defend under this Section 9 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against City or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. Notwithstanding the foregoing and to the extent Architect/Engineer actually defends City and City is ultimately found responsible for such claims, City shall reimburse Architect/Engineer its defense costs, including attorneys' and expert fees, incurred by Architect/Engineer in providing a defense to City and its employees, but only to the extent of the City's culpability.

## **10. INSURANCE:**

A. Architect/Engineer shall procure and maintain during the life of this Agreement insurance of the following types:

1) Worker's Compensation: For all of its employees engaged in work on a project under this Agreement. In case any employee engaged in hazardous work on a project is not protected under the Worker's Compensation Statute, Architect/Engineer shall provide Employer's Liability Insurance for the protection of such of its employees not otherwise protected under such provisions.

Coverage A - Worker's Compensation - Statutory

Coverage B - Employer's Liability - \$100,000 each accident

- \$100,000 each employee

- \$500,000 policy limit for disease

2) General, Automobile and Excess or Umbrella Liability Coverage: Architect/Engineer shall purchase and maintain coverage on forms no more restrictive than the latest editions of the Commercial General Liability and Business Auto policies of the Insurance Services Office.

Minimum limits of \$1,000,000 per occurrence for all liability must be provided, with excess or umbrella insurance making up the difference, if any, between the policy limits of underlying policies (including employers liability required in the Workers Compensation Coverage section) and the total amount of coverage required.

3) Commercial General Liability Coverage. Coverage A shall include bodily injury and property damage liability for premises, operations, products and completed operations, independent contractors, contractual liability covering this agreement, contract or lease, broad form property damage, and property damage resulting from explosion, collapse or underground (x,c,u) exposures.

Coverage B shall include personal injury.

Coverage C, medical payments, is not required.

Architect/Engineer is required to continue to purchase products and completed operations coverage, at least to satisfy this agreement, contract, or lease, for a minimum of three years beyond the CITY's acceptance of renovation or construction projects.

4) Business Auto Liability Coverage. Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance, or use of any auto, including owned, non-owned and hired automobiles and employee non ownership use.

5) Excess or Umbrella Liability Coverage. Umbrella Liability insurance is preferred, but an Excess Liability equivalent may be allowed. Whichever type of coverage is provided, it should be at least "following form" and shall not be more restrictive than the underlying insurance policy coverages.

6) Additional Insurance. The City requires the following additional type of insurance:

#### PROFESSIONAL LIABILITY, MALPRACTICE AND/OR ERRORS OR OMISSIONS

- Hold Harmless

The CITY shall be held harmless against all claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting there from arising out of performance of the agreement or contract, unless such claims are a result of the CITY's own negligence.

The City shall also be held harmless against all claims for financial loss with respect to the provision of or failure to provide professional or other services resulting in professional, malpractice, or errors or omissions liability arising out of performance of the agreement or contract, unless such claims are a result of the CITY's own negligence.

- PROFESSIONAL LIABILITY/ERRORS OR OMISSIONS COVERAGE

The Successful Respondent shall maintain in full force for five years from the date of the completion of the last task under the party's agreement Project Specific Professional Liability Insurance with minimum limits of \$1,000,000 per occurrence/ \$3,000,000 annual aggregate.

If a claim made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts.

Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.



B. Certificates of Insurance: Prior to commencement of work on any Task Order, Architect/Engineer shall furnish to City original, current certificates of all insurance required by this agreement, providing thirty (30) days prior written notice of any change in limits or scope of coverage, cancellation, or non-renewal. Such certificates shall contain the following wording: "SHOULD ANY OF THE ABOVE-DESCRIBED POLICIES BE AMENDED IN LIMITS OR SCOPE OF COVERAGE OR CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL DELIVER THIRTY (30) DAYS PRIOR NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN." All insurance required by this agreement shall be taken out with insurers licensed to do business in Florida having an A.M. Best's rating of A-, or otherwise approved in advance in writing by City. If the insurance policies expire during the term of this Agreement, a renewal certificate shall be filed with City at least 15 days prior to the renewal date. **Certificate Holder will be addressed as the City of Panama City Beach, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address. As outlined above, the CITY is to be named as Additional Insured on General Liability and Business Auto.**

Receipt of certificates or other documentation of insurance or policies or copies of policies by the CITY, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Architect/Engineer's obligation to fulfill the insurance requirements herein.

**11. NEGOTIATION DATA:** Architect/Engineer hereby certifies, covenants, and warrants that hourly rates and other factual unit costs supporting the compensation provided in Exhibit A are accurate, complete, and current as of the date of negotiation.

**12. OWNERSHIP OF DOCUMENTS:**

A. It is understood and agreed that all documents, including detailed reports, plans and all other data in whatever form (text, graphic, digital or other electronic), prepared or obtained by Architect/Engineer in connection with its services hereunder ("Project Documents") shall always be the property of City and shall be delivered to City promptly, at Architect/Engineer's sole expense and without lien, upon City's request or termination of this Agreement by lapse of time or otherwise. Architect/Engineer hereby assigns to City all rights, including all copyrights, to the Project Documents. Architect/Engineer acknowledges and agrees that all Project Documents shall be deemed to be works made for hire, and all right, title, and interest in and to the Project Documents shall be vested in City, and Architect/Engineer will take all actions necessary to secure for City all such right, title, and interest. Architect/Engineer warrants that all materials comprising the Project Documents are original with the Project and have not been copied or derived from any other material without the express consent of the owner, proprietor, and copyright holder of that other material, and are not subject to any other claim of copyright by any other person. Architect/Engineer shall obtain any and all licenses necessary for the production and preparation of the Project Documents including, without limitation, licenses for the use of any material subject to copyright by other parties.

Architect/Engineer shall assign to City any and all rights, including any copyrights, in the Project Documents that Architect/Engineer may possess, now or in the future, and Architect/Engineer will claim no rights adverse to City in the Project Documents. As the Project Documents are completed, Architect/Engineer shall assign its copyright interest in such documents to City by executing and delivering to City the Assignment of Copyright, the form of which is attached as Exhibit C. Architect/Engineer shall execute any additional documents required by City to further evidence this assignment. Architect/Engineer, at its own expense, may retain copies of the Project Documents for its files and internal use. Architect/Engineer shall not be liable for any use by City of the Project Documents to the extent they are modified without written approval of Architect/Engineer.

B. Architect/Engineer warrants to City that it has full right and authority to grant to City all rights in the Project Documents as provided for in this Section 12. Further, Architect/Engineer hereby consents to City's use (including any use by any replacement Architect/Engineer retained by City) of the Project Documents to complete a project following any termination of Architect/Engineer hereunder or to perform any additions to or renovations of a Project.

D. When transferring data in electronic media format, Architect/Engineer makes no representation as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Architect/Engineer at the beginning of the Agreement. Because the data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. The original hard copy of the documents containing the professional Architect/Engineer's seal shall take precedence over the electronic documents.

### **13. WORK COMMENCEMENT/PROGRESS/DELAYS:**

A. The services to be rendered by Architect/Engineer as to any particular Task Order shall commence upon execution of that Task Order and Architect/Engineer's receipt of written notice to proceed with such services from City Manager or his designee.

B. Architect/Engineer agrees to abide by the schedule for performance of the contracted services as set forth in the applicable Task Order. City will be entitled at all times to be advised in writing at its request as to the status of the work being done by Architect/Engineer, and of the details thereof. City may require specification of liquidated delay damages in a Task Order. Failure to specify liquidated delay damages in a Task Order shall not relieve Architect/Engineer of liability for delays or other damages as provided by law.

C. Notwithstanding anything in this Agreement or any Task Order to the contrary, no interruption, interference, suspension or delay in the commencement or progress of Architect/Engineer's services from any cause whatsoever, including those for which City may be responsible in whole or in part, shall relieve Architect/Engineer of its duty to perform or give rise to any right to damages or additional compensation from City. Architect/Engineer expressly acknowledges and agrees that it shall receive no damages for delay. In the event there are delays on the part of City or any applicable regulatory agencies as to the approval of any of the plans, permits and drafts of special provisions submitted by Architect/Engineer or any other delays not due to the fault or neglect of Architect/Engineer, which delay the applicable schedule completion date, Architect/Engineer's sole remedy, if any, against City shall be an equitable extension of time for such delays. Provided, however, if the delay is solely due to City's fault of neglect and the services to be provided hereunder have been delayed for a total of ninety days, Architect/Engineer's compensation shall be adjusted only to reflect the actual incremental increase in out-of-pocket costs experienced by Architect/Engineer, if any, as a result of such delays. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

D. Architect/Engineer shall maintain an adequate and competent staff of professionals and may associate with other qualified firms for the purpose of rendering services hereunder. Architect/Engineer agrees that its staff, subconsultants, and subcontractors who will perform any services for the project are subject to City's reasonable approval and must be identified in each Task Order. None of the staff, subconsultants, and subcontractors identified in a Task Order shall be removed or replaced by Architect/Engineer without City's prior written approval (such approval not to be unreasonably withheld), and if so, removed shall be immediately replaced with a person or firm reasonably acceptable to City. Architect/Engineer is liable for all acts and omissions of its staff, subconsultants, and subcontractors.

#### **14. STANDARDS OF CONDUCT:**

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

B. Architect/Engineer covenants that neither it nor any of its employees presently has any interest and shall not acquire any interest, direct or indirect, financial, or otherwise, that would conflict in any manner or degree with performance of services hereunder.

C. Standards of Conduct-Conflict of Interest-Architect/Engineer agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313, Florida Statutes, as it relates to work performed under this Agreement, which

standards will by reference be made a part of this Agreement as though set forth in full. Architect/Engineer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**15. COMPLIANCE WITH GRANT, FEDERAL, STATE, AND LOCAL LAWS:**

A. In the performance of its services hereunder, Architect/Engineer and all of its work product shall comply with all Federal, State, and Local laws, rules regulations and ordinances applicable to the work or payment for work thereof. Architect/Engineer shall not discriminate on the grounds of race, color, religion, sex, or national origin in its performance of work under this Agreement.

B. The Architect/Engineer shall comply with Appendix II to 2 C.F.R Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards), as more specifically set forth in attached Exhibit C.

C. The City has been awarded HMGP-DM funds from the Florida Division of Emergency Management for this Project, Project # 4399-027-R, by virtue of an agreement approved by the Council on December 9, 2021 (the "Grant Agreement"), a copy of which is attached as Exhibit D to this Agreement. The Architect/Engineer shall be bound by the terms of the Grant Agreement, and shall hold the City and the Florida Division of Emergency Management harmless against all claims of whatever nature arising of the Architect/Engineer's performance of work under the Grant Agreement, to the extent allowed and required by law.

**16. ASSIGNABILITY:** Architect/Engineer shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written approval of City.

**17. INDEPENDENT CONTRACTOR:** Architect/Engineer is and shall remain an independent contractor and not an employee of City.

**18. CONTROLLING LAW AND VENUE:** All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of Florida applicable to contracts made and to be performed within this state. Exclusive jurisdiction and venue to interpret or resolve any dispute under this Agreement shall lie in the State Circuit Court, Fourteenth Judicial Circuit, in and for Bay County, Florida.

**19. ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties with respect to the subject matters. All prior agreements, representations, statements, negotiations, and undertakings are hereby superseded. Any alterations or variations of the terms of this Agreement shall not be valid unless made in writing and signed by the parties. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be illegal or unenforceable, then, notwithstanding, the remainder of the Agreement shall remain in full force and effect.

**20. ATTORNEY'S FEES:** If either party is required to institute or defend against the other party any legal proceedings in connection with this Agreement, the prevailing

party shall be entitled to its costs thereof, together with reasonable attorney's and paralegals' fees.

**21. NO WAIVER:** No waiver of any provision of this Agreement shall be effective unless made in writing, signed by the party against whom it is charged. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, nor of the same provision in the future. Neither the failure nor any delay by any party in exercising any right or power under this Agreement, nor any course of dealing between or among the parties, will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

**22. COOPERATION:** Architect/Engineer acknowledges that the City's projects are generally a multidisciplinary effort which require cooperation and collaboration with numerous consultants, Architect/Engineers, construction managers, contractors, and counsel assisting and advising City, as well as coordination with utilities, other governmental agencies and all directions from City Manager and City Architect/Engineer. Accordingly, Architect/Engineer agrees to cooperate with all such other parties to advance the best interests of City and the project.

**23. MEDIATION:** City and Architect/Engineer agree to attempt to resolve any dispute between them related to the interpretation or performance of this Agreement by mediation in Bay County, Florida, with a mutually acceptable, certified Florida Mediator to serve at joint expense. If the parties are unable to agree upon a mediator, either party shall request the appointment of a mediator by the Chief Judge of the Circuit Court, Fourteenth Judicial Circuit in and for Bay County, Florida. Mediation contemplated by this paragraph is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. Any settlement will require approval of City's governing board. If the parties are unable to reach a mediated settlement within ninety (90) days of the mediator's appointment, either party may terminate the settlement discussions by written notice to the other and initiate litigation. Mediation is a condition precedent to filing any lawsuit or commencing other legal action. Any litigation commenced in violation of this section shall be stayed pending mediation as agreed. This Section 23 shall survive termination of this Agreement.

**24. PUBLIC RECORDS:** The City is a public agency subject to the Florida Public Records Law expressed in Chapter 119, Florida Statutes. Accordingly, to the extent that it is determined that Architect/Engineer is acting on behalf of City as provided under Section 119.011(2) (2017) and implemented through the judicially established "totality of factors" analysis, Architect/Engineer agrees to also comply with that law, specifically including to:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

b. Upon request of the City, provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.

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

**e. IF THE ARCHITECT/ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, IT IS THE ARCHITECT/ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, AND TO CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850-233-5100, LYNNE.FASONE@PCBFL.GOV, 17007 PANAMA CITY BEACH PARKWAY, PANAMA CITY BEACH, FL 32413.**

25. **EVERIFY:** Architect/Engineer is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all employees hired after January 1, 2021, and requiring all sub-contractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Architect/Engineer shall maintain a copy of such affidavit(s) for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Architect/Engineer, the Architect/Engineer may not be eligible for or awarded a City contract for a period of 1 year after the date of termination.

**IN WITNESS WHEREOF**, the parties have hereto caused the execution of these documents as of the year and date first above written.

**CITY OF PANAMA CITY BEACH,  
FLORIDA**, a municipal corporation

By: \_\_\_\_\_  
Drew Whitman, City Manager

ATTEST:

\_\_\_\_\_  
Lynne Fasone, City Clerk

**CLEMONS, RUTHERFORD &  
ASSOCIATES, INC.**

\_\_\_\_\_  
WITNESS  
PRINT NAME:

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

\_\_\_\_\_  
WITNESS  
PRINT NAME:

**EXHIBIT A**

**HOURLY RATE AND UNIT COST SCHEDULE**



**EXHIBIT B**

TASK ORDER

TASK ORDER NO. \_\_\_\_\_

DATE \_\_\_\_\_, 202\_\_

Reference is made to that certain PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF PANAMA CITY BEACH AND \_\_\_\_\_ RELATING TO PROFESSIONAL **ARCHITECTURAL AND ENGINEERING SERVICES FOR PUBLIC WORKS BUILDING SAFE ROOM AND GENERATOR**, dated \_\_\_\_\_, 202\_\_, (the "Agreement"), the terms, conditions and definitions of which are incorporated herein as if set forth in full. Neither party is in breach of the Agreement.

Pursuant to the Agreement, Architect/Engineer agrees to perform the specific professional appraisal tasks set forth upon incorporated Attachment A, Scope of Services, relating to \_\_\_\_\_.

Architect/Engineer's compensation shall be paid in monthly installments as specified in the Agreement. Architect/Engineer's total compensation for the services to be provided under this Task Order shall be determined as follows:

Pursuant to the Agreement, Architect/Engineer agrees to perform the specific tasks set forth upon incorporated Attachment A, Scope of Services, relating to \_\_\_\_\_

Architect/Engineer's total compensation shall be (check one):

\_\_\_\_\_ a stipulated sum of \$ \_\_\_\_\_ ; or

\_\_\_\_\_ a fee determined on a time-involved basis with a maximum cost of \$ \_\_\_\_\_ :

as set forth upon incorporated Attachment B, Fee Breakdown.

Work shall begin on \_\_\_\_\_, 202\_\_, and shall be substantially completed by \_\_\_\_\_, 202\_\_. There are no additional rights and obligations related to this Task Order other than as specified in the Agreement.

Upon execution of this Task Order by both Architect/Engineer and City, Architect/Engineer is directed to proceed.

IN WITNESS WHEREOF the parties have caused these presents to be executed in their names on the date shown.

Witness:

\_\_\_\_\_  
\_\_\_\_\_

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

Its: \_\_\_\_\_

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

CITY OF PANAMA CITY BEACH, FL

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

City Manager

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

ATTEST:

\_\_\_\_\_  
City Clerk

## EXHIBIT C

### APPENDIX II TO 2 C.F.R. PART 200 (CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS)

1. **Conflict of Interest** - This Contract/Work Order is subject to chapter 112, F.S. The vendor shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a five percent (5%) interest in the Contractor's company or its affiliates.
  
2. **Discriminatory Vendors** – (1) No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance during the term of the contract. (2) Contractor shall disclose if they appear on the discriminatory vendor list. An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134, F.S. may not: 1) Submit a bid on an agreement to provide any goods or services to a public entity; 2) Submit a bid on an agreement with a public entity for the construction or repair of a public building or public work; 3) Submit bids on leases of real property to a public entity; or 4) Be awarded or perform work as a consultant under an agreement with any public entity; or transact business with any public entity.
  
3. **Lobbying** - No funds received pursuant to this Agreement may be expended for lobbying the Federal or State Legislature, the judicial branch, or a federal or state agency. The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed

when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure

4. **Record Retention** – A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is made and shall allow the City, the State, or its authorized representatives access to such records for audit purposes upon request. B. In the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the City, the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims
5. **Diversity** – All contracting and subcontracting opportunities afforded by this solicitation/contract embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. Firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a Minority Business vendor. A list of minority owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
6. **Applicable Laws** - The contractor shall comply with all applicable federal, state, and local rules and regulations in providing services to the Consortium. The contractor acknowledges that this requirement includes, but is not limited to, compliance with all applicable federal, state, and local health and safety rules and regulations and that FEMA financial assistance may be used to fund the contract. As such, the contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
7. **Administrative, Contractual, or Legal Remedies** - Unless otherwise provided in this contract, all claims, counterclaims, disputes, and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.
8. **Patents and Data** - No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the contractor. The grantor agency and the grantee shall possess all rights to invention or discovery, as well as rights to data which may arise as a result of the contractor's services.

- 9. Clean Air Act and Federal Water Pollution Control Act** - (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* (2) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* (3) The contractor agrees to report each violation to the Consortium member and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. (4) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.
- 10. Suspension and Debarment** (1) This contract is a covered transaction for purposes of 2 C.F.R.pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower-tier transaction it enters into. (3) This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Florida Department of Emergency Management, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.” (5) The Contractor’s debarment and suspension status will be validated by the City at the System for Award Management at [www.sam.gov](http://www.sam.gov) and the State of Florida at: [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists](https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)
- 11. Reporting** - The contractor will provide any information required to comply with the grantor agency requirements and regulations pertaining to reporting. It is important that the contractor is aware of the reporting requirements of the City, as the Federal or State granting agency may require the contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the granting agency.
- 12. Access to Records** – (1) The contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA

Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.”

**13. Energy Efficiency Standards** - The contractor agrees to comply with 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.

**14. DHS Seal, Logo, and Flags** - “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.”

**15. No Obligation by Federal Government** - The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**16. Program Fraud and False or Fraudulent Statements or Related Acts** - The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.”

**17. Recovered Materials –**

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

**18. Discriminatory Vendors List:** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list 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 with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

**19. Contracting With Small And Minority Businesses, Women's Business Enterprises, And Labor Surplus Area Firms**

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(c) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

## 20. **Equal Opportunity Clauses**

Compliance with Regulations: The contractor shall comply with the Acts and the Regulations relative to Nondiscrimination in federally assisted programs, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

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

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**21. Contract Work Hours And Safety Standards Act 40 U.S.C. 3702 And 3704, As Supplemented By Department Of Labor Regulations (29 CFR Part 5)**  
Compliance with the Contract Work Hours and Safety Standards Act.

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

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



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

**22. Rights To Inventions Made Under A Contract Or Agreement**

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**23. Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (As Amended)**

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

**24. Duplication of Efforts.**

The contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source. The contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the contractor, whose responsibility it will be to account for it accordingly.

TASK ORDER

TASK ORDER NO. 2023-02

DATE February 23, 2023

Reference is made to that certain PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF PANAMA CITY BEACH AND CLEMONS, RUTHERFORD & ASSOCIATES, INC. RELATING TO PROFESSIONAL **ARCHITECTURAL AND ENGINEERING SERVICES FOR PUBLIC WORKS BUILDING SAFE ROOM AND GENERATOR**, dated February 23, 2023, (the "Agreement"), the terms, conditions and definitions of which are incorporated herein as if set forth in full. Neither party is in breach of the Agreement.

Pursuant to the Agreement, Architect/Engineer agrees to perform the specific professional appraisal tasks set forth upon incorporated Attachment A, Scope of Services, relating to Public Works Building Safe Room and Generator.

Architect/Engineer's compensation shall be paid in monthly installments as specified in the Agreement. Architect/Engineer's total compensation for the services to be provided under this Task Order shall be determined as follows:

Pursuant to the Agreement, Architect/Engineer agrees to perform the specific tasks set forth upon incorporated Attachment A, Scope of Services, relating to \_\_\_\_\_

Architect/Engineer's total compensation shall be (check one):

a stipulated sum of \$ 110,080.00 ; or

a fee determined on a time-involved basis with a maximum cost of \$ \_\_\_\_\_:

as set forth upon incorporated Attachment B, Fee Breakdown.

Work shall begin on \_\_\_\_\_, 202\_\_\_\_, and shall be substantially completed by \_\_\_\_\_, 202\_\_\_\_. There are no additional rights and obligations related to this Task Order other than as specified in the Agreement.

Upon execution of this Task Order by both Architect/Engineer and City, Architect/Engineer is directed to proceed.

IN WITNESS WHEREOF the parties have caused these presents to be executed in their names on the date shown.

Witness:

\_\_\_\_\_

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

\_\_\_\_\_

Its: \_\_\_\_\_

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

CITY OF PANAMA CITY BEACH, FL

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

City Manager

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

ATTEST:

\_\_\_\_\_

City Clerk