

**CITY OF BONITA SPRINGS, FLORIDA  
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (hereinafter referred to as "Agreement") is made and entered into this 1st day of September, 2015 between the City Council of the City of Bonita Springs, a municipality incorporated in the State of Florida (hereinafter referred to as the "City") and Capitol Strategies Consulting, Inc. (hereinafter referred to as the "Consultant").

- I. **DESCRIPTION OF BASIC SERVICES.** Consultant hereby agrees to assist and advise the City with respect to matters and issues before the Florida Legislature and the Executive Branch that are of interest and importance to the City during all interim committee meetings and all legislative sessions scheduled during the Agreement period.

The City will formulate a unified policy statement prior to the beginning of each State Legislative Session. This Policy Statement shall be the instrument used to guide the Consultant in providing services to the City. It shall be the responsibility of the Consultant to facilitate development of this Statement to the City.

**The Strategic Planning Services include:**

- Assist the Council with outlining goals, priorities and a legislative agenda for all legislative sessions;
- Provide the City of Bonita Springs with a first draft of a legislative priority statement and subsequent drafts as necessary and assist City staff in preparation of a final priority statement and shall meet with the City Council to explain the legislative priorities and other relevant legislative issues.
- Attend as many local meetings as may be necessary during formulation of the legislative priority statement and at other times during the year as required by the City;
- Assist with questions or implementation strategies of laws passed during legislative session;
- Communicate with legislators, state agencies and the Governor's Office regarding legislation and appropriations that pass;
- Assist the Council with scheduling meetings with the legislative delegation on issues affecting the Council in preparation for legislative session;
- Work with the Council to identify and assess key procedural steps needed to accomplish the City of Bonita Springs' goals pertaining to specific appropriations and/or policy matters;
- Recommend lobbying efforts and strategies in the upcoming legislative session to achieve agenda goals; and
- Continue to work on any legislative matters assigned by the Council.

**Lobbying and Consulting Services during the legislative session include:**

- Identify and implement strategies regarding proposed legislation during legislative session;
- Prepare timely periodic reports of state legislative initiatives;
- Assist the Council with identifying and determining the feasibility of obtaining specific appropriations for the Council's objectives;
- Assist the Council with identifying and determining the feasibility of obtaining legislation to be filed on behalf of the Council;
- Assist the Council with obtaining bill sponsors;
- Provide the Council with opportunities to interact and directly communicate with elected officials, both statewide and locally;
- Meet with the local legislative delegation prior to the legislative session to present the Council's legislative issues;
- Assist the Council in preparing Lee County legislative delegation hearings;
- Represent the Council and advocate on its' behalf at all regular and special sessions of the Florida Legislature as well as attend legislative committee meetings throughout the year;
- On behalf of the Council, appear before any legislative committees and administrative hearings to provide information regarding the effect that proposed legislation, rules or other government action will have on the Council, and advocate on behalf of the Council that a governmental action take place or be deferred;
- Appear and testify, when requested, before the Florida Cabinet on issues that concern the City;
- Work with the Governor's Office during the bill and budget review process to advocate final passage of positive legislation or appropriations or the veto of negative legislation;
- Provide the Council with weekly written summaries of legislative action affecting the City;
- Provide the Council with a legislative session wrap-up report that summarizes legislative actions in relation to the City's priorities and the effect that approved legislation will have on the City and Council;
- Coordinate with the City Manager and City Attorney on matters of particular City interest during and following the session;
- Work and coordinate the City's legislative efforts with those of the Florida League of Cities and other associations or groups with similar agendas; and
- Report regularly to the City Manager or his designee by way of correspondence, informal bulletins and telephone conference briefings concerning state legislation, appointments and rules which affect Bonita Springs.

**Other Consultant Responsibilities:**

The Consultant must submit to the City such data, reports, records, strategy recommendations, and other documents relating to the activity as the individual members may require, however, the following shall be provided to the City as a whole:

- 1) A biweekly report, beginning two (2) months prior to the start of the legislative session, which lists and briefly describes pre-filed Bills which affect Municipal and County governments.
- 2) A minimum of one report weekly, which shall be required during the legislative session analyzing session activity.
- 3) One legislative session wrap-up report, summarizing legislative activity in relation to the City Policy Statement and the effect that approved legislation will have on the City and Council.

It is the expectation of the City that the Consultant, shall also perform additional duties. These duties shall include, but not be limited to:

- 1) Working on local issues.
- 2) Seeking grant funds and revenues for specific projects and general purpose.
- 3) Acting as the official representative of the City when deemed appropriate.

**II. OBLIGATIONS OF CONSULTANT**

The obligations of the Consultant with respect to all the basic services and additional services authorized pursuant to this Agreement shall include, but not be limited to, the following:

**A. CONSULTANT EXPENSES**

The Consultant shall be responsible for all expenses incurred for the publishing and distribution of the reports, for travel, telephone, and other office expenses, and personal incidentals.

**B. CONTROL OF WORK AND WORKMEN BY CONSULTANT**

Except as otherwise provided herein, Consultant shall be solely responsible for the manner and means in which services are performed under this Agreement, and Consultant shall direct the performance of all clerical assistance engaged in connection with the performance of such services. Consultant shall not subcontract for any of the work contemplated under this Agreement without prior written approval of the City, which shall not be unreasonably withheld. Consultant shall be responsible for and shall superintend the execution of all works covered by the Agreement, either personally or through a representative. If Consultant uses a representative, Consultant agrees that the representative shall be competent and qualified, shall give their personal attention to the work hereunder at all times, and shall represent Consultant with full power to act in all matters pertaining to this Agreement. Consultant shall pay all parties employed by Consultant directly.

**C. RELATIONSHIP OF THE PARTIES**

The parties to this Agreement agree that the Consultant shall provide professional services and that the relationship created by this Agreement is that of owner-independent contractor. The Consultant, in the performance of the services and functions on behalf of the City, shall not be considered an employee of the City, shall be independent thereof, and shall have no claim against the City as to pension, worker's compensation or other employee rights or privileges, granted by the City. City shall not be deemed to assume any liability for the acts, omissions, and/or negligence of the Consultant. The Consultant shall not be deemed to assume any liability for the acts, omissions, and/or negligence of the City.

Persons employed by the Consultant in the performance of services pursuant to this qualification statement shall not be considered employees of the City, shall be independent thereof and shall have no claims against the City as to pension, worker's compensation, unemployment compensation, insurance, salary, wages or other employee rights or privileges granted by operation of law or by the City to its officers and employees.

**D. COMPLIANCE WITH APPLICABLE LAWS**

Consultant shall comply with all applicable federal, state and local laws and regulations, including all state laws regulating lobbyists, specifically, the Ethics provisions in Florida Statutes Chapters 11 and 112, and Rule 34-12, Florida Administrative Code. Consultant and the City shall timely and accurately file any registration documents and reports required by such laws.

#### **E. CONFLICT OF INTEREST**

The Consultant must not represent any private sector City or public sector City where potential conflict of interest would arise. In the event that a successful Consultant believes a potential conflict of interest could occur, Consultant is under an affirmative duty to inform the City thereof, and the City shall determine whether such a conflict exists. This duty shall be operational for so long as the Agreement is in effect.

#### **F. NOT TO DIVULGE CERTAIN INFORMATION**

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. Consultant shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

#### **G. IMMIGRATION LAW COMPLIANCE**

Consistent with Bonita Springs Ordinance No. BSC §36.22, Consultants providing services to the City, as a condition of each Agreement, must use E-Verify to verify the employment of any person hired during the Agreement term by the contractor and assigned by the Contractor to perform work for the City. Before any Agreement with the City is signed, proof of enrollment with E-Verify must be provided. The Consultant acknowledges that she will comply with the Immigration Reform and Control Act of 1986 and is committed to employing only those individuals who are authorized to work in the United States, by hiring employees who properly complete, sign and date the first section of the Immigration and Naturalization Services (INS) Form I-9 and presenting to the Contractor the original necessary document(s) to prove identity and employment eligibility, as verified through E-Verify.

The Consultant must also be responsible for entering into an agreement with each and every vendor and subcontractor that states that vendors, and subcontractors (and their vendors) are independently responsible for its own employment decisions, including hiring, disciplinary and termination decisions, and will comply with the Immigration Reform and Control Act of 1986 and use the E-Verify system for verification. The agreements shall also state that each business is responsible for its own I-9 and other employment record-keeping requirements, and with compliance with all immigration laws.

#### **H. FAILURE TO PERFORM IN A TIMELY MANNER**

Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the City may consider such failure as justifiable cause to terminate this Agreement.

#### **I. COVENANTS AGAINST DISCRIMINATION FOR PROJECTS WITH FUNDS APPROPRIATED FROM BONITA SPRINGS GENERAL REVENUES**

The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to City hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with the state laws in the hiring of sub-consultants.

#### **J. INSURANCE**

For the Insurance Section and Exhibit, Consultant will be referred to as "Vendor". The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in Insurance and Bonding Requirements of this solicitation.

Certificates issued as a result of the award of this solicitation must identify: "For any and all work performed on behalf of the City of Bonita Springs."

The Certificate Holder shall be named as: City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific project description, or must read: "For any and all work performed on behalf of the City of Bonita Springs."

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in Insurance and Bonding Requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the work until at least thirty (30) days beyond the date of completion or warranty period, whichever is greater, or otherwise as specified in this solicitation if longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the City of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor except for non-payment which shall be ten (10) days. The Vendor shall also notify the City, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the City may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the City for such costs within thirty (30) days after demand, the City has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the City and Vendor. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Agreement Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the City renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the City with such renewal certificate(s) shall be considered justification for the City to terminate any and all Agreements

#### **K. DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT**

The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

#### **L. MAINTENANCE OF RECORDS**

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

#### **M. COMPLIANCE WITH PUBLIC RECORDS LAW**

The Consultant must comply with Florida public records laws, specifically to:

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

b) 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 Florida Statutes §119 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. The Consultant agrees to meet these requirements for retaining public records and transfer, at no cost, to the City of Bonita Springs all public records in possession of the Consultant upon termination of the Agreement 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. The City will consider it a breach of Agreement should the Consultant fail to comply with any public records request.

**III. OTHER:**

**A. COST OF SERVICES**

The City shall compensate the Consultant for providing and performing the basic services set forth and enumerated in the Description of Basic Services, as follows:

The City agrees to compensate the Consultant \$60,000 annually, inclusive of all costs, fees, and expenses for all work provided to the City or its members by the Consultant for the services provided under this Agreement for Florida Legislative and Agency Lobbying Services. Payment shall be made by the City on a monthly basis, in equal installments on the last day of each month for the duration of the executed Agreement. Under no circumstances will Consultant be paid from City any contingency payments or bonuses.

The City shall pay the Consultant for all additional enhanced services as requested and authorized by the City and negotiated and agreed to in writing by both parties in this Agreement.

**B. TERM**

This Agreement is effective as of September 1, 2015. The Agreement period is for three years with the option for two (2) renewals for one (1) additional 12-month period each. New Agreement negotiations may commence thirty (30) days prior to the termination of the Agreement period, and may be used to agree to a new Agreement executed prior to termination. Either Party shall have the right to terminate this Agreement upon thirty (30) days written notice without cause. If either Party terminates this Agreement upon thirty (30) days written notice, Consultant will receive compensation for services rendered through the date of termination.

**C. ASSIGNMENT**

Neither Party may assign its interest under this Agreement except with the prior written consent of the other Party, which consent shall not be unreasonably withheld. No assignment shall operate to release the assigning Party from its obligations by the other Party.

**D. INUREMENT**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Nothing contained in this Agreement, express or implied, is intended to confer upon any other person or entity any benefits, rights or remedies.

**E. WAIVER**

No waiver by any Party of one or more defaults by any other Party in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character.

**F. ENTIRE AGREEMENT**

This Agreement represents the entire understanding between the Parties relative to the matters addressed herein. There are no restrictions, premises, warranties or undertakings other than those set forth or referred to herein.

**G. AMENDMENT**

This Agreement may not be amended without the execution of a written document by all Parties hereto.

**H. GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida, without regard to principles of conflict of laws.

**I. ATTORNEYS' FEES**

In the event litigation arising out of or in connection with the enforcement of this Agreement or any dispute arising out of this Agreement, the prevailing party shall be entitled to recover all attorney's fees, costs including expenses incurred in connection with such litigation proceeding, including all costs or fees incurred on appeal.

**J. SEVERABILITY**

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect.

**K. COUNTERPARTS**

This Agreement and any amendments hereto may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, binding on all Parties hereto and the signature of any Party to any counterpart. The Parties shall execute two originals of this Agreement. One original will be retained by the Consultant and the other original shall be retained by the City.

ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated. IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

BY: *Debra Lopez*  
CITY CLERK

CITY OF BONITA SPRINGS CITY COUNCIL  
BY: *[Signature]*  
MAYOR

APPROVED AS TO FORM

BY: *[Signature]*  
CITY ATTORNEY'S OFFICE

ATTEST:

*[Signature]*  
(Witness)

CAPITOL STRATEGIES CONSULTING, INC.

BY: *[Signature]*  
(Authorized Signature)

*[Signature]*  
(Witness)

Partner  
(Title)

CORPORATE SEAL

## Insurance and Bonding Requirements

### Insurance / Bond Type

Worker's Compensation

### Required Limits

Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements.

**The policy shall be endorsed to provide a waiver of subrogation in favor of the City.**

Employer's Liability

\$1,000,000 single limit per occurrence (Workers' Compensation Part B)

Commercial General Liability (Occurrence Form) patterned after the current ISO form

Bodily Injury and Property Damage

\$1,000,000 per occurrence, \$2,000,000 aggregate (Per Project)

\$1,000,000 per occurrence, \$1,000,000 aggregate (Per Project)

\$500,000 per occurrence, \$500,000 aggregate

for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.

Indemnification

To the fullest extent permitted by Florida law, the Contractor/Vendor/Consultant shall be liable and agrees to be liable for and shall indemnify and hold harmless the City of Bonita Springs, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act, omission, error or default by the Contractor/Vendor/Consultant, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. 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 or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City of Bonita Springs.

Automobile Liability

\$ 1,000,000 Each Occurrence; Bodily Injury & Property Damage, Owned/Non-owned/Hired; Automobile Included

\$ 500,000 Each Occurrence; Bodily Injury & Property Damage, Owned/Non-owned/Hired; Automobile Included

Other insurance as noted:

Watercraft \$ \_\_\_\_\_ Per Occurrence

United States Longshoreman's and Harbor Worker's Act coverage shall be maintained where applicable to the completion of the work.

\$ \_\_\_\_\_ Per Occurrence

Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work.

\$ \_\_\_\_\_ Per Occurrence

Property Insurance (Or Builder's Risk) **Full insurable value of the scope of the work**

Pollution \$ \_\_\_\_\_ Per Occurrence

Professional Liability \$1,000,000 per claim and in the aggregate

Umbrella Excess \$ \_\_\_\_\_ Per Occurrence

Railroad Right of Way

Railroad Protective Liability Insurance per occurrence limit of not less than **Two Million Dollars (\$2,000,000)** and aggregate limits of **Six Million Dollars (\$6,000,000)** to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Insured. Seminole Gulf Railway also requires your General Liability policy coverage to be \$5,000,000. They require you to include Seminole Gulf Railway LP and CSX Transportation, Inc. as a named Additional Insured for General Liability and the policy must include the endorsement CG 2417, Contractual Liability and must not exclude underground coverage.

For additional information on their insurance requirements and other requirements such as payment for and scheduling Railroad Inspector / Flagman, please contact Sandy Leathers, VP Engineering, Seminole Gulf Railway LP, 4110 Centerpointe Dr. Suite 207, Ft. Myers FL 33916, Phone # 239-275-6060 and FAX 239-275-0581.

Bid bond

Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with The City Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the City of Bonita Springs on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.

Performance and Payment Bonds

If the box is checked for a project less than \$200,000, a performance bond will be required. For projects in excess of \$200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holder's surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038.

Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide City with certificates of insurance meeting the required insurance provisions.

The City of Bonita Springs must be named as "**ADDITIONAL INSURED, INCLUDING COMPLETED OPERATIONS**" on the Insurance Certificate for Commercial General Liability.

The Certificate Holder shall be named as the City of Bonita Springs. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: "For any and all work performed on behalf of The City of Bonita Springs."

**Thirty (30) Days Cancellation Notice (Except for Non-Payment of Premium which is ten (10) days)** Provided by the Insurance Carrier and/or the Vendor.

Policy shall be endorsed for Thirty (30) Days' Notice of Cancellation by the Insurance Carrier and a copy of the endorsement provided to The City of Bonita Springs.