

CONSULTING SERVICES AGREEMENT

THIS CONSULTING SERVICES AGREEMENT is made this 9th day of September 2019 by and between the City of Sanibel, a Florida municipal corporation, hereinafter referred to as "City" or "Client" and DeLisi, Inc., a Florida corporation, hereinafter referred to as "Consultant."

WHEREAS, the City requires the consulting and advocacy skills and experience of the Consultant in addressing water quality issues and associated legislative reviews and options available to the City and other communities in Southwest Florida; and

WHEREAS, the Consultant is uniquely positioned to assist the City in approaching legislative issues and strategies; and

WHEREAS, the City intends to partner with other Southwest Florida communities addressing water quality issues of local, regional and statewide impact;

NOW, THEREFORE, in consideration of the covenants set forth below and other good and valuable consideration, acknowledged by the City and Consultant to be sufficient and to have been received, the City and Consultant agree as follows:

1. Services.

The Consultant will provide to Client professional consulting, advocacy and lobbyist services including, but not limited to:

- a. Assisting Client and Client's designated personnel in the development and implementation of a coordinated strategy to advocate for and represent the City's legislative, funding and policy priorities before the Florida executive and legislative branches, agencies and offices;
- b. Evaluation of all legislation that may affect water policy applicable to the Client or Southwest Florida;
- c. Coordination with Client's staff and any other consultants, advocates or lobbyists designated by Client in matters related to water quality policies or initiatives. The Consultant shall be available at reasonable times through the legislative session to provide regular updates and tracking of critical items.
- d. Communication with the legislature, legislative staff and executive branch staff as required and participation in regular client strategy meetings and conference calls as determined necessary by Client. Preparation of an "end of Legislative Session Report" providing an analysis of issues addressed, activities engaged in on behalf of Client and any recommendations which Consultant deems helpful to the Client's policy positions or goals.

- e. The Consultant and Client acknowledge that the following specific water policy issues or projects are anticipated to be addressed both on a state and regional level:
- i. Continued funding by the legislature of the C-43 reservoir project, including the addition of a water quality treatment component;
 - ii. Funding for the SFWMD to complete Phase 2 of the Lake Hicpochee Restoration Project;
 - iii. Construction funding for the Boma Water Quality Treatment Project
 - iv. Actions necessary to keep planning and construction of the Everglades Agricultural Area Storage Reservoir Project on track with the timeline specified by the Florida Legislature in 2017;
 - v. Matters relating to Lake Okeechobee operations, particularly as such operations affect water quality and water quantity issues of the City and Southwest Florida;
 - vi. Legislation and advocacy associated with updating the Florida Statewide Unified Stormwater Rule; or development or updating of regional stormwater rules;
 - vii. The promotion and funding of water quality projects within the Caloosahatchee watershed;
 - viii. The establishment of partnerships with economic development and real estate interests in order to promote mutually beneficial water quality projects and initiatives; and
 - ix. Promotion and funding of local water quality projects.

2. Obligations of the Consultant.

- a. The Consultant will perform its responsibilities under this agreement in an ethical and businesslike manner.
- b. The Consultant will be responsible for all lobbyist and Consultant registration and licensing requirements necessary to conduct lobbying activities in the State of Florida and shall advise Client, in writing, of any forms, registrations, or other documentation to be executed by Client for Consultant's services.
- c. The Consultant will submit all reports required by Federal and State lobbying disclosure and/or reporting laws.

3. Obligations of Client.

- a. Assisting with Government Disclosures by the Consultant. Client recognizes that the Consultant may periodically be required to file Federal and State lobbying disclosure forms which may require Client's signature. Client agrees to cooperate in the Consultant's efforts to file these disclosures including, but not limited to, providing timely signatures on disclosure forms provided by the Consultant to Client. To the extent that any entity other than the Client (including but not

limited to real parties in interest or members of any association or coalition) contributes in excess of \$5,000 per quarter toward the Consultant's lobbying activities, and actively participates in the planning, supervision, or control of the Consultant's lobbying activities, the Client agrees to provide full information about any such entity to Consultant as soon as reasonably possible, and agrees to provide any changes or updates to such information within seven (7) days of such changes having occurred.

- b. Expenses. No reimbursement for expenses is authorized under this Agreement.
- c. Non-payment. Client acknowledges that any failure to timely remit payments due under this Agreement constitutes a material breach hereof.

4. Compensation.

- a. Monthly Retainer. No Monthly Retainer is included in this Agreement.
- b. Payment Schedule. The Client (which intends to coordinate with various local government partnering agencies) agrees to pay the amount of \$20,000 for Consultant's services described in this Agreement. Any additional compensation shall be renegotiated and shall require an amendment to this Agreement. The Consultant shall be paid 90% of the total fee, pursuant to Consultant's written invoices, in equal amounts monthly from December 1, 2019 through May 31, 2020. A total of 10% of the contract amount will be held until the "end of Legislative Session Report" is submitted to the Client, which report shall be due and submitted to Client within 15 days after the last day of the 2020 regular Legislative Session. At that time, the Client will process the final payment following its normal payment policy.

5. Confidential Information.

Subject to the Public Records Law requirements, the Consultant and the Client otherwise agree that they will hold in confidence any information whatsoever concerning the activities or business of the other, unless such disclosure is (a) mutually agreed upon in writing; (b) reasonably required in connection with the fulfillment of the disclosing Party's obligations hereunder, and then is made only to the minimum extent necessary to carry out such obligations; (c) information which had generally become known to the public other than through the disclosure thereof by the disclosing Party; (d) to attorneys, accountants or other professional advisors of the disclosing Party under confidentiality agreements substantially identical to this one; or (e) pursuant to compulsory legal process or Client's governmental laws, procedures or requirements.

6. Public Records.

The City of Sanibel is a public agency subject to Chapter 119, Florida Statutes, the Public Records Law. As a service provider to the City, Contractor is also subject to the Public Records

Law pursuant to Section 119.0701, Florida Statutes, and shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- a. Keep and maintain public records required by the City in order to perform the service. This shall include all records relating to Contractor's services provided to the City and includes "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics or means of transmission."
- b. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- 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. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

As required by Section 119.0701(2)(a), the following contact information is provided to the Contractor in the format required by statute:

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

**SANIBEL CITY CLERK
800 DUNLOP ROAD
SANIBEL, FLORIDA 33957
(239) 472-3700
pamela.smith@mysanibel.com**

The Contractor acknowledges that the City of Sanibel cannot and will not provide legal advice or business advice to Contractor with respect to its obligations pursuant to this section related to public records. The Contractor further acknowledges that it will not rely on the City of Sanibel or its City Clerk or City Attorney to provide such business or legal advice, and that Contractor has been advised to seek professional advice with regard to public records matters addressed by this Agreement. The Contractor acknowledges that failure to comply with Florida law and this Agreement with respect to public records shall constitute a material breach of this Agreement and grounds for termination.

7. Duration and Termination.

- a. This Agreement shall commence on October 1, 2019 and continue through March 31, 2020, provided, however, the City Manager is hereby authorized to extend the Term of this Agreement for up to an additional two months in the event that Consultant's services are required for legislative follow-up or any extended or additional Legislative Session. Payment for such services shall be the same monthly fee as paid to Consultant during the regular session.
- b. Either Party may terminate this Agreement for cause upon the other Party's breach or default of any provision of this Agreement unless such breach or default is corrected or cured within (30) days after receipt of written notice thereof from the other Party.
- c. Either Party may terminate this Agreement for cause immediately, in the event that the other Party: (i) is the subject of a voluntary or involuntary petition in bankruptcy; (ii) is or becomes insolvent; or, (iii) ceases to pay its obligations or conduct business in the normal course.
- d. Client may terminate the Agreement for convenience (for any reason) upon the provision, in writing, of no fewer than thirty (30) days' written notice to Consultant. Termination pursuant to this paragraph does not release Client or the Consultant from any ongoing disclosure or reporting requirements either might have under this Agreement or any amendments hereto or of any obligation of Client to provide compensation for any and all Consultant services provided to Client up to the time of termination.

8. Notices.

All notices required or authorized by this Agreement shall be given in writing and shall contain a reference to this Agreement. All such notices shall be deemed effective when they are either served by personal delivery or sent, postage paid, by registered or certified mail to the receiving Party at the following address:

If to the Consultant: Daniel DeLisi, President

DeLisi, Inc.
520 27th Street
West Palm Beach, FL 33407
Attn: Dan Delisi

If to the Client: Judith A. Zimomra, City Manager
City of Sanibel
800 Dunlop Road
Sanibel, FL 33957

Or such other address as either Party shall hereafter designate in writing to the other pursuant to the notice procedure set forth in this section.

9. Waiver.

The failure of either Party to enforce at any time or for any period of time any provision hereof shall not be construed to be a waiver of such provision of the right thereafter to enforce each and every provision.

10. Assignment.

Neither this Agreement nor any right or obligation hereunder may be assigned or transferred in whole or in part by either Party without the prior written consent of the other Party. No attempt to assign or transfer the Agreement in violation of this provision shall be valid or binding.

11. Relationship of Parties.

The Consultant is an independent contractor. All persons employed by the Consultant in the performance of the Agreement shall perform under the control and direction of the Consultant and shall under no circumstances be considered employees of the Client.

12. Non-Solicitation of Consultant Employees.

During the life of this Agreement and for six months after termination of this Agreement, the Client agrees not to hire or solicit for hire, as employee or independent contractor, any person currently employed or engaged by the Consultant who provides any services to the Client during the life of this Agreement, without the prior written consent of the Consultant.

13. Waiver of Solicitation.

The City Council finds that DeLisi, Inc. through its primary consultant, Daniel DeLisi, is uniquely qualified to provide the services set forth in this Agreement and further finds that the services required by this Agreement are required immediately. Therefore, to the extent

that they exist, any solicitation or selection requirements that might otherwise be applicable to Consultant's services are hereby waived.

14. Integration and Modification.

This document, including any attached Schedule(s), contains the entire agreement between the Parties relating to the subject matter hereof. All prior agreements and all prior negotiations are superseded by this Agreement. This Agreement may not be modified except by a written document signed by an authorized person on behalf of each Party.

15. Severability.

Should any provision of this Agreement be held to be void, invalid, or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in force and effect and the invalid provision shall be deemed modified to the least degree necessary to remedy such invalidity.

16. Headings.

The Section Headings herein are for convenience only and shall have no force or effect upon the construction or interpretation of any provisions hereof.

17. Interpretation.

This Agreement has been entered into after review and negotiation of its terms by the Parties hereto, who have both had the opportunity to consult with counsel. The Agreement shall be fairly interpreted in accordance with its terms and without any strict construction in favor or against either Party. No ambiguity or omission shall be construed or resolved against either Party on grounds that this Agreement or any provision thereof was drafted or proposed by such Party.

18. Choice of Law.

This Agreement, including its drafting, construction, and performance, shall be governed and construed in accordance with the laws of the State of Florida without regard to any choice of law or conflict of law provisions.

City of Sanibel

By: _____

Judith A. Zimomra
City Manager

Date: _____

DeLisi, Inc.

By:  _____

Daniel Delisi
President

Date: 10-1-19

ATTEST: _____
Pamela Smith, City Clerk

Approved as to Form:  9/4/19
John D. Agnew, City Attorney Date

APPROVED FINANCIAL SUFFICIENCY
 9/4/19
Steven C. Chaipel, Finance Director