

City of Marco Island Florida



AGREEMENT FOR PROFESSIONAL SERVICES

**Water and Wastewater Cost of Service Rate Study
December 21, 2010**

Burton & Associates
200 Business Park Circle, Suite 101
St. Augustine, Florida 32095
P (904) 247-0787

and

CITY OF MARCO ISLAND
50 Bald Eagle Drive
Marco Island, Florida 34145
P (239) 389-5000

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT made this 21st day of December, 2010 by and between the City Council of the City of Marco Island, Florida, a municipal corporation of the State of Florida, located within Collier County, hereinafter referred to as "OWNER," and Burton & Associates, a Florida Corporation, authorized to do business in the State of Florida, whose business address is 200 Business Park Circle, Suite 101, St. Augustine, Florida 32095, hereinafter referred to as "CONSULTANT."

WITNESSETH

WHEREAS, OWNER desires to obtain professional services from CONSULTANT concerning a Water and Wastewater Cost of Service Rate Study; and

WHEREAS, professional services to be provided and performed by CONSULTANT pursuant to this Agreement are being procured and have been negotiated by OWNER in accordance with applicable provisions of Florida Statute 287.055 for professional engineering services; and

WHEREAS, the OWNER has heretofore qualified and selected CONSULTANT pursuant to and in accordance with the consultant selection provisions set forth in Florida Statute 287; and

WHEREAS, the OWNER desires to engage the CONSULTANT to perform certain professional services pertinent to such work in accordance with this AGREEMENT and the Water and Wastewater Cost of Service Rate Study-RFQ #10-055 Cost Proposal submitted by Burton & Associates dated December 16 which is attached to this agreement, the presentation by Burton & Associates on December 8th which was recorded and is included by reference and per verbal agreements made during the December 15th and December 20, 2010 conference calls which are documented in Exhibit B.

WHEREAS, the CONSULTANT has submitted a formal proposal for provision of professional services contemplated by Owner under this Agreement; and

WHEREAS, the CONSULTANT represents that it has expertise in the type of professional services that will be required by the OWNER.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and provisions contained herein, the parties hereto agree as follows:

ARTICLE ONE

CONSULTANT'S RESPONSIBILITY

1.1. CONSULTANT shall provide to OWNER professional services concerning a Water and Wastewater Cost of Service Rate Study as more particularly described in this Agreement.

1.2. The Basic Services to be performed by CONSULTANT hereunder are those set forth in this Agreement and any Supplemental Agreements which may be prepared and issued by the OWNER, and executed by the parties hereto, subsequent and pursuant to execution of the Agreement. The compensation to be paid unto CONSULTANT by the OWNER for the specific services and tasks as detailed in the attached cost proposal and further defined in Exhibit B is \$49,826.00.

1.3. The CONSULTANT agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, Collier County, and the City of Marco Island, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONSULTANT pursuant to this Agreement.

1.4. The CONSULTANT agrees that, when the services to be provided hereunder relate to a professional service, which under Florida Statutes requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified and appropriately licensed personnel to provide such services.

1.5. CONSULTANT agrees to employ and designate a Project Manager in writing for Owner's approval, within five (5) calendar days after receiving a Notice to Proceed. The Project Manager shall be authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating, and managing all aspects of the services to be provided and performed by CONSULTANT under this Agreement and Supplemental Agreements thereto. Within five (5) calendar days from the date of the Notice to Proceed issued by OWNER to CONSULTANT, the CONSULTANT shall deliver

to the OWNER a written statement executed by duly authorized officers of the CONSULTANT, acknowledging that the Project Manager shall have full authority to bind and obligate the CONSULTANT on all matters arising out of or relating to this Agreement and all Supplemental Agreements thereto. The CONSULTANT agrees that the Project Manager shall devote whatever time is required to satisfactorily manage the services to be provided and performed by the CONSULTANT hereunder. The person selected by the CONSULTANT to serve as the Project Manager shall be subject to the prior approval and acceptance of the OWNER.

1.6. CONSULTANT agrees to promptly remove and replace the Project Manager, with or without cause, within fourteen (14) calendar days of receipt of a written directive from the OWNER. This provision also applies to all other personnel employed or retained by the CONSULTANT, or any sub-consultants or any personnel of any such sub-consultants or subConsultants engaged by the CONSULTANT to provide and perform services or work pursuant to the requirements of this Agreement, whom the OWNER shall direct in writing to be removed and replaced with or without cause.

1.7. The CONSULTANT has represented to the OWNER that it has expertise in the type of professional services that will be required hereunder. The CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the OWNER'S review and approval and shall be in accordance with generally accepted standards of professional practice in the State of Florida, and endeavor to be in accordance with all published laws, statutes, ordinances, codes, rules, regulations, and requirements of all governmental agencies which regulate or have jurisdiction over the Owner's project(s) or the services to be provided and performed by CONSULTANT hereunder. In the event of any conflicts in these requirements, the CONSULTANT shall notify the OWNER in writing of each existing or arising conflict, and will utilize its professional judgment to advise OWNER regarding resolution of the conflict.

1.8. CONSULTANT agrees not to divulge, furnish, or make available to any third person, firm or organization, without OWNER'S prior written consent, or unless incident to the proper performance of the 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 services to be rendered by

CONSULTANT herein, and CONSULTANT shall require all of its employees, agents, sub-consultants, and sub-Contractors to comply with the provisions of this paragraph.

ARTICLE TWO

ADDITIONAL SERVICES OF CONSULTANT

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services above the services specified in the cost proposal, The cost of these Additional Services will be paid for by OWNER under individually negotiated Supplemental Agreements based in accordance with the hourly wage rates set forth on pages 5 and 6 of the December 16, 2010 Cost Proposal which is attached hereto and incorporated herein. The following shall be considered as Additional Services within the general scope of the project(s) and tasks contemplated under this Agreement.

- 2.1. Training of designated City Staff on the use of the FAMS-XL modules. The license for use is provided at no additional charge to the City as per the cost proposal.
- 2.2. Services resulting from significant/major changes in the general scope, extent, or character of the study.

ARTICLE THREE

OWNER'S RESPONSIBILITIES

3.1. The OWNER shall designate in writing a Project Coordinator to act as OWNER'S representative with respect to the services to be rendered under this Agreement and all authorized Supplemental Agreements (hereinafter referred to as the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to CONSULTANT'S services for a project or task. However, unless approved in advance by the project steering committee, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CONSULTANT that would have the effect, or be interpreted to have the effect, of modifying or changing in any way the following contract matters:

- (a) The time the CONSULTANT is obligated to commence and complete all such services; or

- (b) The amount of compensation the OWNER is obligated or committed to pay the CONSULTANT.

3.2. The Project Coordinator shall:

- (a) Review and make appropriate recommendations on all requests submitted by the CONSULTANT for payment for services and work provided and performed in accordance with this Agreement;
- (b) Provide all criteria and information requested by CONSULTANT that is available and to provide that information in a timely manner.
- (c) Upon request from CONSULTANT, assist CONSULTANT by placing at CONSULTANT'S disposal all available information in the OWNER'S possession pertinent to the study including existing drawings, specifications, previous reports and any other data relative to the design, cost of operations, physical structure or budgets and,
- (d) Arrange for access to and make all provisions for CONSULTANT to enter City facilities as may be required to perform the services to be provided by CONSULTANT under this Agreement.

3.3 CONSULTANT acknowledges that access to any work site, to be arranged by OWNER for CONSULTANT, may be provided during times that are not the normal business hours of the CONSULTANT.

ARTICLE FOUR

TIME

4.1. The period of service of this AGREEMENT shall be 90 days from the Consultant's receipt of requested data. The CONSULTANT shall be allowed to complete all services authorized prior to the termination of time.

4.2. The period of service for additional requested tasks is negotiated at the time of authorization to perform those additional tasks and shall be documented in the approval to proceed.

4.3. Should CONSULTANT be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the reasonable control of

CONSULTANT, and not due to its own fault or negligence, including, but not restricted to, acts of God or of public enemy, acts of government or of the OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then CONSULTANT shall notify OWNER in writing within five (5) working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which CONSULTANT may have had to request a time extension for professional services.

4.4. Except as noted in Section 4.3, no interruption, interference, inefficiency, suspension, or delay in the commencement or progress of CONSULTANT'S services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve CONSULTANT of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONSULTANT'S sole remedy against OWNER will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

4.5. Should the CONSULTANT fail to commence, provide, perform, or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the OWNER hereunder, the OWNER at its sole discretion and option may withhold any and all payments due and owing to the CONSULTANT until such time as the CONSULTANT resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the OWNER'S satisfaction that the CONSULTANT'S performance is or will shortly be back on schedule.

ARTICLE FIVE COMPENSATION

5.1 This is a lump sum cost for service contract and is inclusive of out-of-pocket expenses. The Owner will compensate the CONSULTANT for the services satisfactorily performed under this agreement.

5.2 Should the City request additional services beyond those specified in the attached cost proposal, the following conditions will apply:

5.2.1 Reimbursable expenses shall be invoiced for the actual expenditures incurred with no additional mark-up by the CONSULTANT as follows:

- a. Expenses of transportation and living when traveling in connection with each authorized project. over the professional services under this Agreement.
- b. Invoiced expenses of reproductions, postage and handling of drawings and specifications, including duplicate sets at the completion of professional services for the Owners review and approval.
- c. Expenses of special overtime work requiring higher than regular rates, when authorized by the Owner.

5.2.2 Non-reimbursable costs include computers, Computer-Aided Design and Drafting Systems and associated appurtenances. These systems are considered to be part of the normal overhead of a modern operation and associated costs should be included in the firm's overhead factor.

5.2.3 Total compensation for all services and expenses shall not exceed the maximum fees reflected in the approved Service Authorization(s) without written approval by Owner.

5.2.4. Total compensation for all services and expenses authorized under this Agreement, shall not be exceeded and additional payments cannot be processed by OWNER unless Supplemental Agreements are executed by the parties if so authorized by OWNER.

5.2.5 Payments for Basic Services, Additional Services, subcontract services, and reimbursable expenses as defined above, shall be made upon Owner's review and approval of CONSULTANT'S itemized invoice.

5.2.6 Records of reimbursable expenses and expenses pertaining to Basic Services and Additional Services shall be kept on a generally recognized accounting basis, and shall be made available and automatically provided to the Owner as part of periodic invoice submittals.

5.2.7 Lump sum method of compensation. The OWNER agrees to pay CONSULTANT compensation for a well-defined level of services, based on a lump sum. The CONSULTANT shall submit all the appropriate details to justify the lump sum value, including task description; labor hour by subtask, expenses by subtasks, and billing rate used to determine lump sum.

5.2.8 Billing rate method of compensation. The OWNER agrees to pay CONSULTANT compensation for services rendered, based upon the actual hours performed by the employees of the CONSULTANT, times an hourly rate established in the December 16, 2010 Cost Proposal.

ARTICLE SIX

OWNERSHIP OF DOCUMENTS

6.1. Upon completion or termination of this Agreement, all records, documents, tracings, plans, specifications, maps, evaluations, reports, computer assisted design or drafting disks, and other technical data, other than working papers, prepared or developed by CONSULTANT under this Agreement shall be delivered in (a) paper and (b) electronic form to and will become the property of OWNER. CONSULTANT, at its own expense, may retain copies for its files and internal use. OWNER agrees to indemnify and hold harmless CONSULTANT with respect to any claim, loss, or damage, including attorneys fees incurred by CONSULTANT due to the OWNER'S use of said records, documents, tracings, plans, specifications, maps, evaluations, reports, computer disks, and other technical data on some other work or project, unless such use is authorized in advance by CONSULTANT. OWNER acknowledges that the

CONSULTANT'S work under this Agreement produces instruments of professional services, not products.

6.2. With respect to and in consideration of the indemnification provided by OWNER in paragraph 6.1. above, CONSULTANT agrees to pay to OWNER \$10.00, the sufficiency and receipt of which is acknowledged by Owner through the signing of this Agreement.

ARTICLE SEVEN

MAINTENANCE OF RECORDS

7.1. CONSULTANT will routinely keep and maintain adequate records and supporting documentation, which concern or reflect its services hereunder. The records and documentation will be retained by CONSULTANT for a minimum period of five (5) years from the date of termination/expiration of this Agreement or the date on which all services are completed, and accepted by OWNER, whichever date is the later. OWNER, or any duly authorized agents or representatives of OWNER, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the ensuing five (5) year period noted above, provided however, that such activity shall be conducted only during normal business hours.

ARTICLE EIGHT

INDEMNIFICATION, INSURANCE AND SAFETY, GOVERNMENTAL COMPLIANCE AND HAZARDOUS MATERIALS

8.1 Indemnity

8.1.1 To the maximum extent permitted by Florida law, Consultant shall indemnify and hold harmless the City, and their respective officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional misconduct of Consultant or anyone employed or utilized by the Consultant in the performance of this contract and any Work Order issued pursuant thereto. In addition to the duty to indemnify and hold harmless the City as required by this paragraph, Consultant shall have the duty to defend the City and its respective officers and employees from all claims, damages,

losses or costs, including, but not limited to, reasonable attorneys' fees to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Consultant or anyone employed or utilized by the Consultant in the performance of this contract and any Work Order issued pursuant thereto. The duty to defend under this Paragraph is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Consultant, City, and 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 Consultant. Consultant's obligation to indemnify and defend under this Paragraph will survive the expiration or earlier termination of this contract and any Work Order issued pursuant thereto until it is determined by final judgment that any action against the City or an indemnified party for any matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

8.1.2 In claims against any person or entity indemnified under this Article by an employee of Consultant, anyone directly or indirectly employed by Consultant, or anyone for whose acts the Consultant may be liable, the indemnification obligations shall not be limited to any limitation on amount or types of damages, compensation or benefits payable by or for the Consultant under workers' compensation acts, disability benefits acts or other employee benefit acts.

8.1.3 The obligations of Consultant under this Article shall not extend to the liability of the City's architect, its agents, or employees, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (b) the giving of or the failure to give direction or instructions by the architect, its agents or employees, provided such giving or failure to give is the sole cause of the injury or damage.

8.1.4 Consultant shall procure contractual liability insurance to cover its obligation under this article.

8.2 Insurance

8.2.1 During the entire term of this contract and any extensions thereof, Consultant shall obtain and maintain at Consultant's expense, the insurance coverages

required by the terms of the contract and in accordance with the requirements and limits set forth therein. Such insurance shall be kept in full force and effect until acceptance of the Work by the City, except as otherwise required hereby. By obtaining the insurance required by this Article, Consultant shall in no manner lessen, diminish or affect Consultant's obligations under this contract and any Work Order issued pursuant thereto. Such insurance shall be maintained with insurance companies both acceptable to the city and licensed to transact business and issue insurance in the State of Florida.

8.2.2 Before proceeding with any Work under the appropriately issued Work Order, Consultant shall furnish to the City, a Certificate(s) of Insurance, and such endorsements thereto as requested by the City, and otherwise in form satisfactory to the City, as necessary to certify and evidence the existence of the required insurance policies, coverages, terms, limits and conditions required hereby. A certificate that contains wording that in any way reduces or lessens the insurer's obligations or that does not fulfill any of the requirements hereof shall not be acceptable, and will be returned for resubmission by Consultant's insurer.

8.2.3 If Consultant fails or neglects to maintain the required insurance, or provide a satisfactory certificate thereof, or should any insurance be terminated or cancelled (prior to satisfactory replacement insurance being obtained) or should any insurance carrier provide notice to the City of cancellation or termination (prior to satisfactory replacement insurance being obtained), then in any such case the City shall have the right, but not the duty, at Consultant's expense, to obtain replacement insurance coverage from other insurance companies, and deduct from any sums that may be due or become due to Consultant, any and all premiums paid by the City for and on account of such insurance. Consultant shall be liable for any and all costs and damages incurred by the City as a result of Consultant's failure or neglect to maintain the minimum insurance limits as required hereunder.

8.2.4 On each Project the "indemnitee" shall be listed as additional insured on the insurance policies required hereunder, except for Consultant's worker's compensation policy. Consultant's insurance policies shall be endorsed to provide that the coverage

shall be primary and noncontributory over any other insurance maintained by the City. Consultant's obligation to provide insurance pursuant to this article shall be independent of all other obligations under this contract.

8.2.5 In addition to the insurance required by the contract, Consultant shall provide any insurance it deems necessary to protect its interest in the Work and any insurance required to be maintained by Consultant under applicable law.

8.3 SAFETY, GOVERNMENTAL COMPLIANCE AND HAZARDOUS MATERIALS

8.3.1 Consultant shall be responsible for safety of its operations and its employees and shall take all reasonable safety precautions with respect to its Work. Consultant in addition to its own standards shall comply will all safety policies and procedures initiated by Consultant for the Project, including Consultant's policy regarding drugs, alcohol and controlled substances, and shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property, including, but not limited to, the Federal Occupational Safety and Health Act (OSHA). Consultant shall immediately notify City of any injury to any of the Consultant's employees. Consultant shall require its personnel to attend any safety meetings the City might conduct and direct Consultant to attend.

8.3.2 Consultant agrees that in performing its Work, it will not create, use or dispose of any hazardous chemicals or substances in an unlawful or hazardous manner and shall be solely responsible for the lawful, proper and safe handling, storage and removal of all hazardous wastes, chemicals and substances which are introduced to the site, or removed from the site, by Consultant's operations. The term "hazardous wastes, chemicals or substances" shall mean those materials and substances prohibited, proscribed, or the use of which is controlled by any agency of the federal government or the applicable state or local agency having jurisdiction of such matters. In the event Consultant encounters material reasonably believed to be hazardous wastes, chemicals or substances, Consultant shall immediately stop work in the area affected and report

such condition to City in writing. Consultant shall comply with all federal, state and local regulations dealing with the use, storage or disposal of all hazardous wastes, chemicals and substances. Consultant shall be responsible for any and all claims and damages resulting from its use, handling, storage, removal and disposal of such hazardous wastes, chemicals or substances from the Project, and will indemnify, defend and hold City harmless from any and all liability associated with such use, handling, storage, removal and disposal including all associated attorney's fees and costs and costs of all cleanup operations wherever and whenever required by any governmental authority or City.

ARTICLE NINE

SERVICES BY CONSULTANT'S OWN STAFF

9.1. The services to be performed hereunder shall be performed by CONSULTANT'S own staff of employees, unless otherwise authorized in writing by the OWNER. The employment of, contract with, or use of the services of any other person or firm by CONSULTANT, as an independent consultant or otherwise, shall be subject to the prior written approval of the OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between the OWNER and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against the OWNER beyond such as may otherwise exist without regard to this Agreement.

ARTICLE TEN

WAIVER OF CLAIMS

10.1. CONSULTANT'S acceptance of a final payment for each project authorized under this Agreement shall constitute a full waiver of any and all claims, except for insurance company subrogation claims by it against OWNER, arising out of this Agreement or otherwise related to the work and services, except those previously made in writing and identified by CONSULTANT as unsettled at the time of the final payment. Neither the acceptance of CONSULTANT'S services nor payment by OWNER shall be deemed to be a waiver of any of OWNER'S rights against CONSULTANT.

ARTICLE ELEVEN

TERMINATION OR SUSPENSION

11.1. CONSULTANT shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement, in whole or in part as further set forth in this section, for any of the following reasons: (a) failure to begin work or services under the Agreement within the time specified under a Notice to Proceed; or (b) failure to properly and timely perform the services to be provided hereunder or as directed by OWNER; or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONSULTANT or by any of CONSULTANT'S principals, officers, or directors; or (d) failure to obey laws, ordinances, regulations, or other codes of conduct; or (e) failure to perform or abide by the terms or spirit of this Agreement; or (f) for any other just cause. The OWNER may so terminate this Agreement in whole or in part by giving the CONSULTANT seven (7)-calendar day's advance written notice.

11.2. If, after Owner submits a notice of termination of this Agreement as provided for in paragraph 11.1. above, it is determined for any reason that CONSULTANT was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against CONSULTANT provided for in paragraph 11.1., then the notice of termination given pursuant to paragraph 11.1. shall be deemed to be the notice of termination provided for in paragraph 11.3. below and CONSULTANT'S remedies against OWNER shall be the same as and limited to those afforded CONSULTANT under paragraph 11.3. below.

11.3. OWNER shall have the right to terminate this Agreement, in whole or in part, without cause upon seven (7) calendar day's written notice to CONSULTANT. In the event of such termination for convenience, CONSULTANT'S recovery against OWNER shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by CONSULTANT that are directly attributable to the termination, but CONSULTANT shall not be entitled to any other compensation or further recovery against OWNER, including, but not limited to, anticipated fees or profits on work and services not required to be performed.

11.4. Upon termination, the CONSULTANT shall deliver to the OWNER all original papers, records, documents, drawings, and other materials set forth and described in this Agreement.

11.5. The OWNER shall have the power to suspend all or any portions of the services to be provided by CONSULTANT hereunder upon giving CONSULTANT two-(2) calendar days prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, the CONSULTANT'S sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in Article Four herein.

ARTICLE TWELVE

TRUTH IN NEGOTIATION REPRESENTATIONS

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

ARTICLE THIRTEEN

CONFLICT OF INTEREST

13.1. CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. CONSULTANT further represents that no persons having any such interest shall be employed to perform those services.

ARTICLE FOURTEEN

MODIFICATION

14.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

ARTICLE FIFTEEN

NOTICES AND ADDRESS OF RECORD

15.1. All notices required or made pursuant to this Agreement to be given by the CONSULTANT to the OWNER shall be in writing and shall be delivered by hand or by

United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following OWNER'S address of record:

Bob Creighton
Purchasing/ Contracts Manager
City of Marco Island
50 Bald Eagle Drive
Marco Island, Florida 34145
Phone: (239) 389-5011
Fax: (239) 389-4359

15.2. All notices required or made pursuant to this Agreement to be given by the OWNER to the CONSULTANT shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONSULTANT'S address of record:

Burton & Associates
200 Business Park Circle, Suite 101
St. Augustine, Florida 32095

15.3. Either party may change its address of record by written notice given to the other party in accordance with requirements of this Article.

ARTICLE SIXTEEN

MISCELLANEOUS

- 16.1. CONSULTANT in representing OWNER shall promote the best interest of OWNER and the citizens of the City of Marco Island, and shall assume towards OWNER a duty of the highest trust, confidence, and fair dealing.
- 16.2. No modification, waiver, suspension, or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.
- 16.3. This Agreement is not assignable, in whole or in part, by CONSULTANT without the prior written consent of OWNER.
- 16.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.
- 16.5. Headings of the Articles, Schedules, Parts, and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions in such Articles, Schedules, Parts, and Attachments.
- 16.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace, and nullify any and all prior written or oral agreements or understandings relating to the matter set forth herein, and any such prior agreements or understandings shall have no force or effect whatsoever on this Agreement.

ARTICLE SEVENTEEN

APPLICABLE LAW

- 17.1 Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought forth in the appropriate Florida State Court in Collier County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT For Professional Engineering Services the day and year first written above.

Attest:

Burton & Associates

BY: MICHAEL E. BURTON
Print Name

[Signature]
(SIGNATURE)

PRESIDENT
(TITLE)

Attest:

BY: [Signature]
Corporate Secretary or Witness

BY: [Signature]
(SIGNATURE)
(CORPORATE SEAL)

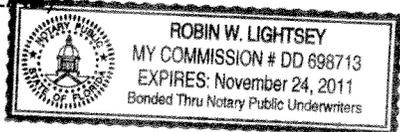
STATE OF: Florida

COUNTY OF: St. Johns

The foregoing instrument was acknowledged before me this 22 day of Dec. 2010, by Michael E. Burton, as President of Burton and Associates Inc., a Florida corporation, on behalf of the corporation, who is personally known to me or has produced _____ as identification.

Robin W. Lightsey
Notary Public
Printed Name Robin W. Lightsey
My Commission Expires: Nov. 24, 2011

(SEAL)



Attest:

THE CITY OF MARCO ISLAND

BY: [Signature]
Laura M. Litzan
City Clerk

BY: [Signature]
James Riviere
City Manager

Date 12/27/2010

Date: 12/27/10

SCHEDULE A

CITY OF MARCO ISLAND
CONSULTANT'S EMPLOYEE HOURLY RATE SCHEDULE
Agreement for Professional Services

Water and Wastewater Cost of Service Rate Study

Contract No. 10-055

Project Principal	\$ 205.00
Project Director	\$ 185.00
Project Consultant	\$ 115.00
Clerical	\$ 40.00

Data Derived from December 16, 2010 Cost Proposal

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END OF SCHEDULE A

**SCHEDULE B
EXHIBIT B
INSURANCE REQUIREMENTS**

Effective October 1, 2006, all entities wishing to perform work for the City of Marco Island will be required to comply with the following minimum insurance requirements.

- COMMERCIAL GENERAL LIABILITY LIMITS \$ 2,000,000 AGGREGATE
(MUST INCLUDE CONTRACTUAL LIABILITY) \$ 1,000,000 EACH
OCCURRENCE

\$ 1,000,000 PRODUCTS-
COMP/OP

\$ 1,000,000 PERS & ADV INJURY
- AUTOMOBILE LIABILITY \$ 1,000,000 COMBINED SINGLE
LIMIT

(INCLUDE HIRED AND NON-OWNED
LIABILITY)
- WORKER'S COMPENSATION STATUTORY
- EMPLOYER'S LIABILITY \$ 1,000,000 EACH ACCIDENT
\$ 1,000,000 DISEASE-POLICY
LIMIT

\$ 1,000,000 DISEASE-EACH
EMPLOYEE
- THE CITY OF MARCO ISLAND, FLORIDA MUST BE NAMED AS AN
ADDITIONAL INSURED UNDER THE GENERAL LIABILITY POLICY.
CONSULTANT'S AND/OR SUBCONSULTANT'S GENERAL LIABILITY SHALL
BE ON A PRIMARY AND NON-CONTRIBUTORY BASIS.

THE ABOVE REFLECTS THE MINIMUM REQUIREMENTS FOR WORKING WITH THE CITY OF MARCO ISLAND, FLORIDA. ANY REQUIREMENTS FOUND IN A PARTICULAR JOB'S CONTRACT THAT ARE OF A HIGHER STANDARD WILL PREVAIL.

THE CITY OF MARCO ISLAND, FLORIDA MUST BE GIVEN A CERTIFICATE OF INSURANCE SHOWING THAT THE ABOVE REQUIREMENTS HAVE BEEN COMPLIED WITH. AS OF 10/1/06, A CURRENT CERTIFICATE OF INSURANCE MUST BE IN THE CITY'S OFFICES BEFORE THE WORK BEGINS. THE CERTIFICATE OF INSURANCE MUST REMAIN CURRENT IN ORDER FOR THE CITY TO ISSUE PAYMENTS TO THE CONSULTANT OR SUB CONSULTANT.

OTHER INSURANCE

Due to the special nature of some projects (such as working on, under or above water), additional insurance coverage may be required.

If the below is checked, that specified insurance is also required.

 n/a Other Insurance as indicated below:
a. Longshoreman & Harborworkers **\$ Statutory Limits**
b. Jones Act: Either under the Protection
& Indemnity coverage or under separate
cover in the limits of not less than **\$ 1,000,000**

POLLUTION AND REMEDIATION LIABILITY INSURANCE

Required by this Agreement? Yes No

(1) Contractor/Professional/Consultant shall maintain:

- a. Pollution and Remediation Liability Insurance including the cost of defense during the term of this agreement and for a period of five (5) years following the completion of the Project as outlined in this Agreement. Such coverage shall apply specifically to the contracting services/scope of work as outlined in this Agreement and shall include but not be limited to Pollution Legal Liability (legal liability arising out of the discharge, dispersal, release, seepage, migration or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gasses, hazardous materials, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water including groundwater at, under or emanating from the project);
- b. Remediation Legal Liability/Expense (expenses incurred for or in connection with the investigation, monitoring, removal, disposal, treatment or neutralization of a condition arising from the discharge, dispersal, release, seepage, migration or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gasses, hazardous materials,

waste materials or other irritants, contaminants or pollutants into or upon land the atmosphere or any watercourse or body of water including groundwater at, under or emanating from the Project, as well as the cost to repair or replace real or personal property damaged during the course of Remediation Expense in order to restore the property to the condition it was in prior to the Remediation Expense to the extent required by Federal, State, Local or Provincial laws, regulations or statutes or any subsequent amendments thereof); and

- c. Transportation Legal Liability/Expense – Pollution Legal Liability or Remediation Legal Liability/Expense arising out of the movement by the Consultant/professional/Consultant of product or waste of the Owner to its final delivery point as specified under this Agreement.

(2) Limits Required:

_____	Each Loss or Expense	\$1,000,000
	Annual Aggregate	\$2,000,000

_____	Each Loss or Expense	\$2,000,000
	Annual Aggregate	\$4,000,000

The Annual Aggregate limit shall apply separately to this project.

- (3) If coverage is provided on a “Claims Made” form as opposed to an “Occurrence” form, the retroactive date for coverage shall be no later than the commencement date of the Project and shall provide that, in the event of cancellation or non-renewal, the Extended Reporting Period (Discovery Period) for claims shall be no less than three (3) years.
- (4) The City of Marco Island Board of City Commissioners shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the Owner.
- (5) This policy shall include contractual liability coverage to contemplate the indemnity provisions of this agreement.
- (6) Consultant shall ensure that all sub –Consultants or sub-contractors comply with the same insurance requirements that he is required to meet. The same Consultant shall provide the City with certificates of insurance meeting the required insurance provisions.
- (7) The City of Marco Island must be named as “**ADDITIONAL INSURED**” on the Insurance Certificate for Commercial General Liability.
- (8) The City of Marco Island shall be named as the Certificate Holder. NOTE: The “Certificate Holder” should read as follows:

The City of Marco Island
50 Bald Eagle Drive
Marco Island, FL 34145

(9) Thirty (30) Days Cancellation Notice is required.

END OF SCHEDULE B

Exhibit A

Water and Wastewater Cost of Service Rate Study

Contract No. 10-055

Burton & Associates

December 16, 2010

Water and Wastewater Cost of Service Rate Study-
RFQ # 10-055 Cost Proposal

INSERT

Exhibit A insert consists of 6 pages

December 16, 2010

Mr. Bob Creighton
Purchasing/ Contracts Manager
City of Marco Island
50 Bald Eagle Drive
Marco Island, FL 34145

Re: Water and Wastewater Cost of Service Rate Study - RFQ #10-055
Cost Proposal

Dear Mr. Creighton:

Burton & Associates is delighted to have been selected to conduct the above referenced Cost of Service Rate Study. As requested, this letter presents our proposal to complete the requested scope of services, including a definitive scope of work, deliverables, a time estimate for completion of the deliverables and our cost proposal. Also, as requested in a supplemental communication from Dr. Trotter that you forwarded to me, this proposal includes an explanation of the methodology that we intend to use in apportionment of costs during rate design on an equivalent residential unit basis. This proposal also includes adjustments to our proposal of December 14th which were agreed upon in a conference call this morning with Dr. Jim Riviere and other City representatives.

Also, as requested in the conference call, I am preparing, and will send under separate cover, general terms of a license agreement for use of the FAMS-XL© modules (our proprietary model referenced in our Proposal). As also requested in the conference call, I will include in the letter an estimate of the cost of periodic updates of the Rate Study if the City were to contract with Burton & Associates for those services.

I have prepared and enclosed on the following pages a detailed Project Work Plan and Cost Estimate Schedule (Schedule) to address the scope of services desired by the City as we understand it from your RFQ and from our discussions with the selection committee during our recent presentation and the above referenced conference call.

The enclosed Schedule includes two primary work elements (Work Element I: Cost Allocation, Rate Design and Impact Fees, and Work Element II: Presentation to Utility Advisory Board (UAB) and City Council and Final Report) to specifically address your required scope of service. The Schedule shows the detailed task plan that we will follow to complete each work element, estimated man-hours by consultant for each sub-task, the

estimated cost based upon the estimated hours by consultant and the billing rates in the header of the schedule and the City's responsibility related to each sub-task.

The scope of work included in Work Elements I and II includes the conduct of a base extra capacity cost allocation and rate design to accomplish the following:

1. Classify functional expenses to cost components.
2. Classify infrastructure investment/debt service by major cost categories.
3. Classify operating expenses by class of user.
4. Allocate classified costs to each class of service customer, capacity and commodity.
5. Derive class of service unit costs.
6. Derive unit cost for designing class of service rates.
7. Develop and recommend a rate structure that will be in compliance with bond issues and current CIP and which will be revenue sufficient for the current and short range operations of the utilities.
8. Develop Impact Fees.

In addition, we anticipate that the basis for allocating costs to customer classes and ultimately to customers will be a unit based approach, where equivalent residential units (ERCs) will be the basis for apportioning the fixed monthly charge to customers and will also be the basis for determining differentials in inclining block rate usage blocks by customer class for those classes included in the inclining block rates. Under this method we anticipate master metered residential multi-family units (by unit type) will be assigned an ERC equivalency factor based upon historical demands per unit compared to single family residential unit historical demands. In addition, we anticipate that ERC equivalencies for non-residential customers will be determined based upon meter/connection size using either AWWA guidelines or actual historical demands by meter size within the City of Marco Island's non-residential classes.

In summary the enclosed Schedule shows the following:

<u>Work Element</u>	<u>Estimated Man-hours</u>	<u>Estimated Cost</u>
Work Element I		
Water and Wastewater Cost Allocation, Rate Design and Impact Fees	250	\$36,400
Work Element II		
Presentations to UAB and City Council and Final Report	86	\$13,426
Total Requested Scope of Services	336	\$49,826

In addition, deliverable products for each work element of the Study are presented below along with a schedule for delivery of each deliverable. A detailed schedule of all project

milestones will also be prepared, discussed and adjusted as required at the project kick-off meeting.

- Work Element I – Water and Wastewater Cost Allocation, Rate Design and Impact Fees
1. Data Request – 2 days from notice-to-proceed
 2. Assumptions and Results Workbook after each interactive work session – 30 to 75 days from receipt of requested data
 3. Cost Allocation Spreadsheet – 45 days from receipt of requested data
 4. Schedule of Alternative and Recommended Rates and Charges, Including Detailed Customer Impact Schedules – 60 days from receipt of requested data
 4. Comparative Survey of Rates in Peer Communities – 60 days from receipt of requested data

- Work Element II - Presentations to UAB and City Council and Final Report
1. PowerPoint presentation of the preliminary results of the study. – 70 days from receipt of requested data
 2. Make presentations to the UAB and City Council of preliminary results – 75 days from receipt of requested data
 3. Draft Report -80 days from receipt of requested data
 4. Final Draft Report - 85 days from receipt of requested data
 5. Present Final results to UAB and City Council - 85 days from receipt of requested data
 5. Final Report - 90 days from receipt of requested data

Optional work elements, which were presented in the work plan in our original Proposal and more specifically in the Cost Proposal dated December 14, 2001, are not included in this Cost Proposal as agreed in the above referenced conference call with Dr. Riviere and the other City representatives who participated in the call. Also, as discussed in the above referenced conference call, we understand that our original Proposal and our oral presentation will be included by reference in the contract for this project.

Based upon the above referenced summary and the enclosed Schedule, we propose to complete Work Elements I and II (which include all scope items requested in your RFP and agreed upon in the conference call referenced in the first paragraph of this letter) for a not to exceed cost of **\$49,826**, inclusive of out-of-pocket expenses. We are prepared to proceed on a lump sum, fixed fee basis or on an actual time and expenses basis using the hourly rates by consultant category as shown in the header of the enclosed Schedule.

If you or any City representatives have any questions or would like to discuss this cost proposal do not hesitate to contact me by telephone or e-mail. I can best be reached this week at my cell phone, which is (904) 923-1466 and I receive e-mails also through my cell phone at mburton@burtonandassociates.com.

Burton & Associates

200 Business Park Circle, Suite 101 • St. Augustine, Florida 32095 • Phone (904) 247-0787 • Fax (904) 241-7708
E-mail: mburton@burtonandassociates.com

Again, we are delighted to have been selected, and we look forward to successfully negotiating a contract and to working with the City on this important project.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael E. Burton", with a long, sweeping flourish extending to the right.

Michael E. Burton
President



The City of Marco Island, Florida
WATER AND WASTEWATER COST OF SERVICE RATE STUDY
PROJECT WORK PLAN & COST ESTIMATE

Work Element	PROJECT TASKS	ESTIMATED MAN-HOURS					Total Project	City of Marco Island Responsibility
		Burton & Associates						
		Project Principal	Project Director	Project Consultant	Project Consultant	Client		
		1005	908	915	915	\$0		
Work Element 1	Cost Allocation, Rate Design and Impact Fees							
Task 1	Project Initiation - Initiate the Project							
1.1	Preparation of data requirements list for study.	0	1	1	0	0	2	
1.2	Conduct kick-off meeting to discuss scope, issues, data requirements, timeline, and any key changes.	2	2	2	0	0	6	
1.3	Review of information/data provided and request clarification/additional data as required.	0	1	2	0	0	3	
Task 2	Cost Allocation - Perform a Detailed Cost-of-Service Analysis for the Water and Wastewater System:							
2.1	Identify all costs/revenue requirements associated with the provision of water and wastewater service for FY 10/11.	0	1	2	0	0	3	
2.2	Allocate costs/revenue requirements to service areas, services, and to functional cost components, fixed and variable cost components, and customer classes based upon appropriate allocation criteria.	2	16	40	0	0	58	
2.3	Review cost allocation model and criteria with City representatives.	3	3	3	0	0	9	
2.4	Make adjustments based upon input from City representatives and finalize cost of service allocation model.	1	4	8	0	0	13	
Task 3	Rate Design - Develop Water and Wastewater Rates, Fees and Charges:							
3.1	Develop user fees/rates:							
a.	Perform a diagnostic evaluation of the current rate design and identify adjustments to be considered in the development of rates including discussion with City representatives of rate design trends and philosophies as they relate to the City's objectives and unique characteristics.	3	3	0	0	0	6	
b.	Load billing history data into our FAMS® rate model and create a bill frequency analysis.	0	4	12	0	0	16	
c.	Conduct a revenue test to ensure accuracy of billing data.	0	3	8	0	0	11	
d.	Set up the rate model to calculate rates in conformance with the cost allocation results of Task 2 and the diagnostic rate design evaluation in 3.1.a.	0	8	24	0	0	32	
e.	Run the model and prepare rate structure scenarios for 1) "revenue neutral" rates (revenue equal to the revenue being produced by the current rates) and 2) rates that would include any additional revenue that may be necessary to meet the FY 10/11 revenue requirements identified in Sub-task 2.1.	0	2	6	0	0	8	
f.	Review results with consulting team and adjust as required.	2	3	4	0	0	9	
g.	Meet with City representatives in an interactive work session to review preliminary results.	4	4	4	0	0	12	
h.	Make adjustments as required based upon input from City representatives in the prior sub-task and distribute preliminary rate and customer impact schedules for review by City representatives.	0	3	8	0	0	11	
i.	Meet with City representatives in a second interactive work session to review adjusted results and determine final alternative rate schedules.	3	3	3	0	0	9	
3.2	Conduct and Compile a Comparative Rate Survey of at least 12 peer communities.	0	1	2	0	6	9	
Task 4	Develop Water and Wastewater Impact Fees (Capital Cost Recovery Fees):							
a.	Obtain and review fixed asset records for all major system components.	0	1	3	0	0	4	
b.	Prepare reproduction cost schedule of fixed assets by major system component.	0	2	8	0	0	10	
c.	Review CJP with City representatives to determine portion of projects for expanded capacity and portions associated with renewal and rehabilitation.	0	1	1	0	0	2	
d.	Load appropriate data into our FAMS® impact fee module, adjust and calibrate and produce preliminary results in terms of impact fee per unit of capacity (ERC).	0	3	8	0	0	11	
e.	Review results with consulting team and adjust as required.	1	2	4	0	0	7	
f.	Link impact fee module of FAMS® with the cost allocation and rate design module set-up in Task 2 to evaluate the integrated effects of changes in the impact fees upon user fee rate revenue requirements.	1	1	2	0	0	4	
g.	Meet with City representatives in an interactive work session to review preliminary results.	1	1	2	0	0	4	
	--- Included in Meeting in Task 3.1.g ---							



The City of Marco Island, Florida
WATER AND WASTEWATER COST OF SERVICE RATE STUDY
PROJECT WORK PLAN & COST ESTIMATE

BURTON & ASSOCIATES

PROJECT TASKS	ESTIMATED MAN-HOURS					City of Marco Island Responsibility
	Burton & Associates					
	Project Principal \$26	Project Director \$186	Project Consultant \$115	Project Clerk \$40	Total Project	
<p>h. Make adjustments as required based upon input from City representatives in the prior sub-task.</p> <p>i. Meet with City representatives in a second interactive work session to review adjusted results and determine final Impact Fee schedule.</p>	0	2	4	0	6	NA
<p>--- Included in Meeting in Task 3.1.1 ---</p>						Meeting
ESTIMATED MAN-HOURS - WORK ELEMENT I	20	70	154	6	250	
ESTIMATED FEE - WORK ELEMENT I	\$4,100	\$12,950	\$17,710	\$240	\$35,000	
ESTIMATED PROJECT COST - WORK ELEMENT I					\$1,400	
					\$36,400	
Work Element II Presentations to Utility Advisory Board and City Council and Final Report						
Task 4						
4.1 Prepare presentation.	1	2	2	0	5	NA
4.2 Make adjustments based upon input from City representatives.	0	1	0	0	1	Review
4.3 Attend meeting with UAB and City representatives and present the preliminary results.	2	2	2	0	6	Attend
4.4 Make adjustments based upon input from UAB and City representatives.	1	2	4	0	7	NA
4.5 Make adjustments as required based upon input from the meetings in the prior sub-task.	1	2	2	0	5	NA
4.6 Attend a workshop presentation to the City Council as a whole.	2	2	2	0	6	Attend
Task 5						
5.1 Final Report - Prepare a Report of the Results of the Study						
5.1 Prepare a Draft Report of the Results of the Study.	1	4	16	0	21	NA
5.2 Review Draft Report with City representatives and Management and prepare a Final Draft Report.	1	2	4	0	7	Review
5.3 Present the results of the Study to the UAB and City representatives and City Council.						
a. Meet with the UAB and City representatives to present the results of the Rate Study.	2	2	2	0	6	Attend
b. Make adjustments to the analyses as required based upon UAB and City representatives direction.	0	1	3	0	4	Review
c. Meet with the City Council to present the results of the Rate Study.	2	2	2	0	6	Attend
d. Make adjustments to the analyses as required based upon City Council direction.	0	1	2	0	3	Review
e. Attend one rate hearing for adoption of final recommended rates.	2	2	0	0	4	Attend
5.4 Prepare Final Report of the Results of the Rate Study.	0	1	2	2	5	NA
ESTIMATED MAN-HOURS - WORK ELEMENT II	15	26	43	2	86	
ESTIMATED FEE - WORK ELEMENT II	\$3,075	\$4,810	\$4,945	\$80	\$12,910	
ESTIMATED EXPENSES - WORK ELEMENT II					\$516	
ESTIMATED PROJECT COST - WORK ELEMENT II					\$13,426	
Total Full Scope of Services						
TOTAL ESTIMATED MAN-HOURS - TOTAL PROJECT	35	96	197	8	336	
TOTAL ESTIMATED FEE - TOTAL PROJECT	\$7,175	\$17,760	\$22,655	\$320	\$47,910	
TOTAL ESTIMATED EXPENSES - TOTAL PROJECT					\$1,916	
TOTAL ESTIMATED PROJECT COST - TOTAL PROJECT					\$49,826	

Exhibit B

Water and Wastewater Cost of Service Rate Study

Documentation of the December 15 conversation between Dr. Jim Riviere, Jerry Gibson and Mike Burton and a Conference call between the selection committee and Mike Burton at 3:45pm on December 20, 2010.

Items/areas to incorporate into the scope of work:

- 1) A timeline which indicates when activities and milestones are scheduled.

December 15: Burton will prepare and present at the kick-off meeting.

December 20: The committee further clarified the need for a detailed activity milestones and meeting schedules. The committee also indicated that, when possible, a status meeting (via teleconferencing) should be held on the Thursday before each City Council meeting to enable City Council to report the progress of the study.

- 2) Define additional deliverables to include the mathematical model, and training as to how the model is used.

December 15: Burton will present a license agreement together with identifying training requirements at or before the kick-off meeting.

December 20: Mike stated that there will be no cost for that license but that the City users of that model must be trained. He suggested that Kevin Krueger would be the best trainer. Three to four days of training would be needed and the cost of that training would be \$ 115 per hour plus travel expenses. Additionally, Mike cautioned the team that while the model would have protected cells to (try to) protect the formulas in certain cells, it may be possible to corrupt that data and suggested that prior to using the data generated by the model for anything other than internal "what if" simulations, Burton and Associates must be given the opportunity to review the program and output to insure that it has been correctly used.

- 3) Confirm that study will address how ERC equivalency is assigned to condominiums "e.g. by unit type", or "historical demand" but not average use.

December 15: Burton confirms that will be identified in the study.

December 20: The Committee communicated that it was their desire to have, at least, two views or approaches to compare. The first would be the "blank sheet of paper" approach utilizing Burton expertise and experience and the second might be to utilize the work of the UAB, utilizing any new or additional data, as a comparative view.

- 4) The proposal emphasizes water but not wastewater. Confirm that wastewater is emphasized in the cost of service study.
December 15: Burton confirms wastewater emphasis in the study.
December 20: Mike again confirmed that both water and wastewater are part of the study.
- 5) Confirm that the definitions of customer classes are included in the cost of services study.
December 15: Confirmed
- 6) The cost proposal does not mention Fire, your presentation does. Confirm that Fire is included in the cost of service study.
December 15: Confirmed by Burton
December 20: Again confirmed that Fire, or the capacity to provide fire suppression, water will be included.
- 7) Incorporate weekly/bi-weekly conference calls for project updates.
December 15: Agreed by Burton, referenced timeline (above) integrated with meetings.
- 8) Confirm that Impact Fees are included in the study. see note# 1
December 15: Impact fees were NOT INCLUDED. However the contractor agreed to remove the one-on-one meetings with councilors and instead include impact fees as part of the study and still perform for under \$50,000.
December 20: Some concern was indicated as to whether or not there would be impact fees calculated for both water and wastewater. Mike confirmed that both water and wastewater are included.
- 9) Eliminate one-on-one councilor meetings (work element II, task 4.5).
December 15: Agreed
- 10) Homogenize meeting schedules for broad spectrum of attendees.
December 15: Agreed
- 11) Abide by a communications policy wherein data flow and direction outside of meetings comes from designated persons, both COMI and Burton.
December 15: Agreed
- 12) Incorporate Burton and Associates proposal into the contract by reference as though fully stated therein.
December 15: Agreed
- 13) Incorporate Burton and Associates oral presentation dated December 8, 2010 into the contract by reference as though fully stated therein.
December 15: Agreed

14) Confirm that Burton can take multiple approaches viz. methodologies such as base plus usage; and non-residential to ERC equivalencies.
December 15: Confirmed

15) Confirm that all classes should be looked at for Block Rates.

December 15: Agreed

December 20: Confirm that Burton will consider Block Rates for all classes and reclaimed water will be included in the study. It was agreed that reclaimed water would be included in the study but Mike suggested that you may not wish to apply Block rates to all classes for a myriad of reasons.

16) Can you itemize what is meant by "other services" and "other costs"?

December 15: NO

17) Confirm Burton's understanding that when the term "city staff" is used, it applies to the members of the COMI cost of service team.

December 15: Agreed

December 15: Note # 1 - Impact fees are included in your presentation and are excluded in your cost proposal.

December 20 additional instructions:

18) Committee requested that Burton proceed with preparing and submitting the data requests even before the contract has been completed. The contract will be provided shortly.