

*City of Marco Island Florida*



AGREEMENT FOR PROFESSIONAL SERVICES

**Water and Wastewater Cost of Service Rate Study  
Side-by-Side Analysis of M54 and M1 Approaches  
November 14, 2010**

**Contract 12-005**

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 14<sup>st</sup> day of November, 2011 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 additional services to the Water and Wastewater Cost of Service Rate Study described as Work Element 1: Conduct Side-by-Side Analysis of M54 and M1 Approaches, and further described in detail on the Proposal dated November 14, 2011, attached as Exhibit A; 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 additional professional services pertinent to such work in accordance with this AGREEMENT and as an extension of the previously defined services of the Water and Wastewater Cost of Service Rate Study-RFQ #10-055. A Proposal submitted by Burton & Associates dated November 14, 2011 is attached to this agreement (Exhibit A).

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 additional services under 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 per the attached proposal 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 is \$32,310.00.

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.

**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:

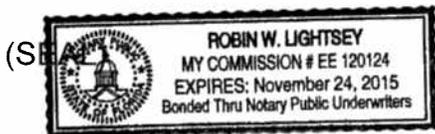
BY: Eric Gran  
Corporate Secretary or Witness

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

STATE OF: Florida

COUNTY OF: St. Johns

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of Nov. 2011, by Michael Burton as President of Burton & 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, 2015

Attest:

**THE CITY OF MARCO ISLAND**

BY: [Signature]  
Laura M. Litzan  
City Clerk

BY: [Signature]  
James Riviere  
City Manager

Date: 11/29/11

Date: 11/29/11

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

Burton & Associates Proposal for Additional Services

dated November 14, 2011

November 14, 2011

Dr. Jim Riviere  
 City 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  
 Additional Services Proposal

Dear Dr. Riviere:

As requested, I have prepared an Additional Services Proposal to include two work elements as follows:

**Work Element 1** will include a side-by-side analysis of Marco Island and Marco Shores rates based upon an approach supported by AWWA manual M54 and by AWWA manual M1 (the method used in the original study).

**Work Element 2** will include the development of a ten year financial plan which will evaluate the sufficiency of the revenues in each year of the projection period and will determine annual rate adjustments that will be necessary to meet all of the utility's requirements in each year of the projection period. The revenue requirement for FY 2012 will be input back through the rate models in Work Element 1 to derive rate schedules that will generate the revenue requirement for FY 2012 determined in the financial plan.

I have developed a Project Work Plan and Cost Estimate Schedule (Schedule) which is enclosed, which presents our proposed work plan and cost estimate for each of these Work Elements. I have also prepared a summary of the results of these options which is presented in the table below.

**The City of Marco Island, Florida**  
 Water and Sewer Cost of Service Rate Study  
**Additional Services Cost Summary**

Tasks	Estimated Man-Hours	Estimated Fee
<b>Work Element 1: Conduct Side-by-Side Analysis of M54 and M1 Approaches</b>	170	\$32,310
<b>Work Element 2: Develop Long Term Financial Plan (Revenue Sufficiency Analysis for FY 2012 through FY 2016)</b>	120	\$17,600

The Schedule also includes a project milestone schedule in the rightmost column. Based upon this milestone schedule, the key dates for interactive work sessions with City staff and for one-on-one meetings with City Council Members are as follows:

**The City of Marco Island, Florida**  
 Water and Sewer Cost of Service Rate Study - Additional Services  
**Milestone Schedule**

Milestones	Dates
<b><u>Work Element 1: Conduct Side-by-Side Analysis of M54 and M1 Approaches</u></b>	
City staff Interactive Work Session - Review preliminary results of side-by-side rate analysis	12/21/11
One-on-One meetings with Council Members to review preliminary results of side-by-side rate analysis	1/4 & 1/5/11
<b><u>Work Element 2: Develop Long Term Financial Plan (Revenue Sufficiency Analysis for FY 2012 through FY 2016)</u></b>	
City staff Interactive Work Session - Review preliminary results of the financial plan and final rates	01/25/11
One-on-One meetings with Council Members to review preliminary results of financial plan and final rates	1/31 & 2/1/11
City Council Meeting to present final results	02/13/11
First reading of rate ordinance for consideration of adopting proposed rates	03/12/11
Second reading of rate ordinance for consideration of adopting proposed rates	03/26/11

As we discussed, this approach will ensure that 1) the City has the flexibility to include policies and phase in considerations in the M54 rate design approach that are difficult to accomplish with the M1 approach, and 2) the rates adopted reflect the revenue requirements for FY 2012 in the context of a five year financial plan that considers all of the funding requirements of the utility. In this way the utility will be on the path to long term sustainability with a rate structure that is fair and equitable while reflecting policy and phase in considerations desired by the City Council.

I trust that this proposal is consistent with our discussions. If you have any questions, or would like to discuss, don't hesitate to call me. We look forward to working with you on completing the original project and on these important work elements.

Very truly yours,



Michael E. Burton  
 President



The City of Marco Island, Florida

WATER AND WASTEWATER COST OF SERVICE RATE STUDY - ADDITIONAL SERVICES

PROJECT WORK PLAN & COST ESTIMATE

BURTON & ASSOCIATES

PROJECT TASKS	ESTIMATED MAN-HOURS					Estimated Date Complete
	Burton & Associates					
	Project Principal \$205	Project Director \$185	Project Consultant \$115	Clerical \$40	Total Project	
Rates ----->						
<b>Work Element 1: Conduct Side-by-Side Analysis of M54 and M1 Approaches</b>						
<b>Task 1 Update Models with New Revenue Requirement and Billing Data Data Update</b>						
1.1 Prepare data request.	1	2	0	0	3	Complete
1.2 Conference call with City staff re data request.	1	1	0	0	2	Complete
1.3 Review data received from City staff, prepare exception emails and make final review to ensure receipt of all data.	0	3	0	0	3	Complete
1.4 Conference call to review new capital improvement program project allocations. <b>M54 Model Initialization</b>	1	1	0	0	2	Complete
1.5 Create new versions of Marco Island and Marco Shores rate design models and revise revenue input and rate calculations to remove individual class revenue requirements.	2	12	0	0	14	11/22/11
1.6 Add additional charge calculation for potential acquisition debt charge.	1	4	0	0	5	11/22/11
1.7 Adjust rate design and perform model adjustments to reflect appropriate rate structure elements and unit equivalencies. <b>M1 Model Update</b>	4	12	0	0	16	11/22/11
1.8 Update M1 model with new revenue requirement and billing data.	0.5	8	0	0	8.5	11/22/11
1.9 Re-calculate cost allocations and rate design based upon new revenue and billing data.	8	40	0	0	48	12/14/11
1.10 Adjust all charts and output to reflect FY2012 implementation.	0.5	2	0	0	2.5	12/14/11
1.11 Conduct internal review with consulting team.	2	2	0	0	4	12/14/11
1.12 Make adjustments as required.	1	4	0	0	5	12/21/11
1.13 Prepare COSA Workbook and two individual rate design work books.	1	4	0	0	5	12/21/11
1.14 <b>Side-by-Side Comparative Analysis</b>						
1.15 Create a revenue allocation by customer class comparison of the M1 approach and alternative M54 approach for each service area and service.						
1.16 Create comparative FY 2112 rate and customer impacts for each alternative approach.	1	4	0	0	5	12/21/11
	1	8	0	0	9	12/21/11
<b>Task 2 Conduct Interactive Work Session with City Staff</b>						
2.1 Interactive work session with City staff and presentation to the UAB.	8	8	0	0	16	12/21/11
2.2 Make adjustments as required.	2	4	0	0	6	12/20/11
2.3 One-on-One meetings with Council members.	8	8	0	0	16	1/4 & 1/5/11
<b>Task 3 Prepare and Present Report</b>						
3.1 Prepare a Draft Report of the Results of the Study.						
a. Draft text of Draft Report	--- Included in Original Project ---					
b. Prepare schedule for inclusion in Draft Report.	--- Included in Original Project ---					
c. Complete text and schedules into Draft Report and review complete Draft Report.	--- Included in Original Project ---					
d. Make adjustments to Draft Report as required.	--- Included in Original Project ---					
3.2 Review Draft Report with City staff and Management and presentation to the UAB.	--- Included in Original Project ---					
	See WE 2					
	See WE 2					
	See WE 2					
	See WE 2					
	See WE 2					



**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				Total Project	Estimated Date Complete
	Burton & Associates					
	Project Principal \$206	Project Director \$185	Project Consultant \$115	Clerical \$40		
3.3 Present the results of the Study to City representatives and City Council. a. Meet with the City Council to present the results of the Rate Study. b. Make adjustments to the analyses as required based upon City Council direction. c. Attend one rate hearing for adoption of final recommended rates. 3.4 Prepare Final Report of the Results of the Rate Study.	Rates →					See WE 2 See WE 2 See WE 2 See WE 2 See WE 2
ESTIMATED MAN-HOURS - WORK ELEMENT 1	43	127	0	0	170	
ESTIMATED FEE - WORK ELEMENT 1	\$8,815	\$23,495	\$0	\$0	\$32,310	



# 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				Total Project	Estimated Date Complete
	Burton & Associates					
	Project Principal \$305	Project Director \$196	Project Consultant \$115	Clerical \$40		
<p><b>Work Element 2: Develop Long Term Financial Plan (Revenue Sufficiency Analysis for FY 2012 through FY 2016)</b></p> <p><b>Task 1 Obtain and Review Financial Data, CIP and Water and Wastewater Demands</b>            1.1 Prepare data request, review data and discuss clarifications with City staff.            1.2 Review the Water and Wastewater Utility Systems CIP and consult with City staff regarding a final schedule of capital projects to be completed during the projection period.            1.3 Prepare water and wastewater customer and demand analysis to determine projected growth, trends in average and peak usage patterns and total projected water and wastewater system customers, ERCs and usage.</p> <p><b>Task 2 Adjust FAMS-XL® as required to accurately reflect the City's assumptions and flow of funds and input all data, information and assumptions into FAMS-XL® and produce preliminary output.</b>            2.1 Input all data, information and assumptions into FAMS-XL® and make any necessary adjustments to reflect the City's flow of funds, policies or assumptions to produce preliminary output to include a ten (10) year financial management plan.            2.2 Produce FAMS-XL® output to include a ten (10) year financial management plan which will include the following:            o Capital Improvements Program:            - Project listing by year, including up to three (3) alternative water supply scenarios            - Optimum funding source by project by year            - Borrowing program, as applicable:              o Amount              o Timing              o Annual debt service            o Revenue Sufficiency Analysis:            - Annual revenue and expense projections:              o Alternative revenue/funding sources              o General fund allocations, as applicable              o Capital requirements funding from impact fees, revenues, reserves and borrowing.            - Annual plan of rate revenue adjustments for each utility to provide sufficient revenues:              o Include consideration of annual price indexing              o Identification of just in time rate revenue increases and alternative rate plans such as equal annual percentage increases, etc.</p>	0	1	0	0	1	TBD
	0	0.5	1	0	1.5	TBD
	0	0.5	1	0	1.5	TBD
	1	8	24	0	33	TBD
	0	1	2	0	3	TBD



# The City of Marco Island, Florida

WATER AND WASTEWATER COST OF SERVICE RATE STUDY - ADDITIONAL SERVICES

## PROJECT WORK PLAN & COST ESTIMATE

**BURTON & ASSOCIATES**

PROJECT TASKS	ESTIMATED MAN-HOURS					Estimated Date Complete
	Burton & Associates					
	Project Principal \$305	Project Director \$135	Project Consultant \$115	Clerical \$40	Total Project	
<ul style="list-style-type: none"> <li>- Preparation of projected operating statements, cash flow analyses, fund balances and sources and uses of funds for each year in the projection period.</li> <li>o Sources and Uses of Funds Analysis</li> <li>o Funds Analysis:               <ul style="list-style-type: none"> <li>- Spend down limits (minimum reserve requirements) by fund</li> <li>- Beginning and ending fund balances by fund by year</li> </ul> </li> <li>Review, cross check and adjust the FAMS-XL model to ensure that the results accurately reflect the City's assumptions, flow of funds and other variables.</li> </ul>	4	4	4	0	12	TBD
<p><b>Task 3</b></p> <p><b>3.1</b> Conduct Interactive Work Sessions with City Staff Conduct an interactive work session with City staff to review the preliminary results of the revenue sufficiency analysis and schedule of proposed rate revenue adjustments.</p> <p><b>3.2</b> Make adjustments based upon input from City staff.</p> <p><b>3.3</b> Prepare an "Assumptions and Results Workbook" to reflect the assumptions included in the analysis and the results of the analysis and distribute to City staff for review and comment.</p> <p><b>3.4</b> Make adjustments based upon input from City staff.</p> <p><b>3.5</b> Meet with City Council Members in One-on-One Meetings</p> <p><b>3.6</b> Make adjustments based upon input from City staff.</p> <p><b>3.7</b> Prepare an "Assumptions and Results Workbook" to reflect the assumptions included in the analysis and the results of the analysis and distribute to City staff.</p>	4	4	6	0	14	1/25/2011 TBD
<p><b>Task 4</b></p> <p><b>4.1</b> Prepare and Present Report</p> <p><b>4.2</b> Prepare a Draft Report of the Results of the Study.</p> <p><b>4.3</b> Review Draft Report with City staff and Management and prepare a Final Draft Report. Present the results of the Study to City representatives and City Council.</p> <ol style="list-style-type: none"> <li>a. Meet with the City Council to present the results of the Rate Study and ask to set a hearing date and authorize notice to customers of the hearing.</li> <li>b. Make adjustments to the analyses as required based upon City Council direction.</li> <li>c. Attend one rate hearing for adoption of final recommended rates to be effective 4/1/11.</li> </ol> <p><b>4.4</b> Prepare Final Report of the Results of the Rate Study.</p>	1	4	8	0	13	2/2/11 2/3/11
<p>ESTIMATED MAN-HOURS - WORK ELEMENT 2</p> <p>ESTIMATED FEE - WORK ELEMENT 2</p>	15	35	70	0	120	
	\$3,075	\$6,475	\$8,050	\$0	\$17,600	