

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (the "Agreement") is between **City of Sanibel** (the "Client") a Florida Municipality with its principal place of business at 800 Dunlop Road, Sanibel, FL 33957 and **Dutko Poole McKinley, LLC** (the "Firm") a Delaware limited liability company with its principal place of business at 106 East College Avenue, Suite 1100, Tallahassee, FL 32301. For purposes of this Agreement, the Client and the Firm are referred to collectively as "the Parties."

AGREEMENT

1. Services.

Under the terms of this Agreement, the Firm will provide to the Client professional consulting services including, but not necessarily limited to:

- Provide analysis and advice on state legislation affecting the Client;
- Develop and implement a state legislative strategy on behalf of Client;
- Identify and assist in outreach and communicate with key state government personnel to advance the Client's agenda.

2. Representations by Client.

Client represents that: (i) no fees, expenses, or other amounts paid to the Firm in connection with this Agreement shall be paid from any Federal or State appropriated funds; (ii) Client shall timely complete and submit any required lobbying registration forms and reports; and (iii) it recognizes that certain costs incurred in connection with this Agreement may not be deductible business expenses under applicable Federal and State law.

3. Obligations of the Firm.

- a. The Firm will perform its responsibilities under this Agreement in an ethical and businesslike manner.
- b. The Firm will submit all reports required of it by Federal and State lobbying disclosure and/or reporting laws.

4. Obligations of Client.

- a. Assisting with Government Disclosures by the Firm. Client recognizes that the Firm may periodically be required to file Federal and State lobbying disclosure forms which may require Client's signature. Client agrees to cooperate in the Firm's efforts to file these disclosures, including, but not limited to, providing timely signatures on disclosure forms provided by the Firm. To the extent that any entity other than the Client (including but not limited to real parties in interest or members of any association or coalition) contributes in excess of \$5,000 per quarter toward the Firm's lobbying activities, and actively participates in the planning, supervision, or control of the Firm's lobbying activities, the Client agrees to provide full information about any such entity at the outset of this Agreement, and agrees to provide any changes or updates to such information

within seven (7) days of such changes having occurred. The Client agrees that pursuant to the Lobbying Disclosure Act, it shall, if applicable, provide the name, address, principal place of business, amount of any contribution greater than \$5,000 to the activities undertaken by the Firm hereunder, and approximate percentage of ownership in the Client of any foreign entity that: holds at least 20% equitable ownership in the Client; or directly or indirectly, in whole or major part, plans, supervises, controls, directs, finances, or subsidizes the activities of the Client.

- b. Expenses. Client authorizes the Firm to incur and receive reimbursement for reasonable out-of-pocket expenses related to the Firm's performance of the Agreement, including: travel costs; expenses related to attending meetings and conferences relevant to the Client's business interests; long distance telephone charges; postage; photocopy and facsimile charges; legal compliance expenses incurred by the Firm associated with any lobbying activities undertaken pursuant to this Agreement; expenses related to the processing and filing of any lobbying disclosure and registration forms; and such other out-of-pocket expenses that are reasonably necessary to the Firm's performance of the Agreement. Monthly expenses shall not exceed \$100 without Client's approval. Reimbursable expenses are separate from and shall not be considered when determining the Firm's compensation under the Agreement.
- c. Non-payment. Client acknowledges that any failure to timely remit payments due under this Agreement constitutes a material breach hereof.

5. Compensation.

- a. Monthly Retainer. Client agrees to pay the Firm, as compensation for services performed under this Agreement, a Monthly Retainer fee of \$2,500. Monthly fees are prorated for partial months.
- b. Payment Schedule. Payment of the monthly retainer and expenses is due upon receipt of the Firm's invoice. If Client fails to pay any sums due within thirty (30) days from the date such sums are due and owing, the balance will accrue interest at the rate of 1% per month. Should the Client allow its account to fall more than ninety (90) days in arrears, the Firm retains the option of suspending its professional services called for in this Agreement until payment arrangements are made to the satisfaction of the Firm.

6. Confidential Information.

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

7. Duration and Termination.

- a. This Agreement shall commence on October 1, 2012 and continue through September 30, 2015 (“Initial Term”). This Agreement shall automatically renew and continue on a month-to-month basis until renewed or terminated by either Party pursuant to the terms herein.
- b. Either Party may terminate this Agreement for cause upon the other Party’s breach or default of any provision of this Agreement unless such breach or default is corrected or cured within thirty (30) days after receipt of written notice thereof from the other Party.
- c. Either Party may terminate this Agreement for cause immediately, in the event that the other Party: (i) is the subject of a voluntary or involuntary petition in bankruptcy; (ii) is or becomes insolvent; or, (iii) ceases to pay its obligations or conduct business in the normal course.
- d. Following the completion of the Initial Term and during any month-to-month continuation period, either Party may terminate the Agreement upon the provision, in writing, of no fewer than forty five (45) days’ notice. Termination pursuant to this paragraph does not release Client or the Firm from any ongoing disclosure or reporting requirements either might have under this Agreement or any amendments hereto or of any obligation of Client to provide compensation for any and all services provided on behalf of Client.

8. Limitation of Liability.

The Client will indemnify and hold harmless the Firm, its officers and employees, against any loss or expenditure (including but not limited to attorney's fees and costs) incurred as a result of the Firm or its employees receiving any subpoena, request for documents, request for production, request for deposition or testimony, or any other request or demand, whether or not the Firm is a target, subject, or party to any such claim, suit, investigation or proceeding) based upon or relating to any work done at the Client’s direction under this Agreement.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF IT HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE FIRM BE LIABLE TO THE CLIENT IN AN AMOUNT IN EXCESS OF COMPENSATION PAID TO THE FIRM DURING THE PRECEDING TWELVE MONTHS BEFORE THE DETERMINATION OF LIABILITY.

9. Notices.

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

If to the Firm: Dutko Poole McKinley, LLC
 100 M Street, SE, Suite 500
 Washington, DC 20003
 Attn: Diane Dougherty
 diane.dougherty@dutkograyling.com

If to Client: City of Sanibel
 800 Dunlop Road
 Sanibel, FL 33957
 Attn: Kenneth B. Cuyler

or such other address as either Party shall hereafter designate in writing to the other.

10. Waiver.

The failure of either Party to enforce at any time or for any period of time any provision hereof shall not be construed to be a waiver of such provision of the right thereafter to enforce each and every provision. No waiver by either Party to this Agreement, either express or implied, of any breach of any term, condition or obligation of this Agreement shall be construed as a waiver of any subsequent breach of that term, condition or obligation or of any other term, condition or obligation of this Agreement.

11. Assignment.

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

12. Relationship of Parties.

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

13. Non-Solicitation of Employees.

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

14. Dispute Resolution.

The Firm and the Client agree that in the event a dispute arises under the terms of this agreement, the following procedures shall be utilized to resolve the dispute(s).

- a. Collection Disputes. Should the Client fail to pay any amount owing under this Agreement, and should the Client fall more than ninety (90) days in arrears, a "Collection Dispute" shall be deemed to have arisen. The Firm reserves the right to utilize the services of a Collection Agency or attorney to resolve any Collection

Dispute and to recover any amount owing, plus interest. The Firm expressly reserves the right to pursue any and all available legal or equitable remedies to recover amounts owing under this Agreement. In the event that it becomes necessary to involve the services of an attorney or collection agent, the Client agrees to pay all costs of collection attempts including reasonable attorney's fees and all costs or expenses associated with any Collection Disputes, including but not limited to interest and any court fees or costs. Each Party agrees to submit to the exclusive jurisdiction of any federal or state court located in the State of Florida for any Collection Dispute arising under this Agreement, and hereby waives and agrees not to assert, by way of defense to any suit, claim or proceeding brought therein, that venue and jurisdiction are improper.

- b. All Other Disputes. With the exception of the rights reserved and procedures set forth in this Agreement concerning Collection Disputes (for which the Parties agree to the exclusive jurisdiction and venue of any federal or state court located in the State of Florida, should any other disputes arise under this Agreement, the parties agree to use the arbitration services of the American Arbitration Association (AAA), and that the parties will abide by Florida law regarding civil arbitration and will be bound by the decision of the arbitrator. Any arbitration will take place in Tallahassee, Florida. The Parties agree to waive their rights to seek judicial resolution of such disputes (other than Collection Disputes, for which judicial resolution is available as described above).

15. Integration and Modification.

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

16. Severability

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

17. Headings

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

18. Interpretation

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

19. Choice of Law

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

20. Survival

The following sections of this Agreement (including all respective subparts) shall continue in full force and effect notwithstanding any termination or expiration hereof: Sections 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20.

City of Sanibel

Dutko Poole McKinley, LLC

By: _____
Kevin Ruane
Mayor

By: _____
Van B. Poole
Managing Principal

Date: _____

Date: October 29, 2012

ATTEST: _____
Pamela Smith, City Clerk

APPROVED AS TO FORM: *Kenneth B. Cuyler* 10/30/12
Kenneth B. Cuyler, City Attorney Date

APPROVED FOR FINANCIAL SUFFICIENCY
Sylvia A. Edwards
Sylvia A. Edwards, Finance Director