



AGENDA
CITY OF LAKE WORTH BEACH
UTILITY CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, MARCH 28, 2023 - 6:00 PM

ROLL CALL:

PLEDGE OF ALLEGIANCE: led by Commissioner Sarah Malega

AGENDA - Additions / Deletions / Reordering:

PRESENTATIONS: (there is no public comment on Presentation items)

- A. Electric Utility Update by Ed Liberty, Electric Utility Director

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

APPROVAL OF MINUTES:

- A. [February 28, 2023](#)

CONSENT AGENDA: (public comment allowed during Public Participation of Non-Agendaed items)

- A. [Waiver of possible conflict of interest for Torcivia, Donlon, Goddeau & Rubin, P.A. to prepare the Subregional Wastewater Interlocal Agreement Amendment](#)
- B. [Work Order No. 13 with Miller Lining, LLC, to install gravity sewer pipe lining on 15th Avenue South](#)

UNFINISHED BUSINESS:

- A. [Purchased Power Cost Adjustment Update \(PCA\)](#)

NEW BUSINESS:

- A. [Purchase Order with Pat's Pump and Blower for an Aquatech Sanitary Storm Sewer Cleaner/Hydro-Excavator Vacuum Truck for the Water Utilities Department](#)
- B. [Task Order No. 1 with Holtz Consulting Engineers, Inc. for design of Lift Stations 5, 6, 15 and 25 Improvements](#)
- C. [Continuing Contracts for Professional Services for Energy Management and Engineering Services](#)
- D. [Discussion regarding raising the rooftop solar limits brought forward by Vice Mayor McVoy](#)
- E. [Discussion regarding rooftop solar procedure brought forward by Vice Mayor McVoy](#)

ADJOURNMENT:

The City Commission has adopted Rules of Decorum for Citizen Participation (See Resolution No. 81-2022). The Rules of Decorum are posted within the City Hall Chambers, City Hall Conference Room, posted online at: <https://lakeworthbeachfl.gov/government/virtual-meetings/>, and available through the City Clerk's office. Compliance with the Rules of Decorum is expected and appreciated.

If a person decides to appeal any decision made by the board, agency or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (F.S. 286.0105)

**MINUTES
CITY OF LAKE WORTH BEACH
UTILITY CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, FEBRUARY 28, 2023 - 6:00 PM**

The meeting was called to order by Mayor Resch on the above date at 06:02 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

ROLL CALL: (0:43)

Present were Mayor Betty Resch, Vice Mayor Christopher McVoy, Commissioners Sarah Malega (via Zoom), Kimberly Stokes and Reinaldo Diaz. Also present were City Manager Carmen Davis, City Attorney Christy L. Goddeau and City Clerk Melissa Ann Coyne.

PLEDGE OF ALLEGIANCE: (1:04) led by Vice Mayor Christopher McVoy.

AGENDA - Additions/Deletions/Reordering: (1:25)

Presentations A and B were reordered so that Mr. Liberty's update would be first. New Business item C, In-City Community Solar Update, was reordered to New Business A. New Business items A and B were reordered to B and C.

Action: Motion made by Commissioner Stokes and seconded by Vice Mayor McVoy to approve the agenda as amended.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

PRESENTATIONS: (2:09) (there is no public comment on Presentation items)

- A. (reordered from A) Brief Electric Utility Update by Ed Liberty, Electric Utility Director (2:13)
- B. (reordered from B) Presentation regarding Community Solar brought forward by Vice Mayor McVoy (18:18)

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA: (29:30)

APPROVAL OF MINUTES: (39:41)

Action: Motion made by Commissioner Malega and seconded by Commissioner Stokes to approve the following minutes:

- A. January 31, 2023

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

NEW BUSINESS: (39:52)

A. (reordered from New Business item C) In-City Community Solar Update (39:54)

Action: Motion made by Vice Mayor McVoy and seconded by Commissioner Stokes to revise the RFP taking into consideration the Inflation Reduction Act and Infrastructure Act, reevaluating the criteria with the city's consultants and expert advice (including outside counsel), bringing the RFP back to the Commission for approval and requiring community outreach to all of the affected neighbors..

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

B. (reordered from A) Conversion of Part-Time Meter Reader position to Full-Time Meter Service Worker position (1:52:22)

Action: Motion made by Commissioner Malega and seconded by Vice Mayor McVoy to approve Conversion of Part-Time Meter Reader position to Full-Time Meter Service Worker position.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

C. (reordered from B) Third Amendment to Professional Services Agreement with WSP USA Inc (1:52:42)

Action: Motion made by Vice Mayor McVoy and seconded by Commissioner Diaz to approve the Third Amendment to Professional Services Agreement with WSP USA Inc.

D. Purchased Power Cost Adjustment (1:53:47)

Action: Motion made by Commissioner Malega and seconded by Commissioner Diaz to keep the rates the same this month and review the PCA on a monthly basis.

Vote: Voice vote showed: AYES: Mayor Resch and Commissioners Malega and Diaz. NAYS: Vice Mayor McVoy and Commissioner Stokes.

The meeting recessed at 8:18 PM and reconvened at 8:34 PM.

E. Resolution No. 05-2023 – committing to achieving net-zero carbon emissions for its Electric Utility (2:46:20)

Action: Motion made by Vice Mayor McVoy and seconded by Commissioner Diaz to approve Resolution No. 05-2023, committing to achieving net-zero carbon emissions for its Electric Utility, removing the words and our neighbors from Section 4.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

ADJOURNMENT: (3:036:53)

Action: Motion made by Commissioner Malega and seconded by Vice Mayor McVoy to adjourn the meeting at 9:04 PM.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz. NAYS: None.

ATTEST:

Betty Resch, Mayor

Melissa Ann Coyne, City Clerk

Minutes Approved: March 28, 2023

Item time stamps correspond to the meeting recording on YouTube.

STAFF REPORT UTILITY MEETING

AGENDA DATE: March 28, 2023

DEPARTMENT: Water Utilities

TITLE:

Waiver of possible conflict of interest for Torcivia, Donlon, Goddeau & Rubin, P.A. to prepare the Subregional Wastewater Interlocal Agreement Amendment

SUMMARY:

Waiver releasing Torcivia, Donlon, Goddeau & Rubin, P.A. for any possible conflict of interest for drafting the Subregional Wastewater Interlocal Agreement that is set to expire and requires an amendment to extend.

BACKGROUND AND JUSTIFICATION:

The City is a member of the Subregional Wastewater board with seven other municipal partners. The City serves as the manager of the system providing operations, maintenance, capital improvement planning, budgeting and all services for the subregional wastewater system. The other members include Village of Palm Springs, Town of Atlantis and the Town of South Palm Beach, among others. There is an Interlocal Agreement between the City and all of the seven partners that is set to expire in September of this year. The City has asked Torcivia, Donlon, Goddeau & Rubin, P.A. ("Torcivia") to prepare an amendment to extend the length of the Interlocal Agreement and provide some updates as well to the terms. Torcivia provides City/Village/Town Attorney services to the City of Lake Worth Beach, Village of Palm Springs, Town of South Palm Beach and Special Counsel-employment law services to the City of Atlantis. As Torcivia represents all of these municipalities, a conflict of interest is created and a waiver is requested to release Torcivia of the resulting potential conflict of interest in this matter.

MOTION:

Move to approve/disapprove waiver of possible conflict of interest for Torcivia, Donlon, Goddeau & Rubin, P.A. to prepare the Subregional Wastewater Interlocal Agreement Amendment.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Torcivia Letter

**TORCIVIA, DONLON,
GODDEAU & RUBIN, P.A.**

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Denise A. Mutamba
Kara L. Land
Ruth A. Holmes

*FLORIDA BAR BOARD CERTIFIED
CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

March 23, 2023

VIA EMAIL ONLY

Mayor and Commissioners
City of Lake Worth Beach
7 North Dixie Highway
Lake Worth, FL 33460
jparham@lakeworthbeachfl.gov

Re: Waiver of possible conflict of interest arising from Torcivia, Donlon, Goddeau & Rubin, P.A.'s ("Firm") legal representation of the City of Lake Worth Beach ("City") regarding the Subregional Wastewater Interlocal Agreement

Dear Mayor and Commissioners:

As you are aware, the City is a member of the Subregional Wastewater System ("Subregional"). In addition to representing the City (City attorney) our firm also represents three other members of the Subregional: The Village of Palm Springs (Village attorney), the Town of South Palm Beach (Town attorney), and the City of Atlantis (Special Counsel-employment law), (collectively "the municipalities"). The City of Lake Worth Beach has requested that we represent them in drafting a proposed amendment to the Agreement.

As a result of our representation of the municipalities, as described above, a conflict of interest within the meaning of the Rules Regulating the Florida Bar would be created if we were to represent the City and any of the municipalities. Specifically, Rule 4-1.7 of the Florida Rules of Professional Conduct states that a lawyer shall not represent a client if: (1) the representation of one client will be directly adverse to another client; or (2) there is a substantial risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer. Although the Firm's representation of the City is wholly unrelated to the representation of the municipalities, the representation of the City could create a potential conflict of interest, for example, when the Firm participates in the negotiation of the Subregional Wastewater System Interlocal Agreement on the City's behalf because the municipalities would also be clients of the Firm. The primary risk arising from this type of potential conflict is that the representation of one client may be materially limited or less than zealous due to the representation of another client.

Rule 4-1.7 allows a client to consent to its attorney's representation of another client notwithstanding a conflict. The Rule provides that "Notwithstanding the existence of a conflict of interest...a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing or clearly state on the record at a hearing." Informed consent is defined in the Rules as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

We believe that our Firm will be able to provide competent and diligent representation of the City and of the municipalities without resulting in any adverse impacts on any of these working relationships. The Firm's representation of the municipalities is not prohibited by law, and the Firm will not simultaneously represent both the municipalities and the City in any proceeding wherein their respective positions will be adverse to one another. As outlined above, the Firm has provided the information and explanation necessary for the City to provide informed consent hereunder. Under these circumstances, we believe that a waiver of the conflict of interest and the City's consent to our representation of the municipalities would be ethically permissible.

By her signature below, the Mayor, on behalf of the City Commission, acknowledges that the City is providing its informed consent to the Firm's representation of the municipalities in certain matters and is waiving the resulting potential conflict of interest. If, at any time, the City has any concerns regarding our representation of the municipalities, we request that it be brought to our attention immediately. Further, if the City has any questions concerning this letter or otherwise, please do not hesitate to contact me.

Sincerely,



GLEN J. TORCIVIA, ESQ.
GJT/ar

c: Carmen Davis

Agreed to this ____ day of _____, 2023

By: _____
Betty Resch, Mayor
On behalf of the City Commission
of the City of Lake Worth Beach

STAFF REPORT UTILITY MEETING

AGENDA DATE: March 28, 2023

DEPARTMENT: Water Utilities

TITLE:

Work Order No. 13 with Miller Lining, LLC, to install gravity sewer pipe lining on 15th Avenue South

SUMMARY:

Work Order No. 13 authorizes Miller Lining, LLC to install gravity sewer pipe lining on 15th Avenue South at a cost not to exceed \$66,454.00.

BACKGROUND AND JUSTIFICATION:

The City's Water Utilities Sewer Collection division works to constantly update, replace and repair the City's 99 miles of gravity sewer system. The City has been using Miller Lining, LLC, as a contractor through an agreement utilizing the Lee County bid agreement, to provide cured-in-place (CIP) pipe lining to many of the cracked, joint separated, and failing sewer pipes. Work Order 13 includes lining 358-ft of 21-inch sewer main along 15th Avenue South between S E and G Sts. This is a regional sewer main that collects flow upstream from the City's regional wastewater partners, and as such, cannot be out of service for any length of time, so bypass pumping is included to allow the main to be out of use and lined.

MOTION:

Move to approve/disapprove Work Order No. 13 with Miller Lining, LLC to install gravity sewer pipe lining on 15th Avenue South at a cost not to exceed \$66,454.00.

ATTACHMENT(S):

Fiscal Impact Analysis
Work Order No. 13

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	\$66,454.00	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

New Appropriation Fiscal Impact:		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Budget Transfer Impact		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Contract Award - Existing Appropriation		
	Expenditure	
Department	Regional Sewer	
Division	Non-departmental	
GL Description	Improve other than Build	
GL Account Number	426-7490-535.63-15	
Project Number	RS2300	
Requested Funds	\$66,454.00	

**AGREEMENT FOR WASTEWATER COLLECTION
SYSTEM CONSTRUCTION SERVICES
WORK ORDER NO. 13**

THIS WORK ORDER FOR CONSTRUCTION SERVICES (“Work Order” hereafter) is made on the ____ day of _____, 2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 (“City” hereafter) and Miller Pipeline, LLC, a corporation authorized to do business in the State of Florida (“Contractor” hereafter).

1.0 Project Description:

The City desires the Contractor to provide those services and work as identified herein related to Wastewater Collection System Construction Services project generally described as: MH 740-741, 20” gravity sewer lining (the “Project”). The Project is more specifically described in the proposal prepared by Miller Pipeline, LLC dated January 24, 2023, and which is incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor’s proposal attached hereto and incorporated herein as Exhibit “1”**.

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within 60 **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within 90 **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties’ execution of this Work Order and the City’s delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City five hundred dollars (\$500.00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for the unit price, not to exceed amount of \$66,454.00 The attached proposal identifies all costs and expenses included in the not to exceed amount.

5.0 Project Manager

The Project Manager for the Contractor is Jeff Newman, phone: 317-653-5297; email: jeff.newman@millerpipeline.com; and, the Project Manager for the City is Julie Parham, phone: 561-586-1798; email: jparham@lakeworthbeachfl.gov.

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFQ; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order

shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Public Construction Bond

A Public Construction Bond **is not** required for this Work Order and shall be recorded in official records in and for Palm Beach County (with a certified copy provided to the City) prior to any services being provided under this Work Order.

10.0 Authorization

This Work Order is issued pursuant to the Agreement for Wastewater Collection System Construction Services between the City of Lake Worth and the Contractor, dated February 6, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE LEFT BLANK

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order NO. 13 to the Agreement for Wastewater Collection System Construction Services as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendayaho, Financial Services Director

Contractor: MILLER PIPELINE, LLC

By: _____

[Corporate Seal]

Print Name: Chris Schuler

Title: Vice President

STATE OF Florida)
COUNTY OF Palm)

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 27th day of February 2023, by Chris Schuler, as the Vice President [title] of Miller Pipeline [vendor's name], a _____ [corporate description], who is personally known to me or who has produced personally known as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Seal:



Notary Public Signature



AN ARTERA COMPANY

January 24, 2023

City of Lake Worth Beach
301 College Street
Lake Worth Beach, FL 33460
V: 561-586-1798

RE: Proposal – FL Lake Worth Beach – Sewer Rehab – MH 740-741

As per the terms, conditions and technical specifications of the contract between Miller Pipeline LLC and Lee County, FL, below is our proposal based on the contract pricing and scope of work in the field to line the following:

Bid Item	Description	U/M	QTY	RATE	Total
E3	INSTALL CURED-IN-PLACE LINER, 21-INCH DIAMETER GRAVITY MAINS (6 TO 12 FEET IN DEPTH)	LF	358	\$105.00	\$37,590.00
F8	REINSTATE LATERALS AND GROUT ANNULAR SPACE	EA	11	\$475.00	\$5,225.00
F12	MECHANICAL TUBERCULATION REMOVAL (15-INCH THROUGH 24-INCH)	LF	151	\$33.00	\$4,983.00
F13	PROTRUDING SERVICE CONNECTION REMOVED BY INTERNAL MEANS	EA	4	\$264.00	\$1,056.00
F15	BYPASS PUMPING (18-INCH AND 30-INCH SEWER)	EACH DAY	2	\$8,800.00	\$17,600.00
Total					\$66,454.00

General Conditions / Responsibilities of Others:

We will expect that the following will be furnished to Miller Pipeline Corporation at no cost to us:

1. Free and legal access to the project site.
2. All approvals and permits as applicable.
3. Any required Point Repairs of the pipe.
4. Access to a fire hydrant or other source of water near the project location.
5. The project does not contain hazardous materials.
6. Use of bypass line items assumes 1 day for cleaning and 1 day for installation. Should conditions require additional days of bypass they will be billed per unit item above.

Sincerely,

Jeffrey Newman
Regional Manager - Florida, Miller Pipeline

STAFF REPORT UTILITY MEETING

AGENDA DATE: March 28, 2023

DEPARTMENT: Electric Utility

TITLE:

Purchased Power Cost Adjustment Update (PCA)

SUMMARY:

Monthly update for the Purchased Power Cost Adjustment in Electric Utility Rates

BACKGROUND AND JUSTIFICATION:

The City's electric utility provides electricity to its customers using a variety of electric production resources. Among them are the City's entitlements in various Florida Municipal Power Agency (FMPA) St. Lucie and Stanton 1 Projects, the City's own solar farm atop City's closed landfill, the City's power plant, and a contract with Orlando Utilities Commission for supplemental energy and capacity (the "OUC Agreement").

As determined during the electric utility rate making process certain electric utility expenses largely related to the purchase of electric capacity, debt service, operations and maintenance, general fund transfer, and City shared internal service costs are recovered via the Base Energy Charge on customers' bills and are not included in the Purchased Power Cost Adjustment (PCA).

Expenses largely related to the purchase of electric energy from the aforementioned electric production resources, as well as the electric energy and capacity purchases under the OUC Agreement, and electric transmission costs, are recovered or returned via the Purchased Power Cost Adjustment (PCA) on customers' bills. As per City Resolution 92-2021 the PCA "shall be established for a projected 3-month period for energy sales during that period...".

In order to establish the PCA, City's Electric Utility Staff provides a recommendation to the City Commission of the PCA for the upcoming 3-month period. In determining the PCA recommendation, Staff uses a combination of actual incurred purchased power costs for the prior period together with a forecast of purchased power costs for the upcoming 3-month period. In performing its analysis Staff calculates a True-Up amount representing the over or under recovery of purchased power costs from the prior period, which are then credited or debited to the following period accordingly.

Monthly PCA Review:

During the February 28 Utility Meeting, the Commission requested a monthly update on the PCA projection in lieu of making adjustments to the April 1 PCA.

Due to the impact of declining natural gas costs on wholesale power costs. Staff has developed three cases or options for evaluation by the City Commission. Option 1 would allow for a reduction on the PCA as we anticipate an over-recovery due to declining natural gas prices since the PCA was last adjusted on December 1, 2022. Option 2 would allow for a transfer of \$301,412 to the

Rate Stabilization Fund and a smaller reduction in the PCA. Option 3 would allow for a transfer of \$500,000 to the Rate Stabilization Fund with an even lower reduction in the PCA. Funding the Rate Stabilization Fund would serve to minimize the impact to customers during periods when increase due to rising natural gas fuel costs by withdrawing from the Rate Stabilization Fund to offset PCA costs.

Staff develops its estimates of future purchased power costs using widely published and publicly available values for natural gas futures contracts for the applicable months. City does not actually purchase natural gas futures contracts, it merely used published prices as a forecasting tool. Staff develops its estimates of future purchased power costs using widely published and publicly available values for natural gas futures contracts for the applicable months. City does not actually purchase natural gas futures contracts, it merely used published prices as a forecasting tool. Section 3 of City's Resolution 92-2021 defines the Purchased Power Cost Adjustment (PCA) and formula for calculation as follows:

$$PCA = (A + B + C) / D$$

Where:

A = The projected purchased power costs for the projected 3-month period comprised of costs such as the FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity; energy and directly related costs, Lake Worth Beach electric utility power plant generating fuel; and transmission costs:

B = A true-up amount representing the over or under recovery of purchased power costs from the prior period

C = The amount transferred to or from the Rate Stabilization Fund for the projected period

D = The projected total retail sales in MWh for the projected 3-month period

Option 1:

Accordingly, the recommended PCA elements effective April 1, 2023 under Option 1 are as follows:

A = \$2,463,517

B = \$2,802,244

C = \$0

D = 94,489 MWh

PCA = \$55.73 per MWh

Option 1 PCA; Residential First 1,000 kWh per month = \$0.05363 per kWh

Option 1 PCA; Residential Additional kWh above 1,000 kWh per month = \$0.05363 per kWh

Option 1 PCA; Average; Commercial and Demand = \$0.05573 per kWh

Option 1 Monthly Change in Bill for 1,000 kWh Residential Customer = -\$7.29

Option 2:

Alternatively, the recommended PCA elements effective April 1, 2023 under Option 2 are as follows:

A = \$2,463,517

B = \$2,802,244

C = \$301,412
D = 94,489 MWh
PCA = \$58.92 per MWh

Option 2 PCA; Residential First 1,000 kWh per month = \$0.05682 per kWh
Option 2 PCA; Residential Additional kWh above 1,000 kWh per month = \$0.06682 per kWh
Option 2 PCA; Average; Commercial and Demand = \$0.05892 per kWh
Option 2 Monthly Change in Bill for 1,000 Residential Customer = -\$4.10

Option 3:

Lastly, the recommended PCA elements effective April 1, 2023 under Option 3 are as follows:

A = \$2,463,517
B = \$2,802,244
C = \$500,000
D = 94,489 MWh
PCA = \$61.02 per MWh

Option 3 PCA; Residential First 1,000 kWh per month = \$0.05892 per kWh
Option 3 PCA; Residential Additional kWh above 1,000 kWh per month = \$0.06892 per kWh
Option 3 PCA; Average; Commercial and Demand = \$0.06102 per kWh
Option 3 Monthly Change in Bill for 1,000 kWh Residential Customer = -\$2.00

If approved, the PCA for all customer rate classes will change effective April 1, 2023.

MOTION:

Move to approve/disapprove the PCA as presented under Option 1; Option 2; or Option 3 effective April 1, 2023.

ATTACHMENT(S):

Resolution 92-2021
PCA Calculation Templates for Rates Effective April 1, 2023
Graph; Natural Gas Futures Price Forecasts vs. Actual Prices

RESOLUTION NO. 92-2021 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, PROVIDING FOR RATES, FEES AND CHARGES, AND REGULATIONS FOR ALL ELECTRICITY SOLD BY THE CITY OF LAKE WORTH BEACH, FLORIDA FOR USE OF ELECTRIC LIGHT AND POWER SYSTEM; REPEALING ALL RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida, is authorized and required to fix uniform and adequate rates for its service; and

WHEREAS, the rates set forth herein are just and equitable and serve a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA as follows:

Section 1. Definitions: For the purpose of this resolution, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

- A. "Shall" is always mandatory and not merely directory.
- B. "Net Metering Accounts" are those customer accounts with the City's Electric Utility where the customer has applied to the City's Electric Utility; installed a Customer-Owned Renewable Generation System (as defined in the Net Metering Program Rules and Regulations); executed a City Interconnection Agreement; has been approved by the Electric Utility for interconnection with the City's electric system; and, remains in compliance with the City's Net Metering Program. All rates applicable to Net Metering Accounts are governed by Resolution No. 45-2019 (as may be amended from time to time).
- C. "Purchased Power Cost Adjustment (PCA)" The cost of electricity is affected by the price of fuel and the purchase price of power supply. The PCA is an adjustment charge caused by an increased or decreased in the cost to purchase or supply power to customers. It is shown on the customer's bill as a credit or a surcharge to the price per kilowatt-hour. The customer's utility bill may have a credit, as the cost of power supply decreases, or it may have a surcharge when the costs increase.

Section 2. The following schedules shall be the rates charged and the regulations imposed by the City of Lake Worth Beach, Florida, on all electric power sold by the City of Lake Worth Beach, Florida for lighting, heating and power purposes, to wit:

A. Regular Residential Electric (Schedule R-S)

1. Designation: Regular Residential Electric
2. Applicable: For domestic electric purposes in private residences and individually metered apartments. Residential rates shall apply for electric energy used in commonly-owned facilities in condominiums and cooperative apartment buildings, subject to the following criteria:
 - a. 100% of the energy is used exclusively for the co-owner's benefit.
 - b. None of the energy is used in any endeavor which sells or rents a commodity or provides service for a fee.
 - c. Each point of delivery will be separately metered and billed.
 - d. A responsible legal entity is established as the customer to whom the City of Lake Worth Beach can render its bills for said service.
 - e. A cooperative or condominium requesting residential rates shall apply for the rate and establish the above criteria.
3. Limitations: Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder. Recognized rooming houses, tourist homes and dwellings accommodating more than four paying guests supplied through a single meter will not be served under this schedule.
4. Service: Single phase, 60 cycles at available standard voltage. Three phase service may be furnished but only under special arrangements and at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each electric account receiving a bill. \$10.55 per month.
 - b. Energy Charge per kWh

	First 1,000 KWH's	Excess
Base Energy	\$0.06900	\$0.08900
Power Cost Adjustment	\$0.03490	\$0.04490
Capacity	N/A	N/A
Total	\$0.1039	\$0.1339

6. The rates listed above include all administrative charges from the City of Lake Worth Beach.
7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be charged at \$35.00 per month.

B. Regular Commercial Service (Schedule C-S)

1. Designation: Regular Commercial Electric.
2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each electric account receiving a bill. \$17.00 per month.
 - b. Energy Charge per kWh.

	All kWhs
Base Energy	\$0.08700
Power Cost Adjustment	\$0.03700
Capacity	N/A
Total	\$0.12400

6. The rates listed above includes all administrative charges from the City of Lake Worth Beach.
7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be \$50.00 per month for single phase service and \$100.00 per month for poly phase service.

C. Demand Commercial Service (Schedule CD-S)

1. Designation: Demand Commercial Electric
2. Applicable: For customers who qualifies for service under Schedule C-S above and has a peak demand of 25 kW or greater for three (3) consecutive months:
3. Limitations: Auxiliary or stand-by service or resale not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each electric account receiving a bill. \$130.00 per month.
 - b. Energy Charge per KWH

	All kWhs	Demand - KW
Base Energy	\$0.05200	\$12.00
Power Cost Adjustment	\$0.03700	
Capacity Charge	N/A	
Total	\$0.08900	\$12.00

6. The rates listed above include all administrative charges from the City of Lake Worth Beach.
7. Billing Demand: The maximum 15 minute measured demand in the month, subject to power factor adjustment.
8. Power Factor Adjustment: When demand is measured with a kW meter and customer's power factor in any month is below 95% the measured demand may be adjusted to 95% power factor.
9. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
10. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
11. Minimum Bill: The minimum bill for electric use shall be \$250.00 per month.

D. Regular Time of Use Commercial Service (Schedule CT-S)

1. Designation: Time of Use Commercial Service
2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each electric account receiving a bill. \$30.00 per month.
 - b. Energy Charge:
 - i. Off Peak \$0.0840 per kWh
 - ii. On Peak \$0.2600 per kWh
 - iii. Determination of Off-Peak Period: October – May: The off-peak period is defined as the hours between 1:00 p.m. and 6:00 a.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: New Year's Day, Memorial Day, Thanksgiving Day, and Christmas Day. June – September: The off-peak period is defined as the hours between 7:00 p.m. and 2:00 p.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: Independence Day and Labor Day. All other hours are considered on peak hours.

6. Term of Contract: One year and thereafter until terminated at the option of either party by the giving of not less than thirty (30) days advance written notice of the effective date of termination.
7. Purchased Power Cost Adjustment Charge: A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be \$50.00 per month for single phase service and \$100.00 per month for poly phase service.

E. Time of Use Demand Commercial Service (Schedule CDT-S)

1. Designation: Time of Use Demand Commercial Service
2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard 416 voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each Electric account receiving a bill. \$140.00 per month.
 - b. Energy Charge:
 - i. Off Peak \$0.0620 per kWh
 - ii. On Peak \$0.2400 per kWh
 - iii. Demand Charge: \$7.00 per kW.
 - iv. Billing Demand: The maximum 15 minute measured demand in the month, subject to power factor adjustment.
 - v. Power Factor Adjustment: When demand is measured with a kW 438 meter and customer's power factor in any month is below 95% the measured demand may be adjusted to 95% power factor.
 - vi. Determination of Off-Peak Period: October – May: The off-peak period is defined as the hours between 1:00 p.m. and 6:00 a.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: New Year's Day, Memorial Day, Thanksgiving Day, and Christmas Day.
 - vii. June – September: The off-peak period is defined as the hours between 7:00 p.m. and 2:00 p.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: Independence Day and Labor Day. All other hours are considered on peak hours.
6. Term of Contract: One year and thereafter until terminated at the option of either party by the giving of not less than thirty (30) days advance written notice of the effective date of termination.
7. Purchased Power Cost Adjustment Charge: A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.

8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be \$140.00 per month.

F. Electric Vehicle Charging Level II (Schedule EV2-S)

1. Designation: Electric Vehicle Charging Level II
2. Applicable: For City owned public electric vehicle Level II charging stations.
 - a. None of the energy is used in any endeavor which sells or rents a commodity or provides service for a fee.
 - b. Each point of delivery will be separately metered and billed.
 - c. Limitations: Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.

3. Energy Charge per kWh

	All KWH's
Base Energy	\$0.05148
Power Cost Adjustment	\$0.03578
Capacity	\$0.01020
Total	\$0.09746

4. The rates listed above include all administrative charges from the City of Lake Worth Beach.
5. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
6. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

G. Private Area Lighting (Schedule L-P)

1. Designation: Private Area Lighting
2. Applicable: For year-round outdoor security lighting of yards, driveways, walkways, parking lots, parks, and other areas, under the following conditions:
 - a. Lights to be served hereunder shall be at locations that are easily and economically accessible to the City of Lake Worth Beach equipment and personnel for construction and maintenance.
 - b. Original location of lighting fixtures shall be by mutual agreement and shall not be located so as to create a public nuisance.
 - c. Any relocation requested by customer after installation shall be made at customer's expense. All new lighting units provided under this Schedule shall be the high pressure sodium vapor (conservation lighting) type.
3. Limitations:
 - a. Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.
 - b. The City of Lake Worth Beach, while exercising reasonable diligence at all times to furnish service hereunder, does not guarantee continuous lighting and will not be liable for damages for any interruption, deficiency or failure of service and reserves the right to interrupt service at any time for necessary repairs to lines or equipment.

4. **Service:** Service includes lamp renewals, energy from approximately dusk each day until approximately dawn the following day and maintenance of facilities. The City of Lake Worth Beach will replace all burned out lamps and will maintain its facilities during regular daytime working hours as soon as practicable following notification by the customer that such work is necessary. The City of Lake Worth Beach shall be permitted to enter the customer's premises at all reasonable times for the purpose of inspecting, maintaining, installing and removing any or all of its equipment and facilities. Single phase, 60 cycles at available standard voltage. Three phase service may be furnished but only under special arrangements and at the option of the City of Lake Worth Beach.
5. **Term of Service:** Not less than one (1) year.
6. **Monthly Rates:** A fixed monthly charge based on the number of units installed shall be charged based on the following schedule.
 - a. **Standard Lighting:**

Description Unit Cost per Month

175 Watt (7,000 Lumen) Mercury –Vapor Street Light Unit on Existing Pole	\$12.21
400 Watt (20,500 Lumen) Mercury-Vapor Street Light Unit on Existing Pole	\$19.15
1,000 Watt (55,000 Lumen) Mercury-Vapor Street Light Unit on Existing Pole	\$37.68
100 Watt (9,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$9.93
250 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$14.26
360 Watt High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$17.05
400 Watt (50,000 Lumen) High Pressure Sodium Vapor Street Light Unit on existing pole	\$17.15
48 Watt LED Street Light Unit on Existing Pole	\$9.00
70 Watt LED Street Light Unit on Existing Pole	\$9.70
80 Watt LED Street Light Unit on Existing Pole	\$9.70
101 Watt LED Street Light Unit on Existing Pole	\$16.30
110 Watt LED Street Light Unit on Existing Pole	\$16.30
133 Watt LED Street Light Unit on Existing Pole	\$16.30
150 Watt LED Street Light Unit on Existing Pole	\$16.30
Wood Pole and span of Overhead Conductors or Pole used only for Light	\$10.00
Concrete Pole and Span of Overhead Conductors or Pole used only for Light	\$15.00
Underground Conductors up to 150 feet	\$1.33
Underground Conductors from 150 feet to 300 feet	\$2.68

7. **Purchased Power Cost Adjustment Charge:** A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. **Outside City Limits Surcharge:** A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

H. Street Lighting (Schedule L-S)

1. Designation: Street Lighting
2. Applicable: For lighting of public right-of ways.
3. Limitations:
 - a. Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.
 - b. The City of Lake Worth Beach, while exercising reasonable diligence at all times to furnish service hereunder, does not guarantee continuous lighting and will not be liable for damages for any interruption, deficiency or failure of service and reserves the right to interrupt service at any time for necessary repairs to lines or equipment.
 - c. Should the City of Lake Worth Beach be required by the customer to replace the street light(s) with a light (or lights) of another type or rating, then the customer may be required to pay the estimated labor, vehicle use and other direct costs involved in replacing the fixtures.
4. Service: Service includes lamp renewals, energy from approximately dusk each day until dawn the following day and maintenance of City of Lake Worth Beach owned street lighting systems.
5. Term of Service: For not less than ten (10) years for City of Lake Worth Beach facilities or customer will be required to pay depreciated cost of installed facilities plus cost of removal.
6. Monthly Rates:
 - a. A fixed monthly charge based on the number of units installed shall be charged based on the following schedule.
 - b. Conservation Lighting:

Description Unit Cost per Month

100 Watt (9,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$7.85
150 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$9.33
250 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$12.26
360 Watt High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$15.19
400 Watt (50,000 Lumen) High Pressure Sodium Vapor Street Light Unit on existing pole	\$17.09
48 Watt LED Street Light Unit on Existing Pole	\$9.00
70 Watt LED Street Light Unit on Existing Pole	\$9.70
80 Watt LED Street Light Unit on Existing Pole	\$9.70
101 Watt LED Street Light Unit on Existing Pole	\$16.30
110 Watt LED Street Light Unit on Existing Pole	\$16.30
133 Watt LED Street Light Unit on Existing Pole	\$16.30
150 Watt LED Street Light Unit on Existing Pole	\$16.30

c. Appurtenances:

Description Unit Cost per Month

Wood Pole and span of Overhead Conductors \$10.00 or Pole used only for Light
 Concrete Pole and Span of Overhead Conductors \$15.00 or Pole used only for Light
 Underground Conductors up to 150 feet \$1.33
 Underground Conductors from 150 feet to 300 feet \$2.68

7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge:
 - A. Surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

Section 3. Purchased Power Cost Adjustment (PCA): A Purchased Power Cost Adjustment Charge (PCA) shall be established for a projected 3 month period for energy sales during that period as follows:

$$PCA = (A + B + C) / D$$

where:

A = The projected purchased power costs for the projected 3 month period comprised of costs such as the FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs

B = A true-up amount representing the over or under recovery of purchased power costs from the prior period

C = The amount transferred to or from the Rate Stabilization Fund for the projected period

D = The projected total retail sales in MWh for the projected 3 month period

The purchased power cost adjustment charge will be reconciled quarterly and trued up between estimated costs and billing units and actual costs and billing units.

Section 4. Surcharge For Service Outside The Municipal Limits: With respect to any residents, premises and/or users outside the corporate limits of the City of Lake Worth Beach, Florida, where such residents, premises and/or users now or hereafter have or use electrical utility service with the electrical system of the City of Lake Worth Beach, they shall be charged a rate for the electricity they use equal to the charge established for service to the residents, premises and/or users within the City of Lake Worth Beach, Florida, plus any applicable taxes or fees that are required in the Code of Ordinances or Resolutions of the specific jurisdiction in which those accounts reside. Such taxes and fees are collected by the City of Lake Worth Beach and remitted directly to the appropriate County or Municipal entity.

Section 5. Nothing in this resolution shall prohibit the City of Lake Worth Beach from entering into an agreement to provide electricity and electric utility services to or within any unit of government or governmental subdivision with terms and conditions other than contained herein.

Section 6. All resolutions or parts of resolutions in conflict herewith are expressly repealed.

Section 7. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the resolution, which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

Section 8. This resolution shall be in effect for billings issued on or after January 1, 2022.

The passage of this resolution was moved by Commissioner McVoy, seconded by Commissioner Malega and upon being put to a vote, the vote was as follows:

Mayor Betty Resch	AYE
Vice Mayor Herman Robinson	AYE
Commissioner Sarah Malega	AYE
Commissioner Christopher McVoy	AYE
Commissioner Kimberly Stokes	AYE

The Mayor thereupon declared this resolution duly passed and enacted on the 14th day of December 2021.

LAKE WORTH BEACH CITY COMMISSION

By: _____

Betty Resch, Mayor

ATTEST:



Melissa Ann Coyne, City Clerk



CITY OF LAKE WORTH BEACH, FLORIDA
POWER COST ADJUSTMENT CALCULATION
Option 1

- 1 Projected Period Jan 2023 - Mar 2023
2 Prior Period True-Up June 2022 - Nov 2022

PCA = (A + B + C) / D

3	A = Projected Power Costs for the 3 months (FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs)	Jan 2023 - Mar 2023	\$2,463,517	
	B = True up amount for prior period June 2022 - Nov 2022			
4	Actual Power Costs		\$16,154,658	
5	Actual PCA Revenues		\$13,352,414	
6	Difference		\$2,802,244	
7	B = True Up amount = Line 6		\$2,802,244	
8	Remaining Costs to be Recovered		\$0	
9	A + B =		\$5,265,761	
10	C = Amount transferred to or from the Rate Stabilization Fund		\$0	
11	D = Projected retail sales in MWh for the 3 months	Jan 2023 - Mar 2023	94,489	
12	PCA = (A + B + C) / D =		<u>\$55.73</u>	per MWh
13			<u>\$0.05573</u>	per kWh
14			\$55.73	per 1,000 kWh
15	Current PCA (Average - Commercial, Demand)		\$0.06302	per kWh
16	Current PCA (First 1,000 kWh Residential)		\$0.06092	per kWh
17	Current PCA (Additional kWh Residential)		\$0.07092	per kWh
18	Current PCA (Average - Commercial, Demand)		\$63.02	per 1,000 kWh

19	Change in PCA	-\$0.00729	per kWh
20	Monthly Change in Bill for 1,000 kWh Residential Customer and other customers per 1,000 kWh	<u>-\$7.29</u>	per 1,000 kWh
21	Proposed PCA (Average - Commercial, Demand)	\$0.05573	per kWh
22	Proposed PCA (First 1,000 kWh Residential)	\$0.05363	per kWh
23	Proposed PCA (Additional kWh Residential)	\$0.06363	per kWh

CITY OF LAKE WORTH BEACH, FLORIDA
POWER COST ADJUSTMENT CALCULATION
Option 2

- 1 Projected Period [Jan 2023 - Mar 2023](#)
2 Prior Period True-Up [June 2022 - Nov 2022](#)

PCA = (A + B + C) / D

3	A = Projected Power Costs for the 3 months Jan 2023 - Mar 2023 (FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs)	\$2,463,517	
	B = True up amount for prior period June 2022 - Nov 2022		
4	Actual Power Costs	\$16,154,658	
5	Actual PCA Revenues	\$13,352,414	
6	Difference	\$2,802,244	
7	B = True Up amount = Line 6	\$2,802,244	
8	Remaining Costs to be Recovered	\$0	
9	A + B =	\$5,265,761	
10	C = Amount transferred to or from the Rate Stabilization Fund	\$301,412	
11	D = Projected retail sales in MWh for the 3 months Jan 2023 - Mar 2023	94,489	
12	PCA = (A + B + C) / D =	<u>\$58.92</u> per MWh	
13		<u>\$0.05892</u> per kWh	
14		\$58.92 per 1,000 kWh	
15	Current PCA (Average - Commercial, Demand)	\$0.06302 per kWh	
16	Current PCA (First 1,000 kWh Residential)	\$0.06092 per kWh	
17	Current PCA (Additional kWh Residential)	\$0.07092 per kWh	
18	Current PCA (Average - Commercial, Demand)	\$63.02 per 1,000 kWh	

19	Change in PCA	-\$0.00410	per kWh
20	Monthly Change in Bill for 1,000 kWh Residential Customer and other customers per 1,000 kWh	<u>-\$4.10</u>	per 1,000 kWh
21	Proposed PCA (Average - Commercial, Demand)	\$0.05892	per kWh
22	Proposed PCA (First 1,000 kWh Residential)	\$0.05682	per kWh
23	Proposed PCA (Additional kWh Residential)	\$0.06682	per kWh

CITY OF LAKE WORTH BEACH, FLORIDA
POWER COST ADJUSTMENT CALCULATION
Option 3

- 1 Projected Period Jan 2023 - Mar 2023
 2 Prior Period True-Up June 2022 - Nov 2022

PCA = (A + B + C) / D

3	A = Projected Power Costs for the 3 months Jan 2023 - Mar 2023 (FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs)	\$2,463,517	
	B = True up amount for prior period June 2022 - Nov 2022		
4	Actual Power Costs	\$16,154,658	
5	Actual PCA Revenues	\$13,352,414	
6	Difference	\$2,802,244	
7	B = True Up amount = Line 6	\$2,802,244	
8	Remaining Costs to be Recovered	\$0	
9	A + B =	\$5,265,761	
10	C = Amount transferred to or from the Rate Stabilization Fund	\$500,000	
11	D = Projected retail sales in MWh for the 3 months Jan 2023 - Mar 2023	94,489	
12	PCA = (A + B + C) / D =	<u>\$61.02</u> per MWh	
13		<u>\$0.06102</u> per kWh	
14		\$61.02 per 1,000 kWh	
15	Current PCA (Average - Commercial, Demand)	\$0.06302 per kWh	
16	Current PCA (First 1,000 kWh Residential)	\$0.06092 per kWh	
17	Current PCA (Additional kWh Residential)	\$0.07092 per kWh	
18	Current PCA (Average - Commercial, Demand)	\$63.02 per 1,000 kWh	

19	Change in PCA	-\$0.00200	per kWh
20	Monthly Change in Bill for 1,000 kWh Residential Customer and other customers per 1,000 kWh	<u>-\$2.00</u>	per 1,000 kWh
21	Proposed PCA (Average - Commercial, Demand)	\$0.06102	per kWh
22	Proposed PCA (First 1,000 kWh Residential)	\$0.05892	per kWh
23	Proposed PCA (Additional kWh Residential)	\$0.06892	per kWh

Delivered Nat. Gas Pricing - Actual vs. PCA



STAFF REPORT UTILITY MEETING

AGENDA DATE: March 28, 2023

DEPARTMENT: Water Utilities

TITLE:

Purchase Order with Pat's Pump and Blower for an Aquatech Sanitary Storm Sewer Cleaner/Hydro-Excavator Vacuum Truck for the Water Utilities Department

SUMMARY:

The Purchase Order with Pat's Pump and Blower authorizes the purchase of an Aquatech Sanitary Storm Sewer Cleaner/Hydro-Excavator Vacuum Truck for the Water Utilities Department at a cost not to exceed \$476,103.11.

BACKGROUND AND JUSTIFICATION:

The Water Utilities Department Sewer Collection Division actively engages in the process of cleaning and televising the City's sanitary sewer piping and manhole system. One of the existing sewer vacuum trucks (Equipment #153) was purchased in 2004 and has reached the end of its useful life due to excessive down time and repairs. The vacuum truck is an essential piece of equipment in ensuring the City's underground infrastructure is clean, free from blockages, and intact. The funding for this truck was approved in the FY2023 budget hearings.

The purchase of a new 2022 Aquatech Vac truck serves a dual role for the Division – traditional pipeline and manhole cleaning as well as hydro-excavation for “soft-digging” around existing underground utilities and conflicts. The Purchase Order with Pats Pump and Blowers is for a cost not to exceed \$476,103.11 and will be purchased through the Florida Sheriff's Association Cooperative Purchase Program, which the City utilizes often for purchases as it has been competitively advertised. Part of the purchase price includes the trade-in value of the old vacuum truck #153 for a credit of \$25,000. The vacuum truck that is being purchased is a demonstration unit and is gently used, which allowed a \$60,081.00 discount as well.

MOTION:

Move to approve/disapprove Purchase Order with Pat's Pump and Blower for an Aquatech Sanitary Storm Sewer Cleaner/Hydro-Excavator Vacuum Truck for the Water Utilities Department for a cost not to exceed \$476,103.11.

ATTACHMENT(S):

Fiscal Impact Analysis

Invoice

Florida Sheriff's Association Cooperative Purchase Agreement Item #346

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Operating	0	0	0	0	0
Capital	\$476,103.11	0	0	0	,
Net Fiscal Impact	\$476,103.11	0	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

New Appropriation Fiscal Impact:		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Budget Transfer Impact		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Contract Award - Existing Appropriation		
	Expenditure	
Department	Sewer	
Division	Collection	
GL Description	Improve other than Build Infrastructure	
GL Account Number	423-7231-535.63-15	
Project Number	LS2201	
Requested Funds	\$476,103.11	

PAT'S PUMP & BLOWER
2141 W. CHURCH STREET ORLANDO, FL 32805
800-359-7867 * 407-648-2096 fax
www.patspump.com

January 30, 2023

City of Lake Worth
Judy Love

RE: PURCHASE OF AQUATECH DEMONSTRATOR SEWER / CATCH BASIN
CLEANER VIA THE FLORIDA SHERIFF'S ASSOCIATION CONTRACT # FSA20-
EQU 18.0, SPECIFICATION 364. CONFIGURATION IS A B10-1450 MOUNTED ON
A PETERBILT CHASSIS.

BASE PRICE \$312,897.00

ADD OPTIONS

A249023-12V	Hydraulic Pump Off System	7,218.00
A382557-6	Back up camera	3,203.00
A338837-1	Floor flusher (includes upper jets)	5,103.00
200041010	23 foot Extendable boom	6,177.00
NPN	Extra 300 gallons water inside debris tank	<u>13,816.00</u>
ADJUSTED BASE PRICE INCLUDING THIS CATEGORY		\$348,414.00

UNSPECIFIED OPTIONS (Subject to 1% discount)

A383923-2	Pneumatic vacuum breaker	5,127.00
A385700-short	Cyclone separator with collection chamber	6,470.00
121002494	1/2" x 75'wash down reel and hose	3,822.00
A215555-23	Unloader Control System Side and Rear	6,334.00
A239902	Water purge / blow out system	225.00
A249936-HYD-PATS	Hydraulic High-pressure reel and hose	6,432.00
NS0028	Rear door splash shield	1,350.00
NS0030	6" Rear Drain Valve with 15' layflat hose	621.00
NS0034	Tank access steps to boom cleanout	791.00
121006209	Removable decant hose with disconnect and cap	568.00
A245901-4	Debris tank vibrator	4,298.00
A381531-1	Remote lubrication manifold	3,440.00
A384963	Debris door blank-off screen	602.00
A384092-2	Water tank signage package	2,730.00.
A249000-1	Dual side water fill system	776.00
NS0077	Boom mounted air flapper valve	2,373.00
A176110	20' Leader Hose	357.00
A175252-3000-Cobra	Hose, 1" x 600' 3000PSI	1,481.00
A338664-7	Digital footage counter	5,351.00
A180555-S	60" X 24" X24" Toolbox	2,075.00
A180757-s	48" x 24" x 24" Toolbox	1,644.00

A385801	Aluminum tool trays on both sides of water tanks	1,720.00
30004744	Sliding tube rack behind cab	5,000.00
A120101-LED	Control panel lights	170.00
A120378-3-LED	Boom flood lights	846.00
A380713-LED	Linear Amber strobe lights	727.00
A388569	Lighting pkg – 5 flood lts, strobes (3) Arrowboard	7,153.00
A176154	50' X 2.5" Fill hose	279.00
A220260-CH-NC	Traffic cone holder (no cones)	290.00
A220330	Hydrant wrench	55.00
A221800	Manhole hook	88.00
1000551	8" Manhole tube support	355.00
A244263	8" Tube handle	186.00
A388552	DOT Safety kit	481.00
121002193	Dig wand kit	1,742.00
A383826	8"X6' Extension tube (4) Band Lock	1,832.00
A383830	8"X3' Fluidizer tube (1) Band Lock	411.00
121003299	8"x6' Excavator tube (1) Band Lock	442.00
A399045	8" Band Lock clamps (5)	160.00
STD-0150	Blower hour meter	257.00
STD-0060	PTO Hour meter	257.00
STD-0151	Water pump hour meter	257.00
TOTAL THIS CATEGORY		\$79,575.00
LESS 1% CONTRACT DISCOUNT (-)		<u>795.75</u>
TOTAL WITH DISCOUNT		\$78,779.25

DEALER SUPPLIED NON-CONTRACT OPTIONS

NPN	Stainless steel fenders	\$ 1,440.00
NPN	Anti-slip tape on tank top	\$ 388.00
NPN	Wireless controller	\$ 3,996.00
NPN	Boom up warning light and alarm	\$ 700.00
NPN	Low water warning alarm	\$ <u>690.00</u>
TOTAL THIS CATEGORY		\$ 7,214.00
LESS 1% CONTRACT DISCOUNT		72.14
TOTAL WITH DISCOUNT		\$ 7,141.86

BODY TOTAL WITH OPTIONS \$434,335.11

PETERBILT MODEL 348 CHASSIS SUPPLIED BY FACTORY \$126,849.00

TOTAL PROJECT COST \$561,184.11

Trade-In offer for 2004 Aquatech B-10 / International chassis
VIN#ITWGADT54J027522

Based upon the CURRENT CONDITION of the subject unit, we will credit \$25,000.00 US as a trade-in value against the purchase of our proposed demonstrator offer. The 2004

unit must be in operational condition at time of trade-in capable of DOT inspection passage, and normal vacuum-jetting operations.

TOTAL PROJECT COST WITH TRADE-IN OF YOUR 2004 UNIT		\$536,184.11
SPECIAL DEMONSTRATOR DISCOUNT	(-)	\$ 60,081.00
TOTAL DELIVERED PRICE		\$476,103.11

Please direct your Purchase Order to the above address.

Sincerely,

STEVE NEWMAN
941-232-3298 cell
CMEOFFL@AOL.COM

Cc: KFender PP&B
KFENDER@PATSPUMP.COM

SPEC 364 AQUATECH B-10 BASE UNIT \$312,897

SPECIFIED OPTIONS

DELETE OPTION	PART NUMBER	DESCRIPTION	CREDIT
	B-6	6 Yard Capacity	\$9,284
	CB-10	Ten Yard Basin Cleaner	\$12,395
	SJR1500	1500 Gallon Jetter Only	\$83,927
		Provide roots 624 Blower in lieu of Roots 825	
	624	Blower	\$2,711
		Provide 2000 PSI Water Pump in lieu of 2500 PSI	
	GL2000	Water Pump	\$1,420

ADD OPTIONS			COST
	B-15	15 Yard Debris 1500 Gallon Water	\$46,354
	F-10	Front Reel with with 180 Degree Boom	\$66,625
	NPN	High Dump	N/A
	A249023-12V	Hydraulic Pump off system	\$7,218
	NPN	APD Blower	Standard
	A381546	Soil Surgeon	\$4,432
	Autolube	Autolube System	\$12,737
	STOOLKIT	Specialty Tool Kit	\$15,494
	A382557-6	Back Up Camera	\$3,203
	A338837-1	Dual Floor Flusher for all body sizes	\$5,103
	200041010	23 Feet extendable boom	\$6,177
	NPN	Extra Gallon Water Inside Debris Tank	\$13,816
	A382703-1	Autolevel Wind Rear Reel	\$10,877
	DT340XSS	Camera system truck-mounted for pipe inspection	\$74,889
	GOPRO	Jet Camera	\$4,519
	A338837-1	Floor Flusher	\$5,103

MAINTENANCE

	MAINT-1	Annual maintenance for one year (Body only)	\$17,663
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WARRANTY

	WARRANTY2	Two years parts and labor. Body Only (\$8,925 per year)	\$21,950
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UNSPECIFIED OPTIONS 1% DISCOUNT OFF MSRP

STAFF REPORT UTILITY MEETING

AGENDA DATE: March 28, 2023

DEPARTMENT: Water Utilities

TITLE:

Task Order No. 1 with Holtz Consulting Engineers, Inc. for design of Lift Stations 5, 6, 15 and 25 Improvements

SUMMARY:

Task Order No. 1 authorizes Holtz Consulting Engineers, Inc. to prepare design drawings, technical specifications and opinion of cost for Lift Stations 5, 6, 15 and 25 Improvements project at a cost not to exceed \$196,000.00.

BACKGROUND AND JUSTIFICATION:

The City's Water Utilities Sewer Pumping division works to constantly update, replace and repair the City's wastewater pump stations. Various upgrades are necessary to lift stations 5, 6, 15 and 25 to maintain the stations in working order. These upgrades include mechanical, electrical and structural components, as well as replacing the 3-inch forcemain from lift station 25 that has had several breaks in recent years. Task Order 1 includes survey, subsurface utility locating, design, permitting and bidding assistance for the project.

MOTION:

Move to approve/disapprove Task Order No. 1 with Holtz Consulting Engineers, Inc. for design of Lift Stations 5, 6, 15, and 25 Improvements at a cost not to exceed \$196,000.00.

ATTACHMENT(S):

Fiscal Impact Analysis
Task Order No. 1

,FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	\$196,000	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

New Appropriation Fiscal Impact:		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Budget Transfer Impact		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Contract Award - Existing Appropriation		
	Expenditure	
Department	Local Sewer	
Division	Pumping	
GL Description	Improve other than Build	
GL Account Number	423-7221-535.63-15	
Project Number	LS2200	
Requested Funds	\$196,000.00	

Task Order for the Lake Worth Beach Civil Engineering Services

TASK ORDER NO.

THIS TASK ORDER ("Task Order") is made on the _____ day of _____, 2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and Holtz Consulting Engineers, Inc., a Florida corporation ("Consultant").

1.0 Project Description:

The City desires the Consultant to provide those services as identified herein and generally described as: Lift Station Nos. 5, 6, 15, 25 Improvements (the "Project").

2.0 Scope

Under this Task Order, the Consultant will provide professional services to the City as detailed in the **Consultant's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule

The services to be provided under this Task Order shall be completed within 270 calendar days from the City's approval of this Task Order or the issuance of a Notice to Proceed.

4.0 Compensation

This Task Order is issued for a time and expense, not to exceed amount of \$196,000.00. The attached proposal identifies all costs and expenses included in the time and expense, not to exceed amount.

5.0 Project Manager

The Project Manager for the Consultant is Stephen Fowler, P.E., phone: (561) 575-2005; email: Stephen.fowler@holtzconsulting.com; and, the Project Manager for the City is Julie Parham, P.E., phone: 561-586-1798; email: jparham@lakeworthbeachfl.gov.

6.0 Progress Meetings

The Consultant shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days at a minimum.

7.0 Authorization

This Task Order is issued in compliance with the Consultants' Competition Negotiation Act, section 287.055, Florida Statutes, and pursuant to the Agreement for Professional Services between the City of Lake Worth Beach and the Consultant, dated March 21, 2023 ("Agreement" hereafter). If there are any conflicts between the terms and conditions of this Task Order and the Agreement, the terms and conditions of the Agreement shall prevail; however, the specific scope of services set forth in this Task Order shall take precedence.

over any other more general description of services.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement to the Professional Services Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **Holtz Consulting Engineers**

By: _____
[Signature]

Print Name: Stephen Fowler, P.E.

Title: Vice President

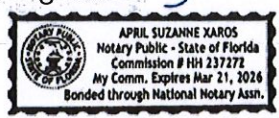


STATE OF Florida)
COUNTY OF Palm Beach)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 16 day of March 2023, by Stephen Fowler, as the Vice President [title] of Holtz Consulting Engineers, Inc. [vendor's name], a Florida [corporate description], who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

April Suzanne Xaros
Notary Public Signature

Notary Seal:





HOLTZ CONSULTING ENGINEERS, INC

March 2, 2023

Julie Parham, P.E.
Assistant Water Utilities Director
City of Lake Worth
Water Utilities Department
301 College Street
Lake Worth, FL 33460

Subject: **City of Lake Worth Beach
Lift Station Nos. 5, 6, 15, and 25 Improvements**

Dear Ms. Parham,

We are pleased to offer the following proposal for the Lift Station Nos. 5, 6, 15, and 25 Improvements Project. The project includes services for the underground locating, surveying, and engineering services for the design, permitting, and bidding of the proposed improvements at Lift Station Nos. 5, 6, 15, and 25, including all related mechanical, electrical, piping and site work. The project also includes replacement of the Lift Station No. 25 force main. The Scope of Services will consist of the following tasks:

Task 1 – Subsurface Utility Locating for Force Main Replacement

Under this task the HCE will contract with Dig Safe First LLC. to provide utility locating services for the Lift Station No. 25 force main route. Key existing buried utilities will be located utilizing ground penetrating radar in order to obtain depth and diameter material information for the existing buried utilities to identify potential design conflicts and aid in the protection of these existing facilities during construction. These underground utility markings will be captured by the surveyor under Task 2 and depicted on the survey.

Task 1 - Deliverables:

1. Information obtained from underground utility locating will be depicted on the survey deliverable provided under Task 2.

Task 2 - Topographic Survey

Under this task, Holtz Consulting Engineers (HCE) will contract with Dennis J. Leavy & Associates, Inc., to perform a topographic survey of Lift Station Nos. 5, 6, 15, and 25, as well as the LS No. 25 force main route from the station to the discharge point in manhole 3593 on Lantana Pines Drive. The surveys shall depict the horizontal location and vertical location of facilities such as wet well and inverts, valve vault, piping, control panels, fence perimeter, etc., and:



- 2.1 Obtain horizontal and vertical control for this Project using information published by the Palm Beach County Survey Department utilizing State Plane Coordinates for horizontal control and the North American Vertical Datum of 1988 (NAVD 88) for vertical control (with conversion to NGVD 29).
- 2.2 Location of visible fixed improvements within the lift station sites and along the force main route, depicting the horizontal location and vertical location of facilities such as wet well and inverts, valve vault, piping, control panels, fences, power poles, buildings, etc.
- 2.3 Location of above ground existing utilities: FP&L, BellSouth, Cable TV, Natural Gas, Potable Water (valves, fire hydrants, and meters), Force Mains (valves), Sanitary Sewer, Reclaimed Water Mains (valves), Storm Sewers. Including invert elevations, pipe size, type and direction for storm and sanitary infrastructure.
- 2.4 Provide and reference site benchmarks. Elevations to be referenced to an existing established City or County Benchmark.
- 2.5 Platted boundary lines and easements will be shown on the survey but this proposal does not include performing any title searches.

Task 2 - Deliverables

1. Topographic Survey drawings in (CAD or PDF or hardcopy) format.

Task 3 – Engineering Design

HCE will provide engineering services consisting of preparation of construction plans and specifications for the improvements listed below. HCE will contract with Hillers Electrical Engineering to provide electrical :

- 3.1 Lift Station No. 5:
 - Complete mechanical upgrades including new pumps, base elbows, base plates, discharge piping and valves.
 - Full electrical equipment replacement upgraded to current standards, including control panel, RTU, etc.
 - Complete rehabilitation of civil components including new fence and gates, new concrete slab, new wet well and valve vault tops with new hatches that include fall protection.
 - New bypass pumping connection located outside of valve vault.
 - New 1.5” water service from water main located on west side of road.



- Addition of station isolation valve, protective bollards, light pole with overhead light.
- Addition of skid mounted generator with automatic transfer switch (ATS).
- Elimination of trip hazards from hydrogen peroxide feed system.
- Addition of pressure transmitters for the force main and water service.

3.2 Lift Station No. 6:

- Complete mechanical upgrades including new pumps, base elbows, base plates, discharge piping and valves.
- Full electrical equipment replacement upgraded to current standards, including control panel, RTU, etc.
- Complete rehabilitation of civil components including new fence and gates, new concrete slab, new wet well and valve vault tops with new hatches that include fall protection.
- New bypass pumping connection located outside of valve vault.
- Addition of station isolation valve and light pole with overhead light.
- Addition of pressure transmitters for the force main and water service.

3.3 Lift Station No. 15:

- Replacement of check valves and plug valves only.
- Addition of skid mounted generator with automatic transfer switch (ATS) and concrete pad for generator.
- Modifications to the existing RTU to add signals from the ATS and generator.
- New 1.5" water service from water main.
- New base elbow for one of the pumps.

3.4 Lift Station No. 25:

- Full electrical equipment replacement upgraded to current standards, including control panel, and addition of RTU with connection to SCADA system.
- Addition of light pole with overhead light
- Addition of backflow prevention device to water service.

3.5 Lift Station No. 25 Force Main:

- Replacement of approximately 2,700 LF of 3" force main with 4" PVC C-900 force main, including one subaqueous directional drill and reconnection to the existing discharge manhole. The entire length of the force main will be replaced from the station valve vault to the discharge manhole (MH 3593) on Lantana Pines Drive.

- 3.6 HCE will prepare an Engineer's Opinion of Probable Construction Cost at the 60%, 90%, and 100% design stages. These cost estimates will be provided with the 60%, 90%, and 100% complete submittal packages.



- 3.7 HCE will provide one (1) digital set, one (1) full size (24" x 36") set, and two (2) half size (11" x 17") sets of plans for review and comment by the City at the 60%, 90%, and 100% complete stages. The submittals will also include a draft outline of the specifications table of contents with the 60% complete submittal, and an updated table of contents and complete draft of the technical specifications sections with the 90% complete submittal. HCE will also provide CAD files and PDF files of the final (100% complete) drawings and specifications.

Task 3 Deliverables:

1. 60% complete drawings, specifications table of contents, and cost estimate.
2. 90% complete drawings, specifications, and cost estimate.
3. 100% complete drawings, specifications, and final cost estimate.

Task 4 – Permitting of Lift Station Improvements

- 4.1 HCE shall prepare permit applications for construction of the lift station improvements that require permitting to the following agencies:
- Palm Beach County Health Department (PBCHD)
 - Palm Beach County Land Development Utility Permit (for force main replacement)
 - Lake Worth Drainage District (LWDD) (for subaqueous force main crossing)
- 4.2 HCE will coordinate with the permitting agency during the review process on a regular basis in an effort to keep the project on schedule and respond to their review comments. HCE will respond to Requests for Additional Information (RAI) during the permitting process. It is anticipated that no more than three (3) RAI's will be issued by the permitting agencies.
- 4.3 Permit fees will be paid by the City.

Task 4 Deliverables:

1. Copies of all permits obtained.

Task 5 – Bidding Assistance

Under this task, HCE will perform the following activities:

- 5.1 Prepare bid documents.



- 5.2 Prepare bid advertisement and provide bid documents to bidders.
- 5.3 Conduct a pre-bid meeting and issue meeting minutes to all plan holders.
- 5.4 Respond to questions bidders may have concerning the bid documents.
- 5.5 Issue addenda as necessary to clarify the bid documents.
- 5.6 Maintain a plan-holders list.
- 5.7 Attend bid opening and prepare bid tabulation form.
- 5.8 Evaluate bids and prepare recommendation of award to the lowest responsive, responsible bidder.
- 5.9 Prepare Contractor's Notice of Award.
- 5.10 Prepare and review executed contract documents.
- 5.11 Prepare Contractor's Notice to Proceed.

Task 5 Deliverables:

- 1. Addenda as necessary.
- 2. Bid tabulation form.
- 3. Written recommendation for award of the contract.
- 4. Copy of Notice of Award and Notice to Proceed.
- 5. Executed Contract Documents

SCHEDULE

The above tasks will be completed according to following schedule:

Task 1 - Subsurface Utility Locating	20 days from NTP
Task 2 – Topographic Survey	45 days from NTP
Task 3 – Engineering Design	
60% Design Submittal	90 days from receipt of survey



HOLTZ CONSULTING ENGINEERS, INC

90% Design Submittal

60 days from receipt of City comments on the 60% Submittal

100% Design Submittal

30 days from receipt of City comments on the 90% Submittal

Task 4 – Permitting of Lift Station Improvements

Applications submitted with the 90% plans

Task 5 – Bidding Assistance

Throughout bid process

COMPENSATION

Compensation will be in accordance with the attached budget summary (Attachment A) for a lump sum amount of \$196,000. Monthly progress payments will be authorized based on percent complete as determined by HCE and approved by the City.

Sincerely,

HOLTZ CONSULTING ENGINEERS, INC.

Stephen Fowler, P.E.
Vice President

Attachment A: City of Lake Worth Beach Lift Station Nos. 5, 6, 15, and 25 Improvements - Budget Summary

Task	Rate	Principal	Senior Project Manager	Project Engineer (EI)	Senior Designer	Construction Manager	Construction Inspector	Subconsultant	Item Cost (Note Subconsultant fee is marked up 10%)	Task Cost
		\$190	\$170	\$105	\$110	\$135	\$95	--		
Item	Hours	Fees								
1. Subsurface Utility Locating	Utility Locates		3					\$3,200.00	\$4,030.00	\$4,030.00
2. Topographic Survey	Surveying Services		3	3				\$36,535.00	\$41,013.50	\$41,013.50
3. Engineering Design Services	Prepare Agenda, Attend Kickoff Meeting with City and Site Visits	4	4	5					\$1,965.00	\$139,088.60
	60% General Drawings and Details	3	10	12	36				\$7,490.00	
	60% Lift Station Demolition Drawings	3	12	20	40				\$9,110.00	
	60% Lift Station Civil and Mechanical Drawings	3	35	60	60				\$19,420.00	
	60% Force Main Drawings	1	6	18	34				\$6,840.00	
	60% Specifications	4	8	24					\$4,640.00	
	60% Cost Estimate	1	6	12					\$2,470.00	
	90% General Drawings and Details	3	4	8	16				\$3,850.00	
	90% Lift Station Demolition Drawings	2	6	10	15				\$4,100.00	
	90% Lift Station Civil and Mechanical Drawings	1	24	32	35				\$11,480.00	
	90% Force Main Drawings	1	8	12	20				\$5,010.00	
	90% Specifications	2	4	12					\$2,320.00	
	90% Cost Estimate	1	4	8					\$1,710.00	
	100% General Drawings and Details	2	2	2	8				\$1,810.00	
	100% Demolition Drawings	1	2	2	8				\$1,620.00	
	100% Civil and Mechanical Drawings	4	4	6	20				\$4,270.00	
	100% Force Main Drawings	1	4	6	8				\$2,380.00	
	100% Specifications	1	2	4					\$950.00	
	100% Cost Estimate	1	2	4					\$950.00	
	Monthly Progress Meetings (including submittal review meetings, 5 meetings total)	4	10	10					\$3,510.00	
Electrical Engineering Subconsultant Design	1	4		8			\$37,676.00	\$43,193.60		
4. Permitting	Prepare and Submit PBC Health Department Permit Applications	1	4	5					\$1,395.00	\$7,999.80
	Prepare and Submit Palm Beach County Land Development Utility Permit Application	1	4	6					\$1,500.00	
	Prepare and Submit Lake Worth Drainage District Permit Application	1	6	6					\$1,840.00	
	Respond to RFIs (Assume 3)		3	3	3				\$1,155.00	
	Electrical Engineering Subconsultant Permitting							\$1,918.00	\$2,109.80	
5. Bidding	Prepare, Attend Pre-Bid Meeting and Minutes	2	2	2					\$930.00	\$3,889.80
	Issue Addenda		1						\$170.00	
	Attend Bid Opening and Prepare Bid Tab		2						\$340.00	
	Recommendation of Award		1						\$170.00	
	Assist with Contract Execution, NTP		1						\$170.00	
Electrical Engineering Subconsultant Bidding							\$1,918.00	\$2,109.80		
		49	191	292	311	0	0	\$81,247.00		
Total Engineering Fee									\$196,021.70	

STAFF REPORT REGULAR MEETING

AGENDA DATE: March 28, 2023

DEPARTMENT: Electric Utility

TITLE:

Continuing Contracts for Professional Services for Energy Management and Engineering Services

SUMMARY:

Continuing Contracts for Professional Services for Energy Management and Engineering services with BHI Engineering, Inc., Enercon Services, Inc., TEAMWORKnet, Inc., Chen Moore & Associates, Inc. RMC Technologies, Inc. and nFront Consulting, LLC consistent with Florida's Consultants' Competitive Negotiations Act (CCNA)

BACKGROUND AND JUSTIFICATION:

The City of Lake Worth Beach has a requirement for professional consulting firms to provide civil engineering, geotechnical engineering, surveying, architecture, hydrogeological services, energy management and engineering services. The services consist of engineering studies, reports, design and construction phase services for capital improvements projects and other needs within the municipal limits of the City of Lake Worth Beach and the water and electric utility service areas. The City desires to establish "continuing contracts" with a manageable number of firms for each engineering category, with the intent of affording the City a diverse consultant base, and to facilitate the issuance of engagements for studies, design, engineering, construction inspection and other services across a range of CCNA disciplines.

The City issued Request for Qualifications RFQ#23-300 to acquire select professional services for the City consistent with the Florida's Consultants' Competitive Negotiations Act (CCNA) (section 287.055, Florida Statutes). The RFQ included seven different engineering service categories: Architecture, Civil Engineering for Water and Transportation; Geotechnical, Hydrogeological Sciences, Surveying and Energy Management and Engineering Services. It is the intent of the City to award multiple non-exclusive agreements for the initial period of three years with the possibility to extend the agreements for three additional one-year terms.

The City received 60 qualifications from interested firms across all categories.

The City assembled Evaluation Committees comprised of City staff for each of the seven categories that met publicly to evaluate received qualifications. The first step of the evaluations included shortlisting of the firms based on the personnel availability, capability, experience and skill, firm's past performance, client management, past terminations and litigations and evidence of veteran business enterprise, small business and local business preference. Shortlisted firms were invited to prepare presentations at the final evaluation meeting. Evaluation Committees evaluated shortlisted firms after their presentations based on firm's ability of professional personnel, evidence of successful past performance for similar projects, recent and current workload and location/convenience to City staff and recommended the awards for each of the categories.

For the Energy Management and Engineering services category, the City received 11 qualification submittals. The Evaluation Committee shortlisted eight firms for presentations and in the final evaluation meeting recommended award to all eight firms: BHI Engineering, Inc., Power Engineers, Inc., Kiewit Engineering Group, Inc., TEAMWORKnet, Inc., Enercon Services, Inc., Chen Moore & Associates, Inc., RMC Technologies, Inc. and nFront Consulting, LLC. City staff negotiated rates and terms with each of

the recommended firms. Agreements with Power Engineers, Inc. and Kiewit Engineering Group Inc. are still in process of negotiations.

MOTION:

Move to approve/disapprove the Agreements for Continuing Contracts for professional services for Energy Management and Engineering services with BHI Engineering, Inc., Kiewit Engineering Group, Inc., TEAMWORKnet, Inc., Chen Moore & Associates, Inc., RMC Technologies, Inc. and Professional Services Agreement for Utility Studies, System Modelling, Analytics and other energy services to nFront Consulting, LLC.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A

Shortlist Results Energy Management and Engineering services

Final Results Energy Management and Engineering services

BHI Engineering Agreement

Enercon Services, Inc. Agreement

TEAMWORKnet Agreement

Chen Moore & Associates, Inc. Agreement

RMC Technologies, Inc. Agreement

nFront Consulting, LLC Agreement



RFQ#23-300 Continuing Contracts for Professional Services

Evaluation Committee Meeting – Shortlisting Results Energy Management & Engineering Services

The following firms have been shortlisted by the Evaluation Committee to proceed to presentation meeting:

COMPANY	TOTAL	RANK
Enercon Services, Inc	375	1
POWER Engineers, Inc.	375	1
RMC Technologies, Inc.	369	3
TEAMWORKnet, Inc.	367	4
Chen Moore & Associates, Inc.	360	5
Kiewit Engineering Group, Inc.	355	6
BHI Engineering, Inc.	342	7

Additional firm invited to provide presentation on part of their qualifications relating to utility studies and system modelling, analytics and other energy services only.

1. NFRONT

Attachments:

Evaluation Sheet for RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) Energy Management & Engineering Services

City of Lake Worth Beach
Final Evaluation Matrix - Oral Presentations

RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Energy Management & Professional Services

RANKED:

5	1	7	4	6	3	1
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Oral Presentation Evaluation Criteria Score Sheet:	Weight	Enercon Services	Power Engineers	RMC Technologies	Teamworknet	Chen Moore & Associates	Kiewit Engineering Group	BHI Engineering
1 Ability of professional personnel	35	130	138	135	132	138	135	131
2 Evidence of successful past performance for similar projects	35	133	138	138	134	138	134	140
3 Recent, current workload	15	60	60	51	60	50	60	60
4 Location/Convenience to City staff	15	60	55	26	60	45	60	60
Total Points Received:		383	391	350	386	371	389	391

City of Lake Worth Beach
Final Evaluation Matrix - Oral Presentations

RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Energy Management & Professional Services (utility studies, analytics & modelling only)

RANKED: 1

Oral Presentation Evaluation Criteria Score Sheet:		Weight	nFront
1	Ability of professional personnel	35	130
2	Evidence of successful past performance for similar projects	35	140
3	Recent, current workload	15	60
4	Location/Convenience to City staff	15	60
Total Points Received:			390

CONTINUING PROFESSIONAL SERVICES AGREEMENT
RFQ#23-300
(Energy Management & Engineering Services)

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **BHI, Engineering, Inc.**, a Florida Corporation registered to do business in the State of Florida (“CONSULTANT”).

RECITALS

WHEREAS, the City issued Request for Qualifications (No. 23-300) for civil engineering, geotechnical engineering, surveying, architecture, hydrogeological services, transportation and mobility planning, energy management and engineering services, construction management and project management and related professional services in accordance with the Consultants’ Competitive Negotiations Act, section 287.055, Florida Statutes (“RFQ”); and

WHEREAS, the CONSULTANT submitted its qualifications in response to the RFQ; and

WHEREAS, the City desires to award the RFQ to the CONSULTANT based on CONSULTANT’s qualifications and experience to provide Energy Management & Engineering Services; and

WHEREAS, the CONSULTANT has significant experience in assisting municipal organizations in providing engineering services; and

WHEREAS, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the CONSULTANT agrees that any services performed pursuant to the RFQ and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, FEMA policies, procedures, and directives and special clauses as provided for in **Exhibit “C”**; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by the CONSULTANT to the City; and,

WHEREAS, the City finds entering this Agreement with the CONSULTANT serves a valid public purpose.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the CONSULTANT agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement by reference and acknowledged as true and correct statements.

SECTION 2: CONSULTANT’S SERVICES. The City has awarded the CONSULTANT the non-exclusive right to provide the City with Energy Management & Engineering Services (“services”).

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that CONSULTANT will act hereunder as an independent contractor and none of the CONSULTANT’s, officers, directors, employees, independent contractors, representatives or agents performing services for CONSULTANT pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and CONSULTANT is that of independent contractors, and

neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM, TIME AND TERMINATION.

(a) Term. This non-exclusive Agreement shall become effective upon approval by the City Commission and execution by the City, and shall have an initial term of three (3) years with three (3) optional, one (1) year renewals. The City Manager is authorized to exercise the optional one (1) year renewals. Each fiscal year of this Agreement and any renewals will be subject to the availability of funds lawfully appropriated for its purpose by the City Commission. Notwithstanding the foregoing, this Agreement may be terminated as stated herein. The term may be extended by written agreement of the parties for further services related to those services identified herein.

(b) Time for Completion. Time is of the essence in the performance of this Agreement. The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the project schedule set forth by the City.

(c) Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, regulations, epidemic or pandemic. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible. Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to perform the services and, if the CONSULTANT's failure to perform was without its or its sub-consultants' fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

(d) Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination.

(e) Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) days from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) days, then this Agreement shall terminate at the end of the three (3) day period without further notice or demand.

(f) Early Termination. If this Agreement is terminated before the completion of all services by either party, the CONSULTANT shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

(g) Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement is subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify CONSULTANT of such occurrence and either the City or CONSULTANT may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay CONSULTANT for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

(a) Fee Schedule. The fee schedule attached as **Exhibit "B"** shall remain firm for the first three (3) years of this Agreement. After the first three (3) years, the CONSULTANT may request a change to the fee schedule. No changes to the fee schedule shall occur unless approved in writing by the City, which may be by an approved amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSULTANT and in any approved task order.

(b) Task Order(s). This non-exclusive Agreement does not guarantee that the City will utilize CONSULTANT in any capacity or for any services identified herein. When the City identifies a need for the CONSULTANT's services, the City will request a proposal from the CONSULTANT to provide the services requested. The CONSULTANT's proposal shall be submitted in the format of the sample task order, attached hereto and incorporated herein as **Exhibit "A"** and shall be based on the CONSULTANT's currently hourly fee set forth in the CONSULTANT's proposal and attached hereto as **Exhibit "B"**. If a sub-consultant(s) is to be utilized for services under a task order, the CONSULTANT shall obtain a written proposal from the sub-consultant(s) and attach the same with to the CONSULTANT's proposal submitted to the City. Upon receipt of the CONSULTANT's proposal, the City shall decide in its sole discretion whether to award the task order to the CONSULTANT. Depending on the lump sum, not to exceed amount of each proposed task order, the task order may be awarded by the City Manager (if within her purchasing authority of \$50,000 or less) or the City Commission. If the task order is awarded to the CONSULTANT, the CONSULTANT shall commence the identified services upon receipt of a Notice to Proceed from the City or upon the CONSULTANT's receipt of a fully executed task order for the services. The City reserves the right to reject any and all proposals submitted by the CONSULTANT.

(c) Invoices. Unless otherwise agreed in an issued Task Order, the CONSULTANT shall render monthly invoices to the City for services that have been rendered in conformity with this Agreement in the previous month. The invoices shall specify the services performed and the time spent on such work. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. Invoices will be paid within thirty (30) days following the City's receipt of the CONSULTANT's invoice.

(d) Reimbursable Expenses. The CONSULTANT's reimbursable, out-of-pocket expenses including, but not limited to, travel, per diem and other living expenses, shall be identified in an approved task order. The City shall not be responsible for payment of any such reimbursable, out-of-pocket expenses except as provided for in an approved task order or amendment thereto. Reimbursement for mileage shall only be for travel required outside of Palm Beach County. CONSULTANT shall not be reimbursed for

travel within Palm Beach County and all travel shall be proposed and reimbursed pursuant to section 112.061, Florida Statutes.

(e) Direct Project Expenses. Unless otherwise specifically stated in an approved task order, charges for printing, reproduction, use of computer-aided design equipment, field equipment, and any laboratory analysis performed by the CONSULTANT or its subconsultants or its subcontractors, and the use of the CONSULTANT's and employee's automobiles shall be identified in an approved task order. The City shall not be responsible for payment of any other direct project expenses. All direct project expenses shall be billed at cost to the City and the CONSULTANT shall not mark-up or charge an administrative fee in addition to the direct cost for such expenses.

(f) Additional Services. If the City seeks to utilize the CONSULTANT for any additional services related to the services identified herein, the City and CONSULTANT will meet and negotiate a reasonable fee for such services. The negotiated fee shall be approved by the City in the form of an Amendment prior to said services being provided.

(g) Status Report. The CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice at no additional cost to the City (format may be provided by City or CONSULTANT for each approved task order).

(h) Fiscal Non-funding. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the CONSULTANT of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City. The CONSULTANT will be paid for all services rendered through the date of termination.

SECTION 6: TERMS OF PERFORMANCE

(a) Starting Work. The CONSULTANT will not begin any of the services until authorized in writing by a Notice to Proceed from the City or upon the CONSULTANT's receipt of an approved Task Order for the services.

(b) Ownership of Documents. The drawings, specifications, calculations, supporting documents, or other work products which are prepared for the City by the CONSULTANT under this Agreement, a City issued Task Order, or amendments thereto ("Work Product"), shall be and shall become the property of the City upon delivery or completion by the CONSULTANT or receipt of payment from the City for the same. The CONSULTANT may keep copies or samples thereof and shall have the right to use such Work Product. The City accepts sole responsibility for its reuse of any Work Product in a manner other than as initially intended, or for any use of incomplete Work Product unless prior written approval is obtained from the CONSULTANT.

(c) Accounting Records. The CONSULTANT's accounting records, insofar as they pertain to invoicing the City or for disbursements made from the CONSULTANT's account for services under this Agreement, shall be open to City's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Backup documentation for out-of-pocket expenses exceeding Twenty-Five Dollars (\$25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

(d) Approval of Changes. The City, through the City Manager must approve in writing any changes in the scope of services which result in additional costs or expenses to the City, extension of the schedule or which would change the underlying purpose of the services. Changes include, but are not limited to, issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

(e) Authorized Representative. Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City to represent and act for the CONSULTANT and shall inform the City in writing of the name and address of such representative together with a clear definition of the scope of their authority. The CONSULTANT shall keep the City informed of any subsequent changes in the foregoing. The authorized representative of the City shall be the City Manager or designee.

(f) Design/Construction Phase Services. Visits to construction sites and observations made by the CONSULTANT as part of construction phase services, if any, shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the construction contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Safety precautions administered by the CONSULTANT, if any, to protect the CONSULTANT's personnel shall meet those policies enacted by the City. Further, CONSULTANT shall endeavor to make reasonable efforts to guard the City against defects and deficiencies in the services of the construction contractor(s) and to help determine if the provisions of the construction contract documents are being fulfilled. This paragraph does not, however, release the CONSULTANT from any liability which might be attributable to its negligent acts, errors, or omissions, including but not limited to design, construction phase services, or other services as defined in this Agreement, of the CONSULTANT.

(g) Personnel. The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The CONSULTANT shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. All of the CONSULTANT's personnel (and all subconsultants) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of CONSULTANT's personnel furnished by the CONSULTANT upon written notice by City to CONSULTANT of the cause for such replacement.

(h) Conflict of Interest. The 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, as provided for in Section 112.311, Florida Statutes. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said performance. The CONSULTANT shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the City shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the CONSULTANT under the terms of this Agreement.

(i) News Releases / Publicity. The CONSULTANT shall not make any news releases, publicity releases, or advertisements relating to this Agreement or the services hereunder without prior written City approval.

SECTION 8: CITY'S RESPONSIBILITIES

(a) Service of Others. The City shall furnish to the CONSULTANT, if required for performance of the Consultant's services, all available data prepared by or the result of the services of others, including without limitation (as may be appropriate): building plans and related drawings, core borings, probings, and subsurface explorations, hydraulic surveys, laboratory tests, and inspections of samples, materials, and equipment, appropriate professional interpretations of all of the foregoing; environmental assessments and impact statements, appropriate professional interpretations of all of the foregoing; property boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; zoning, deed, and other land use restrictions; and any other special data or consultations relating to the Project.

(b) Examine Work of the Consultant. Within a reasonable time so as not to delay the services of the CONSULTANT, the City shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor, or other consultants, as the City deems appropriate, for such examinations and the rendering, if required, of written opinions pertaining thereto.

SECTION 9: SUSPENSION BY CITY FOR CONVENIENCE. The City may, at any time without cause, order CONSULTANT in writing to suspend, delay or interrupt its services in whole or in part for such period of time as City may determine for City's convenience. Such order shall be by written notice to the CONSULTANT providing at least ten (10) days advance notice unless such order is immediately necessary for the protection of the public health, safety or welfare or for the protection of property.

SECTION 10: INDEMNIFICATION. The CONSULTANT shall indemnify and hold harmless the City, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence of the CONSULTANT, its officers, directors, employees, representatives, and agents employed or utilized by the CONSULTANT in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the CONSULTANT, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 11: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 12: SUB-CONSULTANTS. The City reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant and approve all qualifications of any subconsultant in order to make a determination as to the capability of the subconsultant to perform properly under this Agreement. All subconsultants providing professional services to the CONSULTANT under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement for the CONSULTANT. In the event that a subconsultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the CONSULTANT shall indemnify and hold harmless the City for any claim in excess of the subconsultant's insurance coverage, arising out of the negligent acts, errors or omissions of the subconsultant. Nothing contained herein shall create any contractual relationship between any subconsultant and the City.

SECTION 13: FEDERAL AND STATE TAX. The City is exempt from payment of Florida State Sales and Use Tax. The CONSULTANT is not authorized to use the City’s Tax Exemption Number.

SECTION 14: INSURANCE. Prior to commencing any services, the CONSULTANT shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than “excellent” by A.M. Best or as mutually agreed upon by the City and the CONSULTANT. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent CONSULTANT, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker’s Compensation	\$ statutory limits

The commercial general liability and automobile policies will name the City as an additional insured on primary, non-contributory basis and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve CONSULTANT of its liability and obligations under this Agreement.

Additional Insured status shall be provided pursuant and subject to ISO Form CG 20 10 12 19 (ongoing operations) and, if applicable, CG 20 37 12 19 (completed operations), or equivalent forms for coverages other than Commercial General Liability, to the extent that the loss or claim in question is caused by the CONSULTANT’s negligence in its operations in and during the performance of the services, and to no greater extent than is necessary to provide insurance coverage for the covered indemnity obligations expressly assumed by CONSULTANT under this Agreement, it being the express intent and understanding of the Parties that, up to specified limits, additional insured status is provided hereunder as a support to performance of CONSULTANT’s expressly assumed, covered indemnity obligations hereunder.

SECTION 15: SUCCESSORS AND ASSIGNS. The City and the CONSULTANT each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 16: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator’s fee equally. The mediation shall be held in Palm Beach County, Florida. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce the Agreement or disputes arising out of the Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given

hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 17: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 18: NONDISCRIMINATION. The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 19: AUTHORITY TO PRACTICE. The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 20: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 21: PUBLIC ENTITY CRIMES. CONSULTANT acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The CONSULTANT will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 22: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and if sent to the CONSULTANT, shall be sent to:

BHI Engineering, Inc.
Attn: J. Robert Beckman, Executive Vice President
500 Columbia Dr., Suite 100
West Palm Beach, FL 33409

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 23: ENTIRETY OF AGREEMENT AND CONTROLLING PROVISIONS. This Agreement consists of the terms and conditions set forth in this Agreement (inclusive of all exhibits hereto) and any City issued Task Orders. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement (inclusive of all exhibits hereto) and a City issued Task Order, the terms and conditions of this Agreement shall prevail with the City issued Task Order next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 24: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 25: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the City reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 26: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event CONSULTANT fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to the CONSULTANT to terminate for cause.

SECTION 27: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Agreement is executed by the City.

SECTION 28: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 29: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 30: COUNTERPARTS. This Agreement may be executed in one or more counterparts electronically or digitally, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all the signatories hereto have signed a counterpart of this Agreement.

SECTION 31: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of the CONSULTANT, the undersigned hereby represents to the City that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the CONSULTANT for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 33: PUBLIC RECORDS. The CONSULTANT shall comply with Florida’s Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City’s custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONSULTANT does not transfer the records to the City.

(d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If the CONSULTANT transfers all public records to the City upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City’s custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION. Each party (the “Receiving Party”) will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software (“Confidential Information”) obtained from the other party (the “Disclosing Party”); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party’s Confidential Information, (iv) that is already in the Receiving Party’s possession at the time of disclosure, or (v) that is required to be released by law.

SECTION 35: EXPORT ADMINISTRATION. Each party agrees to comply with all export laws and regulations of the United States (“Export Laws”) to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

SECTION 36: NO THIRD-PARTY BENEFICIARIES. There are no third party beneficiaries under this Agreement.

SECTION 37: SCRUTINIZED COMPANIES.

(a) The CONSULTANT certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, the CONSULTANT certifies that it and its subconsultants are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) The CONSULTANT agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(d) The CONSULTANT agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Agreement, including any and all renewals.

(e) The CONSULTANT agrees that if it or any of its subconsultants' status changes in regards to any certification herein, the CONSULTANT shall immediately notify the City of the same.

(f) As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above stated contracting prohibitions then they shall become inoperative.

SECTION 38: E-VERIFY. Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONSULTANT shall:

(a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subconsultants (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subconsultants' newly hired employees;

(b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subconsultant does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

(c) Maintain copies of all subconsultant affidavits for the duration of this Agreement and provide the same to the City upon request;

(d) Comply fully, and ensure all subconsultant comply fully, with Section 448.095, Florida Statutes;

(e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited) shall be grounds for termination of this Agreement; and,

(f) Be aware that if the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONSULTANT may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Continuing Professional Services Agreement for Energy Management & Engineering Services as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Betty Resch, Mayor

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT:

BHI ENGINEERING, INC.

By: J. Robert Beckman 8/22/2023
J. ROBERT BECKMAN
EXECUTIVE V.P. ENGINEERING SERVICES

[Corporate Seal]

STATE OF Florida
COUNTY OF PALM BEACH

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 22 day of February, 2023, by **BHI, Engineering, Inc.** a Florida Corporation, who is personally known to me or who has produced FL. Power License as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Suzanne Michael Masterson
Notary Public Signature

Notary Seal:



EXHIBIT "A"
(Sample Task Order)

Note: Task Order Number will be issued by the City, leave the line number empty.

TASK ORDER No. _____

**CONTINUING PROFESSIONAL SERVICES
(Energy Management & Engineering Services)**

THIS TASK ORDER FOR CONTINUING PROFESSIONAL SERVICES (“Task Order”) is made on the day of _____, between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **BHI Engineering, Inc.**, a Florida CORPORATION (“CONSULTANT”).

1.0 Project Description:

The City desires the CONSULTANT to provide those services as identified herein for the Project. The Project is described in the CONSULTANT’s Proposal, dated _____ and services are generally described as: _____ (the “Project”).

2.0 Scope

Under this Task Order, the CONSULTANT will provide the City of Lake Worth Beach _____ with Energy Management & Engineering Services for the Project as specified in the **CONSULTANT’s proposal attached hereto and incorporated herein as Exhibit “1”**.

3.0 Schedule

The services to be provided under this Task Order shall be completed within _____ calendar days from the City’s approval of this Task Order or the issuance of a Notice to Proceed.

4.0 Compensation

This Task Order is issued for a lump sum, not to exceed amount of _____. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

5.0 Project Manager

The Project Manager for the CONSULTANT is _____, phone (_____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The CONSULTANT shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Authorization

This Task Order is issued pursuant to the Continuing Professional Services Agreement (Energy Management & Engineering Services) based on RFQ#23-300 between the City of Lake Worth Beach and the CONSULTANT, dated _____ (“Agreement” hereafter). If there are any conflicts between the terms and conditions of this Task Order and the Agreement, the terms and conditions of the Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Task Order No. _____ as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: **BHI ENGINEERING, INC.**

By: **DO NOT SIGN – SAMPLE ONLY**

[Corporate Seal]

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____, 2023, by **BHI Engineering, Inc.** a Florida Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Notary Public Signature

Notary Seal:

Exhibit "B"

Consultant's Rate Schedule



BHI ENGINEERING LABOR RATE SHEET 02/07/2023				
Classification	2023-2025	2026	2027	2028
Engineer I	\$123.00	\$128.00	\$133.00	\$138.00
Engineer II	\$134.00	\$140.00	\$145.00	\$151.00
Engineer III	\$145.00	\$151.00	\$157.00	\$163.00
Senior Engineer	\$157.00	\$164.00	\$170.00	\$176.00
Principal Engineer	\$176.00	\$184.00	\$191.00	\$198.00
Designer I	\$95.00	\$99.00	\$103.00	\$107.00
Designer II	\$105.00	\$110.00	\$114.00	\$118.00
Senior Designer	\$117.00	\$122.00	\$127.00	\$132.00
Lead Designer	\$122.00	\$127.00	\$132.00	\$137.00
Project Manager I	\$124.00	\$129.00	\$134.00	\$139.00
Project Manager II	\$133.00	\$139.00	\$144.00	\$150.00
Senior Project Manager	\$157.00	\$164.00	\$170.00	\$176.00
Lead Project Manager	\$164.00	\$171.00	\$177.00	\$184.00
Project Coordinator I	\$90.00	\$94.00	\$98.00	\$102.00
Project Coordinator II	\$113.00	\$118.00	\$123.00	\$128.00
Senior Project Coordinator	\$133.00	\$139.00	\$144.00	\$150.00
Lead Project Coordinator	\$157.00	\$164.00	\$170.00	\$176.00
CAD Drafter I	\$96.00	\$100.00	\$104.00	\$108.00
CAD Drafter II	\$101.00	\$106.00	\$110.00	\$114.00
Senior CAD Drafter	\$112.00	\$117.00	\$122.00	\$127.00
Project Estimator I	\$109.00	\$114.00	\$118.00	\$123.00
Project Estimator II	\$133.00	\$139.00	\$144.00	\$150.00
Senior Project Estimator	\$157.00	\$164.00	\$170.00	\$176.00
Lead Project Estimator	\$164.00	\$171.00	\$177.00	\$184.00
Project Scheduler I	\$109.00	\$114.00	\$118.00	\$123.00
Project Scheduler II	\$133.00	\$139.00	\$144.00	\$150.00
Senior Project Scheduler	\$157.00	\$164.00	\$170.00	\$176.00
Lead Project Scheduler	\$164.00	\$171.00	\$177.00	\$184.00
Administrative Clerk I	\$68.00	\$71.00	\$74.00	\$77.00
Administrative Clerk II	\$80.00	\$84.00	\$87.00	\$91.00
Senior Administrative Clerk	\$93.00	\$97.00	\$101.00	\$105.00
Field Survey Tech	\$101.00	\$106.00	\$110.00	\$114.00
Drone Survey Spotter	\$101.00	\$106.00	\$110.00	\$114.00
Drone Survey Pilot	\$118.00	\$123.00	\$128.00	\$133.00
ROW Agent	\$90.64	\$95.00	\$99.00	\$103.00
STORM SUPPORT RATES				
Production Leads ST	\$151.00	\$158.00	\$164.00	\$170.00
Production Leads OT	\$211.00	\$220.00	\$228.00	\$236.00
Damage Assessors / Patrollers ST	\$101.00	\$106.00	\$110.00	\$114.00
Damage Assessors / Patrollers OT	\$142.00	\$148.00	\$154.00	\$160.00
SPECIAL APPLICATION SOFTWARE				
*Level I Software (per hour)	\$12.00	\$13.00	\$14.00	\$15.00
**Level II Software (per hour)	\$22.00	\$23.00	\$24.00	\$25.00
***Level III Software (per hour)	\$39.00	\$41.00	\$43.00	\$45.00
****Level IV Software (per hour)	\$54.00	\$57.00	\$59.00	\$62.00
OTHER				
Expenses including but not limited to materials at cost plus 10%				
Travel expenses including but not limited to airfare, lodging, meals, postage and rental, are billed at cost				
*Level I software includes, among others: AutoCAD, Pole foreman				
**Level II software includes, among others: PLS CAD, PLS Pole, Structural Detailing Software, ETAP; SDS				
***Level III Software includes among others: PLSTower, Structural Design [STADD][RISA], GE PSILF, PSCAD, PTI PSS/E				
****Level IV Software includes others: CDEGS, ESA EasyPower, ASPEN, OneLiner, CAPE				

Exhibit "C"

Federal Contract Provisions

The Consultant hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this RFQ, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Consultant agrees as follows:

(1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.

(4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The

Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Consultant debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Consultant or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

- (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Consultant agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

- (1) The Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Consultant agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Consultant is required to verify that none of the Consultant’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of

Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

- (i) In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iii) The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

- (1) The Consultant agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Consultant agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Consultant acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Consultant will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Consultant, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant’s actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Consultant intends to subcontract any portion of the work covered by this Contract, the Consultant must take all necessary affirmative steps to assure that small and minority businesses, women’s business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

(1) As appropriate and to the extent consistent with law, the Consultant should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(2) For purposes of this section:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

(1) The Consultant is prohibited from obligating or expending loan or grant funds to:

(a) Procure or obtain;

(b) Extend or renew a contract to procure or obtain; or

(c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant is required to confirm that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Consultant, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Consultant to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that

the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



Signature of Consultant's Authorized Official

George Guirguis, P.E.
Name and Title of Consultant's Authorized Official

02/22/2023

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Consultant's Authorized Official

George Guirguis, P.E.

Name and Title of Consultant's Authorized Official

02/22/2023

Date

CONTINUING PROFESSIONAL SERVICES AGREEMENT

RFO#23-300

(Energy Management & Engineering Services)

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Enercon Services, Inc.**, a Florida Corporation registered to do business in the State of Florida (“CONSULTANT”).

RECITALS

WHEREAS, the City issued Request for Qualifications (No. 23-300) for civil engineering, geotechnical engineering, surveying, architecture, hydrogeological services, transportation and mobility planning, energy management and engineering services, construction management and project management and related professional services in accordance with the Consultants’ Competitive Negotiations Act, section 287.055, Florida Statutes (“RFQ”); and

WHEREAS, the CONSULTANT submitted its qualifications in response to the RFQ; and

WHEREAS, the City desires to award the RFQ to the CONSULTANT based on CONSULTANT’s qualifications and experience to provide Energy Management & Engineering Services; and

WHEREAS, the CONSULTANT has significant experience in assisting municipal organizations in providing engineering services; and

WHEREAS, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the CONSULTANT agrees that any services performed pursuant to the RFQ and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, FEMA policies, procedures, and directives and special clauses as provided for in **Exhibit “C”**; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by the CONSULTANT to the City; and,

WHEREAS, the City finds entering this Agreement with the CONSULTANT serves a valid public purpose.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the CONSULTANT agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement by reference and acknowledged as true and correct statements.

SECTION 2: CONSULTANT’S SERVICES. The City has awarded the CONSULTANT the non-exclusive right to provide the City with Energy Management & Engineering Services (“services”).

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that CONSULTANT will act hereunder as an independent contractor and none of the CONSULTANT’s, officers, directors, employees, independent contractors, representatives or agents performing services for CONSULTANT pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and CONSULTANT is that of independent contractors, and

neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM, TIME AND TERMINATION.

(a) Term. This non-exclusive Agreement shall become effective upon approval by the City Commission and execution by the City, and shall have an initial term of three (3) years with three (3) optional, one (1) year renewals. The City Manager is authorized to exercise the optional one (1) year renewals. Each fiscal year of this Agreement and any renewals will be subject to the availability of funds lawfully appropriated for its purpose by the City Commission. Notwithstanding the foregoing, this Agreement may be terminated as stated herein. The term may be extended by written agreement of the parties for further services related to those services identified herein.

(b) Time for Completion. Time is of the essence in the performance of this Agreement. The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the project schedule set forth by the City.

(c) Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, regulations, epidemic or pandemic. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible. Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to perform the services and, if the CONSULTANT's failure to perform was without its or its sub-consultants' fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

(d) Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination.

(e) Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) business days from the date of the notice in which to commence to remedy the breach. If such corrective action is not commenced within three (3) business days, then this Agreement shall terminate at the end of the three (3) day period without further notice or demand.

(f) Early Termination. If this Agreement is terminated before the completion of all services by either party, the CONSULTANT shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

(g) Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement is subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify CONSULTANT of such occurrence and either the City or CONSULTANT may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay CONSULTANT for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

(a) Fee Schedule. The fee schedule attached as **Exhibit "B"** shall remain firm for the first three (3) years of this Agreement. After the first three (3) years, the CONSULTANT may request a change to the fee schedule. No changes to the fee schedule shall occur unless approved in writing by the City, which may be by an approved amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSULTANT and in any approved task order.

(b) Task Order(s). This non-exclusive Agreement does not guarantee that the City will utilize CONSULTANT in any capacity or for any services identified herein. When the City identifies a need for the CONSULTANT's services, the City will request a proposal from the CONSULTANT to provide the services requested. The CONSULTANT's proposal shall be submitted in the format of the sample task order, attached hereto and incorporated herein as **Exhibit "A"** and shall be based on the CONSULTANT's currently hourly fee set forth in the CONSULTANT's proposal and attached hereto as **Exhibit "B"**. If a sub-consultant(s) is to be utilized for services under a task order, the CONSULTANT shall obtain a written proposal from the sub-consultant(s) and attach the same with to the CONSULTANT's proposal submitted to the City. Upon receipt of the CONSULTANT's proposal, the City shall decide in its sole discretion whether to award the task order to the CONSULTANT. Depending on the lump sum, not to exceed amount of each proposed task order, the task order may be awarded by the City Manager (if within her purchasing authority of \$50,000 or less) or the City Commission. If the task order is awarded to the CONSULTANT, the CONSULTANT shall commence the identified services upon receipt of a Notice to Proceed from the City or upon the CONSULTANT's receipt of a fully executed task order for the services. The City reserves the right to reject any and all proposals submitted by the CONSULTANT.

(c) Invoices. Unless otherwise agreed in an issued Task Order, the CONSULTANT shall render monthly invoices to the City for services that have been rendered in conformity with this Agreement in the previous month. The invoices shall specify the services performed and the time spent on such work. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. Invoices will be paid within thirty (30) days following the City's receipt of the CONSULTANT's invoice.

(d) Reimbursable Expenses. The CONSULTANT's reimbursable, out-of-pocket expenses including, but not limited to, travel, per diem and other living expenses, shall be identified in an approved task order. The City shall not be responsible for payment of any such reimbursable, out-of-pocket expenses except as provided for in an approved task order or amendment thereto. Reimbursement for mileage shall only be for travel required outside of Palm Beach County. CONSULTANT shall not be reimbursed for

travel within Palm Beach County and all travel shall be proposed and reimbursed pursuant to section 112.061, Florida Statutes.

(e) Direct Project Expenses. Unless otherwise specifically stated in an approved task order, charges for printing, reproduction, use of computer-aided design equipment, field equipment, and any laboratory analysis performed by the CONSULTANT or its subconsultants or its subcontractors, and the use of the CONSULTANT's and employee's automobiles shall be identified in an approved task order. The City shall not be responsible for payment of any other direct project expenses. All direct project expenses shall be billed at cost to the City and the CONSULTANT shall not mark-up or charge an administrative fee in addition to the direct cost for such expenses.

(f) Additional Services. If the City seeks to utilize the CONSULTANT for any additional services related to the services identified herein, the City and CONSULTANT will meet and negotiate a reasonable fee for such services. The negotiated fee shall be approved by the City in the form of an Amendment prior to said services being provided.

(g) Status Report. The CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice at no additional cost to the City (format may be provided by City or CONSULTANT for each approved task order).

(h) Fiscal Non-funding. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the CONSULTANT of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City. The CONSULTANT will be paid for all services rendered through the date of termination.

SECTION 6: TERMS OF PERFORMANCE

(a) Starting Work. The CONSULTANT will not begin any of the services until authorized in writing by a Notice to Proceed from the City or upon the CONSULTANT's receipt of an approved Task Order for the services.

(b) Ownership of Documents. The physical embodiment of the drawings, specifications, calculations, supporting documents, or other work products which are prepared for the City by the CONSULTANT under this Agreement, a City issued Task Order, or amendments thereto ("Work Product"), shall be and shall become the property of the City upon delivery or completion by the CONSULTANT or receipt of payment from the City for the same. The CONSULTANT may keep copies or samples thereof and shall have the right to use such Work Product. The City accepts sole responsibility for its reuse of any Work Product in a manner other than as initially intended, or for any use of incomplete Work Product unless prior written approval is obtained from the CONSULTANT. Anything to the contrary contained herein notwithstanding, CONSULTANT shall be the sole and exclusive owner of any and all intellectual property rights contained or embedded in the drawings, specifications, calculations, supporting documents, or other work products which are prepared for the City by the CONSULTANT under this Agreement (collectively, the "Intellectual Property Rights"). CONSULTANT hereby grants the City a non-exclusive, royalty-free, fully paid-up, perpetual, irrevocable, transferable, worldwide, license to use, practice, apply, reproduce, modify, exploit, sell, distribute, license and manufacture the Intellectual Property Rights inside and outside the United States of America.

(c) Accounting Records. The CONSULTANT's accounting records, insofar as they pertain to invoicing the City or for disbursements made from the CONSULTANT's account for services under this Agreement, shall be open to City's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Backup documentation for out-of-pocket expenses exceeding Twenty-Five Dollars (\$25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

(d) Approval of Changes. The City, through the City Manager must approve in writing any changes in the scope of services which result in additional costs or expenses to the City, extension of the schedule or which would change the underlying purpose of the services. Changes include, but are not limited to, issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

(e) Authorized Representative. Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City to represent and act for the CONSULTANT and shall inform the City in writing of the name and address of such representative together with a clear definition of the scope of their authority. The CONSULTANT shall keep the City informed of any subsequent changes in the foregoing. The authorized representative of the City shall be the City Manager or designee.

(f) Design/Construction Phase Services. Visits to construction sites and observations made by the CONSULTANT as part of construction phase services, if any, shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the construction contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Safety precautions administered by the CONSULTANT, if any, to protect the CONSULTANT's personnel shall meet those policies enacted by the City. Further, CONSULTANT shall endeavor to make reasonable efforts to guard the City against defects and deficiencies in the services of the construction contractor(s) and to help determine if the provisions of the construction contract documents are being fulfilled. This paragraph does not, however, release the CONSULTANT from any liability which might be attributable to its negligent acts, errors, or omissions, including but not limited to design, construction phase services, or other services as defined in this Agreement, of the CONSULTANT.

(g) Personnel. The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The CONSULTANT shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. All of the CONSULTANT's personnel (and all subconsultants) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of CONSULTANT's personnel furnished by the CONSULTANT upon written notice by City to CONSULTANT of the cause for such replacement.

(h) Conflict of Interest. The 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, as provided for in Section 112.311, Florida Statutes. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said performance. The CONSULTANT shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the City shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with

respect to services provided to the City by the CONSULTANT under the terms of this Agreement.

(i) News Releases / Publicity. The CONSULTANT shall not make any news releases, publicity releases, or advertisements relating to this Agreement or the services hereunder without prior written City approval.

SECTION 8: CITY'S RESPONSIBILITIES

(a) Service of Others. The City shall furnish to the CONSULTANT, if required for performance of the Consultant's services, all available data prepared by or the result of the services of others, including without limitation (as may be appropriate): building plans and related drawings, core borings, probings, and subsurface explorations, hydraulic surveys, laboratory tests, and inspections of samples, materials, and equipment, appropriate professional interpretations of all of the foregoing; environmental assessments and impact statements, appropriate professional interpretations of all of the foregoing; property boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; zoning, deed, and other land use restrictions; and any other special data or consultations relating to the Project.

(b) Examine Work of the Consultant. Within a reasonable time so as not to delay the services of the CONSULTANT, the City shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor, or other consultants, as the City deems appropriate, for such examinations and the rendering, if required, of written opinions pertaining thereto.

SECTION 9: SUSPENSION BY CITY FOR CONVENIENCE. The City may, at any time without cause, order CONSULTANT in writing to suspend, delay or interrupt its services in whole or in part for such period of time as City may determine for City's convenience. Such order shall be by written notice to the CONSULTANT providing at least ten (10) days advance notice unless such order is immediately necessary for the protection of the public health, safety or welfare or for the protection of property.

SECTION 10: INDEMNIFICATION. The CONSULTANT shall indemnify and hold harmless the City, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence of the CONSULTANT, its officers, directors, employees, representatives, and agents employed or utilized by the CONSULTANT in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the CONSULTANT, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 11: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 12: SUB-CONSULTANTS. The City reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant and approve all qualifications of any subconsultant in order to make a determination as to the capability of the subconsultant to perform properly under this Agreement. All subconsultants providing professional services to the CONSULTANT under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement for the CONSULTANT. In the event that a subconsultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the CONSULTANT shall indemnify and hold harmless the City for any claim in excess of the subconsultant's insurance coverage, arising out of the negligent acts, errors or omissions of the subconsultant. Nothing contained herein shall create any contractual relationship between any subconsultant and the City.

SECTION 13: FEDERAL AND STATE TAX. The City is exempt from payment of Florida State Sales and Use Tax. The CONSULTANT is not authorized to use the City's Tax Exemption Number.

SECTION 14: INSURANCE. Prior to commencing any services, the CONSULTANT shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the City and the CONSULTANT. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent CONSULTANT, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits

The commercial general liability and automobile policies will name the City as an additional insured on primary, non-contributory basis and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve CONSULTANT of its liability and obligations under this Agreement.

Additional Insured status shall be provided pursuant and subject to ISO Form CG 20 10 12 19 (ongoing operations) and, if applicable, CG 20 37 12 19 (completed operations), or equivalent forms for coverages other than Commercial General Liability, to the extent that the loss or claim in question is caused by the CONSULTANT's negligence in its operations in and during the performance of the services, and to no greater extent than is necessary to provide insurance coverage for the covered indemnity obligations expressly assumed by CONSULTANT under this Agreement, it being the express intent and understanding of the Parties that, up to specified limits, additional insured status is provided hereunder as a support to performance of CONSULTANT's expressly assumed, covered indemnity obligations hereunder.

SECTION 15: SUCCESSORS AND ASSIGNS. The City and the CONSULTANT each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 16: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County, Florida. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce the Agreement or disputes arising out of the Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given

hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 17: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 18: NONDISCRIMINATION. The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 19: AUTHORITY TO PRACTICE. The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 20: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 21: PUBLIC ENTITY CRIMES. CONSULTANT acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The CONSULTANT will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 22: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and if sent to the CONSULTANT, shall be sent to:

Enercon Services, Inc.,
Attn: Bryan T. Philipps, Vice President
500 Townpark Lane
Kennesaw, GA 30144

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 23: ENTIRETY OF AGREEMENT AND CONTROLLING PROVISIONS. This Agreement consists of the terms and conditions set forth in this Agreement (inclusive of all exhibits hereto) and any City issued Task Orders. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement (inclusive of all exhibits hereto) and a City issued Task Order, the terms and conditions of this Agreement shall prevail with the City issued Task Order next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 24: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 25: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the City reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 26: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event CONSULTANT fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to the CONSULTANT to terminate for cause.

SECTION 27: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Agreement is executed by the City.

SECTION 28: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 29: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 30: COUNTERPARTS. This Agreement may be executed in one or more counterparts electronically or digitally, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all the signatories hereto have signed a counterpart of this Agreement.

SECTION 31: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of the CONSULTANT, the undersigned hereby represents to the City that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the CONSULTANT for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 33: PUBLIC RECORDS. The CONSULTANT shall comply with Florida’s Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City’s custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONSULTANT does not transfer the records to the City.

(d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If the CONSULTANT transfers all public records to the City upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City’s custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION. Each party (the “Receiving Party”) will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software (“Confidential Information”) obtained from the other party (the “Disclosing Party”); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party’s Confidential Information, (iv) that is already in the Receiving Party’s possession at the time of disclosure, or (v) that is required to be released by law.

SECTION 35: EXPORT ADMINISTRATION. Each party agrees to comply with all export laws and regulations of the United States (“Export Laws”) to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

SECTION 36: NO THIRD-PARTY BENEFICIARIES. There are no third party beneficiaries under this Agreement.

SECTION 37: SCRUTINIZED COMPANIES.

(a) The CONSULTANT certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, the CONSULTANT certifies that it and its subconsultants are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) The CONSULTANT agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(d) The CONSULTANT agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Agreement, including any and all renewals.

(e) The CONSULTANT agrees that if it or any of its subconsultants' status changes in regards to any certification herein, the CONSULTANT shall immediately notify the City of the same.

(f) As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above stated contracting prohibitions then they shall become inoperative.

SECTION 38: E-VERIFY. Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONSULTANT shall:

(a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subconsultants (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subconsultants' newly hired employees;

(b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subconsultant does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

(c) Maintain copies of all subconsultant affidavits for the duration of this Agreement and provide the same to the City upon request;

(d) Comply fully, and ensure all subconsultant comply fully, with Section 448.095, Florida Statutes;

(e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited) shall be grounds for termination of this Agreement; and,

(f) Be aware that if the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONSULTANT may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Continuing Professional Services Agreement for Energy Management & Engineering Services as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Betty Resch, Mayor

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT:

ENERCON SERVICES, INC.

By: Bryan T. Phillips Digitally signed by Bryan T. Phillips
Date: 2023.03.07 14:46:56 -05'00'

[Corporate Seal]

STATE OF Georgia)
COUNTY OF Harris)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 8th day of MARCH, 2023, by **Enercon Services, Inc.** a Florida Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Cynthia Anderson
Notary Public Signature

Notary Seal:

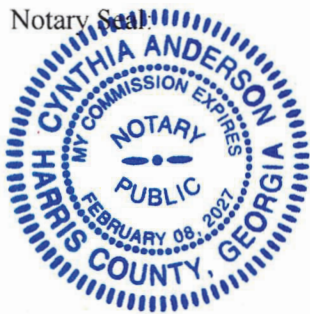


EXHIBIT "A"
(Sample Task Order)

Note: Task Order Number will be issued by the City, leave the line number empty.

TASK ORDER No. _____

**CONTINUING PROFESSIONAL SERVICES
(Energy Management & Engineering Services)**

THIS TASK ORDER FOR CONTINUING PROFESSIONAL SERVICES (“Task Order”) is made on the day of _____, between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Enercon Services, Inc.**, a Florida CORPORATION (“CONSULTANT”).

1.0 Project Description:

The City desires the CONSULTANT to provide those services as identified herein for the Project. The Project is described in the CONSULTANT’s Proposal, dated _____ and services are generally described as: _____ (the “Project”).

2.0 Scope

Under this Task Order, the CONSULTANT will provide the City of Lake Worth Beach _____ with Energy Management & Engineering Services for the Project as specified in the **CONSULTANT’s proposal attached hereto and incorporated herein as Exhibit “1”**.

3.0 Schedule

The services to be provided under this Task Order shall be completed within _____ calendar days from the City’s approval of this Task Order or the issuance of a Notice to Proceed.

4.0 Compensation

This Task Order is issued for a lump sum, not to exceed amount of _____. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

5.0 Project Manager

The Project Manager for the CONSULTANT is _____, phone (_____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The CONSULTANT shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Authorization

This Task Order is issued pursuant to the Continuing Professional Services Agreement (Energy Management & Engineering Services) based on RFQ#23-300 between the City of Lake Worth Beach and the CONSULTANT, dated _____ (“Agreement” hereafter). If there are any conflicts between the terms and conditions of this Task Order and the Agreement, the terms and conditions of the Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Task Order No. _____ as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Carmen Y. Davis, City Manager or Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: **ENERCON SERVICES, INC.**

By: **DO NOT SIGN – SAMPLE ONLY**

[Corporate Seal]

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____, 2023, by **Enercon Services, Inc.** a Florida Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Notary Public Signature

Notary Seal:

Exhibit “B”

Consultant’s Rate Schedule



LAKE WORTH BEACH FEE SCHEDULE*
(Effective January 1, 2023)

LABOR

Title	Hourly Service Rates
Principal Engineer	\$165.00
Project Manager Sr	\$160.00
Engineer Manager	\$160.00
Engineer Lead	\$148.00
Project Manager II	\$144.00
Project Manager	\$132.00
Engineer IV	\$138.00
Engineer III	\$128.00
Engineer II	\$117.00
Engineer I	\$105.00
Drafter Sr	\$110.00
Drafter III	\$100.00
Technician	\$90.00
Drafter II	\$85.00
Administrative Support	\$80.00
Drafter I	\$75.00

Exhibit "C"

Federal Contract Provisions

The Consultant hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this RFQ, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Consultant agrees as follows:

(1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.

(4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of

September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Consultant debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Consultant or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

(1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Consultant agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

(1) The Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Consultant agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Consultant is required to verify that none of the Consultant’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated

funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

(i) In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

(ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(iii) The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

(1) The Consultant agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Consultant agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the City and the Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Consultant acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Consultant will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Consultant, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant’s actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Consultant intends to subcontract any portion of the work covered by this Contract, the Consultant must take all necessary affirmative steps to assure that small and minority businesses, women’s business

enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

(1) As appropriate and to the extent consistent with law, the Consultant should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(2) For purposes of this section:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

(1) The Consultant is prohibited from obligating or expending loan or grant funds to:

(a) Procure or obtain;

(b) Extend or renew a contract to procure or obtain; or

(c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant is required to confirm that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Consultant, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Consultant to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that

the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Bryan T. Phillips Digitally signed by Bryan T. Phillips
Date: 2023.03.09 13:40:11 -05'00'

Signature of Consultant's Authorized Official

Vice President, Power Delivery

Name and Title of Consultant's Authorized Official

3-9-2023

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant Enercon Services, Inc. certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Bryan T. Phillips  Digitally signed by Bryan T. Phillips
Date: 2023.03.09 13:42:39 -05'00'

Signature of Consultant's Authorized Official

Bryan T. Phillips, Vice President
Name and Title of Consultant's Authorized Official

3/9/2023
Date

CONTINUING PROFESSIONAL SERVICES AGREEMENT

RFQ#23-300

(Energy Management & Engineering Services)

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **TEAMWORKnet, Inc.**, a Florida Corporation registered to do business in the State of Florida (“CONSULTANT”).

RECITALS

WHEREAS, the City issued Request for Qualifications (No. 23-300) for civil engineering, geotechnical engineering, surveying, architecture, hydrogeological services, transportation and mobility planning, energy management and engineering services, construction management and project management and related professional services in accordance with the Consultants’ Competitive Negotiations Act, section 287.055, Florida Statutes (“RFQ”); and

WHEREAS, the CONSULTANT submitted its qualifications in response to the RFQ; and

WHEREAS, the City desires to award the RFQ to the CONSULTANT based on CONSULTANT’s qualifications and experience to provide Energy Management & Engineering Services; and

WHEREAS, the CONSULTANT has significant experience in assisting municipal organizations in providing engineering services; and

WHEREAS, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the CONSULTANT agrees that any services performed pursuant to the RFQ and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, FEMA policies, procedures, and directives and special clauses as provided for in **Exhibit “C”**; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by the CONSULTANT to the City; and,

WHEREAS, the City finds entering this Agreement with the CONSULTANT serves a valid public purpose.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the CONSULTANT agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement by reference and acknowledged as true and correct statements.

SECTION 2: CONSULTANT’S SERVICES. The City has awarded the CONSULTANT the non-exclusive right to provide the City with Energy Management & Engineering Services (“services”).

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that CONSULTANT will act hereunder as an independent contractor and none of the CONSULTANT’s, officers, directors, employees, independent contractors, representatives or agents performing services for CONSULTANT pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and CONSULTANT is that of independent contractors, and

neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM, TIME AND TERMINATION.

(a) Term. This non-exclusive Agreement shall become effective upon approval by the City Commission and execution by the City, and shall have an initial term of three (3) years with three (3) optional, one (1) year renewals. The City Manager is authorized to exercise the optional one (1) year renewals. Each fiscal year of this Agreement and any renewals will be subject to the availability of funds lawfully appropriated for its purpose by the City Commission. Notwithstanding the foregoing, this Agreement may be terminated as stated herein. The term may be extended by written agreement of the parties for further services related to those services identified herein.

(b) Time for Completion. Time is of the essence in the performance of this Agreement. The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the project schedule set forth by the City.

(c) Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, regulations, epidemic or pandemic. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible. Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to perform the services and, if the CONSULTANT's failure to perform was without its or its sub-consultants' fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

(d) Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination.

(e) Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) days from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) days, then this Agreement shall terminate at the end of the three (3) day period without further notice or demand.

(f) Early Termination. If this Agreement is terminated before the completion of all services by either party, the CONSULTANT shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

(g) Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement is subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify CONSULTANT of such occurrence and either the City or CONSULTANT may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay CONSULTANT for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

(a) Fee Schedule. The fee schedule attached as **Exhibit "B"** shall remain firm for the first three (3) years of this Agreement. After the first three (3) years, the CONSULTANT may request a change to the fee schedule. No changes to the fee schedule shall occur unless approved in writing by the City, which may be by an approved amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSULTANT and in any approved task order.

(b) Task Order(s). This non-exclusive Agreement does not guarantee that the City will utilize CONSULTANT in any capacity or for any services identified herein. When the City identifies a need for the CONSULTANT's services, the City will request a proposal from the CONSULTANT to provide the services requested. The CONSULTANT's proposal shall be submitted in the format of the sample task order, attached hereto and incorporated herein as **Exhibit "A"** and shall be based on the CONSULTANT's currently hourly fee set forth in the CONSULTANT's proposal and attached hereto as **Exhibit "B"**. If a sub-consultant(s) is to be utilized for services under a task order, the CONSULTANT shall obtain a written proposal from the sub-consultant(s) and attach the same with to the CONSULTANT's proposal submitted to the City. Upon receipt of the CONSULTANT's proposal, the City shall decide in its sole discretion whether to award the task order to the CONSULTANT. Depending on the lump sum, not to exceed amount of each proposed task order, the task order may be awarded by the City Manager (if within her purchasing authority of \$50,000 or less) or the City Commission. If the task order is awarded to the CONSULTANT, the CONSULTANT shall commence the identified services upon receipt of a Notice to Proceed from the City or upon the CONSULTANT's receipt of a fully executed task order for the services. The City reserves the right to reject any and all proposals submitted by the CONSULTANT.

(c) Invoices. Unless otherwise agreed in an issued Task Order, the CONSULTANT shall render monthly invoices to the City for services that have been rendered in conformity with this Agreement in the previous month. The invoices shall specify the services performed and the time spent on such work. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. Invoices will be paid within thirty (30) days following the City's receipt of the CONSULTANT's invoice.

(d) Reimbursable Expenses. The CONSULTANT's reimbursable, out-of-pocket expenses including, but not limited to, travel, per diem and other living expenses, shall be identified in an approved task order. The City shall not be responsible for payment of any such reimbursable, out-of-pocket expenses except as provided for in an approved task order or amendment thereto. Reimbursement for mileage shall only be for travel required outside of Palm Beach County. CONSULTANT shall not be reimbursed for

travel within Palm Beach County and all travel shall be proposed and reimbursed pursuant to section 112.061, Florida Statutes.

(e) Direct Project Expenses. Unless otherwise specifically stated in an approved task order, charges for printing, reproduction, use of computer-aided design equipment, field equipment, and any laboratory analysis performed by the CONSULTANT or its subconsultants or its subcontractors, and the use of the CONSULTANT's and employee's automobiles shall be identified in an approved task order. The City shall not be responsible for payment of any other direct project expenses. All direct project expenses shall be billed at cost to the City and the CONSULTANT shall not mark-up or charge an administrative fee in addition to the direct cost for such expenses.

(f) Additional Services. If the City seeks to utilize the CONSULTANT for any additional services related to the services identified herein, the City and CONSULTANT will meet and negotiate a reasonable fee for such services. The negotiated fee shall be approved by the City in the form of an Amendment prior to said services being provided.

(g) Status Report. The CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice at no additional cost to the City (format may be provided by City or CONSULTANT for each approved task order).

(h) Fiscal Non-funding. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the CONSULTANT of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City. The CONSULTANT will be paid for all services rendered through the date of termination.

SECTION 6: TERMS OF PERFORMANCE

(a) Starting Work. The CONSULTANT will not begin any of the services until authorized in writing by a Notice to Proceed from the City or upon the CONSULTANT's receipt of an approved Task Order for the services.

(b) Ownership of Documents. The drawings, specifications, calculations, supporting documents, or other work products which are prepared for the City by the CONSULTANT under this Agreement, a City issued Task Order, or amendments thereto ("Work Product"), shall be and shall become the property of the City upon delivery or completion by the CONSULTANT or receipt of payment from the City for the same. The CONSULTANT may keep copies or samples thereof and shall have the right to use such Work Product. The City accepts sole responsibility for its reuse of any Work Product in a manner other than as initially intended, or for any use of incomplete Work Product unless prior written approval is obtained from the CONSULTANT.

(c) Accounting Records. The CONSULTANT's accounting records, insofar as they pertain to invoicing the City or for disbursements made from the CONSULTANT's account for services under this Agreement, shall be open to City's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Backup documentation for out-of-pocket expenses exceeding Twenty-Five Dollars (\$25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

(d) Approval of Changes. The City, through the City Manager must approve in writing any changes in the scope of services which result in additional costs or expenses to the City, extension of the schedule or which would change the underlying purpose of the services. Changes include, but are not limited to, issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

(e) Authorized Representative. Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City to represent and act for the CONSULTANT and shall inform the City in writing of the name and address of such representative together with a clear definition of the scope of their authority. The CONSULTANT shall keep the City informed of any subsequent changes in the foregoing. The authorized representative of the City shall be the City Manager or designee.

(f) Design/Construction Phase Services. Visits to construction sites and observations made by the CONSULTANT as part of construction phase services, if any, shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the construction contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Safety precautions administered by the CONSULTANT, if any, to protect the CONSULTANT's personnel shall meet those policies enacted by the City. Further, CONSULTANT shall endeavor to make reasonable efforts to guard the City against defects and deficiencies in the services of the construction contractor(s) and to help determine if the provisions of the construction contract documents are being fulfilled. This paragraph does not, however, release the CONSULTANT from any liability which might be attributable to its negligent acts, errors, or omissions, including but not limited to design, construction phase services, or other services as defined in this Agreement, of the CONSULTANT.

(g) Personnel. The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The CONSULTANT shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. All of the CONSULTANT's personnel (and all subconsultants) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of CONSULTANT's personnel furnished by the CONSULTANT upon written notice by City to CONSULTANT of the cause for such replacement.

(h) Conflict of Interest. The 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, as provided for in Section 112.311, Florida Statutes. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said performance. The CONSULTANT shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the City shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the CONSULTANT under the terms of this Agreement.

(i) News Releases / Publicity. The CONSULTANT shall not make any news releases, publicity releases, or advertisements relating to this Agreement or the services hereunder without prior written City approval.

SECTION 8: CITY'S RESPONSIBILITIES

(a) Service of Others. The City shall furnish to the CONSULTANT, if required for performance of the Consultant's services, all available data prepared by or the result of the services of others, including without limitation (as may be appropriate): building plans and related drawings, core borings, probings, and subsurface explorations, hydraulic surveys, laboratory tests, and inspections of samples, materials, and equipment, appropriate professional interpretations of all of the foregoing; environmental assessments and impact statements, appropriate professional interpretations of all of the foregoing; property boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; zoning, deed, and other land use restrictions; and any other special data or consultations relating to the Project.

(b) Examine Work of the Consultant. Within a reasonable time so as not to delay the services of the CONSULTANT, the City shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor, or other consultants, as the City deems appropriate, for such examinations and the rendering, if required, of written opinions pertaining thereto.

SECTION 9: SUSPENSION BY CITY FOR CONVENIENCE. The City may, at any time without cause, order CONSULTANT in writing to suspend, delay or interrupt its services in whole or in part for such period of time as City may determine for City's convenience. Such order shall be by written notice to the CONSULTANT providing at least ten (10) days advance notice unless such order is immediately necessary for the protection of the public health, safety or welfare or for the protection of property.

SECTION 10: INDEMNIFICATION. The CONSULTANT shall indemnify and hold harmless the City, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence of the CONSULTANT, its officers, directors, employees, representatives, and agents employed or utilized by the CONSULTANT in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the CONSULTANT, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 11: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 12: SUB-CONSULTANTS. The City reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant and approve all qualifications of any subconsultant in order to make a determination as to the capability of the subconsultant to perform properly under this Agreement. All subconsultants providing professional services to the CONSULTANT under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement for the CONSULTANT. In the event that a subconsultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the CONSULTANT shall indemnify and hold harmless the City for any claim in excess of the subconsultant's insurance coverage, arising out of the negligent acts, errors or omissions of the subconsultant. Nothing contained herein shall create any contractual relationship between any subconsultant and the City.

SECTION 13: FEDERAL AND STATE TAX. The City is exempt from payment of Florida State Sales and Use Tax. The CONSULTANT is not authorized to use the City's Tax Exemption Number.

SECTION 14: INSURANCE. Prior to commencing any services, the CONSULTANT shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the City and the CONSULTANT. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent CONSULTANT, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits

The commercial general liability and automobile policies will name the City as an additional insured on primary, non-contributory basis and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve CONSULTANT of its liability and obligations under this Agreement.

Additional Insured status shall be provided pursuant and subject to ISO Form CG 20 10 12 19 (ongoing operations) and, if applicable, CG 20 37 12 19 (completed operations), or equivalent forms for coverages other than Commercial General Liability, to the extent that the loss or claim in question is caused by the CONSULTANT's negligence in its operations in and during the performance of the services, and to no greater extent than is necessary to provide insurance coverage for the covered indemnity obligations expressly assumed by CONSULTANT under this Agreement, it being the express intent and understanding of the Parties that, up to specified limits, additional insured status is provided hereunder as a support to performance of CONSULTANT's expressly assumed, covered indemnity obligations hereunder.

SECTION 15: SUCCESSORS AND ASSIGNS. The City and the CONSULTANT each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 16: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County, Florida. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce the Agreement or disputes arising out of the Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given

hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 17: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 18: NONDISCRIMINATION. The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 19: AUTHORITY TO PRACTICE. The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 20: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 21: PUBLIC ENTITY CRIMES. CONSULTANT acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The CONSULTANT will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 22: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and if sent to the CONSULTANT, shall be sent to:

TEAMWORKnet, Inc.
Attn: Paul D. Gates, CEO
4265 New Tampa Highway, Suite
B Lakeland, FL 33815

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 23: ENTIRETY OF AGREEMENT AND CONTROLLING PROVISIONS. This Agreement consists of the terms and conditions set forth in this Agreement (inclusive of all exhibits hereto) and any City issued Task Orders. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement (inclusive of all exhibits hereto) and a City issued Task Order, the terms and conditions of this Agreement shall prevail with the City issued Task Order next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 24: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 25: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the City reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 26: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event CONSULTANT fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to the CONSULTANT to terminate for cause.

SECTION 27: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Agreement is executed by the City.

SECTION 28: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 29: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 30: COUNTERPARTS. This Agreement may be executed in one or more counterparts electronically or digitally, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all the signatories hereto have signed a counterpart of this Agreement.

SECTION 31: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of the CONSULTANT, the undersigned hereby represents to the City that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the CONSULTANT for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 33: PUBLIC RECORDS. The CONSULTANT shall comply with Florida’s Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City’s custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONSULTANT does not transfer the records to the City.

(d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If the CONSULTANT transfers all public records to the City upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City’s custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION. Each party (the “Receiving Party”) will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software (“Confidential Information”) obtained from the other party (the “Disclosing Party”); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party’s Confidential Information, (iv) that is already in the Receiving Party’s possession at the time of disclosure, or (v) that is required to be released by law.

SECTION 35: EXPORT ADMINISTRATION. Each party agrees to comply with all export laws and regulations of the United States (“Export Laws”) to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

SECTION 36: NO THIRD-PARTY BENEFICIARIES. There are no third party beneficiaries under this Agreement.

SECTION 37: SCRUTINIZED COMPANIES.

(a) The CONSULTANT certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, the CONSULTANT certifies that it and its subconsultants are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) The CONSULTANT agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(d) The CONSULTANT agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Agreement, including any and all renewals.

(e) The CONSULTANT agrees that if it or any of its subconsultants' status changes in regards to any certification herein, the CONSULTANT shall immediately notify the City of the same.

(f) As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above stated contracting prohibitions then they shall become inoperative.

SECTION 38: E-VERIFY. Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONSULTANT shall:

(a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subconsultants (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subconsultants' newly hired employees;

(b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subconsultant does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

(c) Maintain copies of all subconsultant affidavits for the duration of this Agreement and provide the same to the City upon request;

(d) Comply fully, and ensure all subconsultant comply fully, with Section 448.095, Florida Statutes;

(e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited) shall be grounds for termination of this Agreement; and,

(f) Be aware that if the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONSULTANT may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Continuing Professional Services Agreement for Energy Management & Engineering Services as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Betty Resch, Mayor

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Financial Services Director

CONSULTANT:

TEAMWORKNET, INC.

By: Paul D. Gates
Paul D. Gates - CEO

[Corporate Seal]

STATE OF FL
COUNTY OF Polk

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 28 day of February, 2023, by **Teamworknet, Inc.**, a Florida Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Darlene E. Sommars
Notary Public-Signature

Notary Seal:

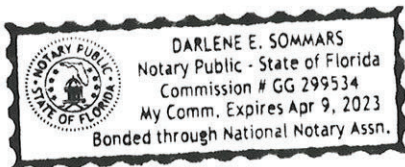


EXHIBIT "A"
(Sample Task Order)

Note: Task Order Number will be issued by the City, leave the line number empty.

TASK ORDER No. _____

**CONTINUING PROFESSIONAL SERVICES
(Energy Management & Engineering Services)**

THIS TASK ORDER FOR CONTINUING PROFESSIONAL SERVICES (“Task Order”) is made on the day of _____, between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Teamworknet, Inc.**, a Florida CORPORATION (“CONSULTANT”).

1.0 Project Description:

The City desires the CONSULTANT to provide those services as identified herein for the Project. The Project is described in the CONSULTANT’s Proposal, dated _____ and services are generally described as: _____ (the “Project”).

2.0 Scope

Under this Task Order, the CONSULTANT will provide the City of Lake Worth Beach _____ with Energy Management & Engineering Services for the Project as specified in the **CONSULTANT’s proposal attached hereto and incorporated herein as Exhibit “1”**.

3.0 Schedule

The services to be provided under this Task Order shall be completed within _____ calendar days from the City’s approval of this Task Order or the issuance of a Notice to Proceed.

4.0 Compensation

This Task Order is issued for a lump sum, not to exceed amount of _____. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

5.0 Project Manager

The Project Manager for the CONSULTANT is _____, phone (_____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The CONSULTANT shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Authorization

This Task Order is issued pursuant to the Continuing Professional Services Agreement (Energy Management & Engineering Services) based on RFQ#23-300 between the City of Lake Worth and the CONSULTANT, dated _____ (“Agreement” hereafter). If there are any conflicts between the terms and conditions of this Task Order and the Agreement, the terms and conditions of the Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Task Order No. _____ as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: **TEAMWORKNET, INC.**

By: **DO NOT SIGN – SAMPLE ONLY**

[Corporate Seal]

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____, 2023, by **Teamworknet, Inc.**, a Florida Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Notary Public Signature

Notary Seal:

DOMESTIC PROFESSIONAL FEE SCHEDULE

GENERAL

TEAMWORKnet, Inc. will provide professional engineering, consulting engineering, testing, and field services in accordance with the following fee schedule. Should you have any questions or require further details, please contact us.

	<u>Regular</u>	<u>Field Services</u>
SENIOR CONSULTING ENGINEERS	\$275 /hour	\$325 /hour
PRINCIPAL ENGINEERS	\$210 /hour	\$260 /hour
SENIOR ENGINEERS	\$195 /hour	\$240 /hour
SENIOR PROJECT ENGINEERS	\$170 /hour	\$225 /hour
PROJECT ENGINEERS	\$160 /hour	\$210 /hour
ASSOCIATE ENGINEERS	\$135 /hour	\$175 /hour
SENIOR PROJECT MANAGER	\$150 /hour	\$185 /hour
PROJECT MANAGER	\$135 /hour	\$175 /hour
SENIOR TECHNICIAN	\$155 /hour	\$175 /hour
TECHNICIAN	\$110 /hour	\$135 /hour
SENIOR DESIGNER	\$150 /hour	\$175 /hour
DESIGNER	\$130 /hour	\$155 /hour
SENIOR SAFETY COORDINATOR	\$140 /hour	\$175 /hour
SAFETY COORDINATOR	\$130 /hour	\$155 /hour
ENGINEERING ASSISTANT	\$85 /hour	\$95 /hour
CAD DRAFTING	\$85 /hour	\$95 /hour
CLERICAL	\$60 /hour	\$65 /hour

Exhibit "C"

Federal Contract Provisions

The Consultant hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this RFQ, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Consultant agrees as follows:

(1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.

(4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of

September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Consultant debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Consultant or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

- (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Consultant agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

- (1) The Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Consultant agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Consultant is required to verify that none of the Consultant’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated

funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

(i) In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

(ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(iii) The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

(1) The Consultant agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Consultant agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the City and the Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Consultant acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Consultant will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Consultant, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Consultant intends to subcontract any portion of the work covered by this Contract, the Consultant must take all necessary affirmative steps to assure that small and minority businesses, women's business

enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

(1) As appropriate and to the extent consistent with law, the Consultant should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(2) For purposes of this section:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

(1) The Consultant is prohibited from obligating or expending loan or grant funds to:

(a) Procure or obtain;

(b) Extend or renew a contract to procure or obtain; or

(c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant is required to confirm that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Consultant, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Consultant to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that

the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



Signature of Consultant's Authorized Official

Paul D. Gates - Chief Executive Officer

Name and Title of Consultant's Authorized Official

February 28, 2023

Date

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Consultant's Authorized Official

Paul D. Gates - Chief Executive Officer

Name and Title of Consultant's Authorized Official

February 28, 2023

Date

CONTINUING PROFESSIONAL SERVICES AGREEMENT
RFQ#23-300
(Energy Management & Engineering Services)

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Chen Moore And Associates, Inc.**, a Florida Corporation registered to do business in the State of Florida (“CONSULTANT”).

RECITALS

WHEREAS, the City issued Request for Qualifications (No. 23-300) for civil engineering, geotechnical engineering, surveying, architecture, hydrogeological services, transportation and mobility planning, energy management and engineering services, construction management and project management and related professional services in accordance with the Consultants’ Competitive Negotiations Act, section 287.055, Florida Statutes (“RFQ”); and

WHEREAS, the CONSULTANT submitted its qualifications in response to the RFQ; and

WHEREAS, the City desires to award the RFQ to the CONSULTANT based on CONSULTANT’s qualifications and experience to provide Energy Management & Engineering Services; and

WHEREAS, the CONSULTANT has significant experience in assisting municipal organizations in providing engineering services; and

WHEREAS, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the CONSULTANT agrees that any services performed pursuant to the RFQ and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, FEMA policies, procedures, and directives and special clauses as provided for in **Exhibit “C”**; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by the CONSULTANT to the City; and,

WHEREAS, the City finds entering this Agreement with the CONSULTANT serves a valid public purpose.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the CONSULTANT agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement by reference and acknowledged as true and correct statements.

SECTION 2: CONSULTANT’S SERVICES. The City has awarded the CONSULTANT the non-exclusive right to provide the City with Energy Management & Engineering Services (“services”).

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that CONSULTANT will act hereunder as an independent contractor and none of the CONSULTANT’s, officers, directors, employees, independent contractors, representatives or agents performing services for CONSULTANT pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and CONSULTANT is that of independent contractors, and

neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM, TIME AND TERMINATION.

(a) **Term.** This non-exclusive Agreement shall become effective upon approval by the City Commission and execution by the City, and shall have an initial term of three (3) years with three (3) optional, one (1) year renewals. The City Manager is authorized to exercise the optional one (1) year renewals. Each fiscal year of this Agreement and any renewals will be subject to the availability of funds lawfully appropriated for its purpose by the City Commission. Notwithstanding the foregoing, this Agreement may be terminated as stated herein. The term may be extended by written agreement of the parties for further services related to those services identified herein.

(b) **Time for Completion.** Time is of the essence in the performance of this Agreement. The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the project schedule set forth by the City.

(c) **Force Majeure.** Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, regulations, epidemic or pandemic. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible. Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to perform the services and, if the CONSULTANT's failure to perform was without its or its sub-consultants' fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

(d) **Termination without cause.** Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination.

(e) **Termination for cause.** Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) days from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) days, then this Agreement shall terminate at the end of the three (3) day period without further notice or demand.

(f) **Early Termination.** If this Agreement is terminated before the completion of all services by either party, the CONSULTANT shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

(g) Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement is subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify CONSULTANT of such occurrence and either the City or CONSULTANT may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay CONSULTANT for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

(a) Fee Schedule. The fee schedule attached as **Exhibit "B"** shall remain firm for the first three (3) years of this Agreement. After the first three (3) years, the CONSULTANT may request a change to the fee schedule. No changes to the fee schedule shall occur unless approved in writing by the City, which may be by an approved amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSULTANT and in any approved task order.

(b) Task Order(s). This non-exclusive Agreement does not guarantee that the City will utilize CONSULTANT in any capacity or for any services identified herein. When the City identifies a need for the CONSULTANT's services, the City will request a proposal from the CONSULTANT to provide the services requested. The CONSULTANT's proposal shall be submitted in the format of the sample task order, attached hereto and incorporated herein as **Exhibit "A"** and shall be based on the CONSULTANT's currently hourly fee set forth in the CONSULTANT's proposal and attached hereto as **Exhibit "B"**. If a sub-consultant(s) is to be utilized for services under a task order, the CONSULTANT shall obtain a written proposal from the sub-consultant(s) and attach the same with to the CONSULTANT's proposal submitted to the City. Upon receipt of the CONSULTANT's proposal, the City shall decide in its sole discretion whether to award the task order to the CONSULTANT. Depending on the lump sum, not to exceed amount of each proposed task order, the task order may be awarded by the City Manager (if within her purchasing authority of \$50,000 or less) or the City Commission. If the task order is awarded to the CONSULTANT, the CONSULTANT shall commence the identified services upon receipt of a Notice to Proceed from the City or upon the CONSULTANT's receipt of a fully executed task order for the services. The City reserves the right to reject any and all proposals submitted by the CONSULTANT.

(c) Invoices. Unless otherwise agreed in an issued Task Order, the CONSULTANT shall render monthly invoices to the City for services that have been rendered in conformity with this Agreement in the previous month. The invoices shall specify the services performed and the time spent on such work. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. Invoices will be paid within thirty (30) days following the City's receipt of the CONSULTANT's invoice.

(d) Reimbursable Expenses. The CONSULTANT's reimbursable, out-of-pocket expenses including, but not limited to, travel, per diem and other living expenses, shall be identified in an approved task order. The City shall not be responsible for payment of any such reimbursable, out-of-pocket expenses except as provided for in an approved task order or amendment thereto. Reimbursement for mileage shall only be for travel required outside of Palm Beach County. CONSULTANT shall not be reimbursed for

travel within Palm Beach County and all travel shall be proposed and reimbursed pursuant to section 112.061, Florida Statutes.

(e) Direct Project Expenses. Unless otherwise specifically stated in an approved task order, charges for printing, reproduction, use of computer-aided design equipment, field equipment, and any laboratory analysis performed by the CONSULTANT or its subconsultants or its subcontractors, and the use of the CONSULTANT's and employee's automobiles shall be identified in an approved task order. The City shall not be responsible for payment of any other direct project expenses. All direct project expenses shall be billed at cost to the City and the CONSULTANT shall not mark-up or charge an administrative fee in addition to the direct cost for such expenses.

(f) Additional Services. If the City seeks to utilize the CONSULTANT for any additional services related to the services identified herein, the City and CONSULTANT will meet and negotiate a reasonable fee for such services. The negotiated fee shall be approved by the City in the form of an Amendment prior to said services being provided.

(g) Status Report. The CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice at no additional cost to the City (format may be provided by City or CONSULTANT for each approved task order).

(h) Fiscal Non-funding. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the CONSULTANT of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City. The CONSULTANT will be paid for all services rendered through the date of termination.

SECTION 6: TERMS OF PERFROMANCE

(a) Starting Work. The CONSULTANT will not begin any of the services until authorized in writing by a Notice to Proceed from the City or upon the CONSULTANT's receipt of an approved Task Order for the services.

(b) Ownership of Documents. The drawings, specifications, calculations, supporting documents, or other work products which are prepared for the City by the CONSULTANT under this Agreement, a City issued Task Order, or amendments thereto ("Work Product"), shall be and shall become the property of the City upon delivery or completion by the CONSULTANT or receipt of payment from the City for the same. The CONSULTANT may keep copies or samples thereof and shall have the right to use such Work Product. The City accepts sole responsibility for its reuse of any Work Product in a manner other than as initially intended, or for any use of incomplete Work Product unless prior written approval is obtained from the CONSULTANT.

(c) Accounting Records. The CONSULTANT's accounting records, insofar as they pertain to invoicing the City or for disbursements made from the CONSULTANT's account for services under this Agreement, shall be open to City's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Backup documentation for out-of-pocket expenses exceeding Twenty-Five Dollars (\$25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

(d) Approval of Changes. The City, through the City Manager must approve in writing any changes in the scope of services which result in additional costs or expenses to the City, extension of the schedule or which would change the underlying purpose of the services. Changes include, but are not limited to, issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

(e) Authorized Representative. Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City to represent and act for the CONSULTANT and shall inform the City in writing of the name and address of such representative together with a clear definition of the scope of their authority. The CONSULTANT shall keep the City informed of any subsequent changes in the foregoing. The authorized representative of the City shall be the City Manager or designee.

(f) Design/Construction Phase Services. Visits to construction sites and observations made by the CONSULTANT as part of construction phase services, if any, shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the construction contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Safety precautions administered by the CONSULTANT, if any, to protect the CONSULTANT's personnel shall meet those policies enacted by the City. Further, CONSULTANT shall endeavor to make reasonable efforts to guard the City against defects and deficiencies in the services of the construction contractor(s) and to help determine if the provisions of the construction contract documents are being fulfilled. This paragraph does not, however, release the CONSULTANT from any liability which might be attributable to its negligent acts, errors, or omissions, including but not limited to design, construction phase services, or other services as defined in this Agreement, of the CONSULTANT.

(g) Personnel. The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The CONSULTANT shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. All of the CONSULTANT's personnel (and all subconsultants) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of CONSULTANT's personnel furnished by the CONSULTANT upon written notice by City to CONSULTANT of the cause for such replacement.

(h) Conflict of Interest. The 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, as provided for in Section 112.311, Florida Statutes. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said performance. The CONSULTANT shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the City shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the CONSULTANT under the terms of this Agreement.

(i) News Releases / Publicity. The CONSULTANT shall not make any news releases, publicity releases, or advertisements relating to this Agreement or the services hereunder without prior written City approval.

SECTION 8: CITY'S RESPONSIBILITIES

(a) Service of Others. The City shall furnish to the CONSULTANT, if required for performance of the Consultant's services, all available data prepared by or the result of the services of others, including without limitation (as may be appropriate): building plans and related drawings, core borings, probings, and subsurface explorations, hydraulic surveys, laboratory tests, and inspections of samples, materials, and equipment, appropriate professional interpretations of all of the foregoing; environmental assessments and impact statements, appropriate professional interpretations of all of the foregoing; property boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; zoning, deed, and other land use restrictions; and any other special data or consultations relating to the Project.

(b) Examine Work of the Consultant. Within a reasonable time so as not to delay the services of the CONSULTANT, the City shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor, or other consultants, as the City deems appropriate, for such examinations and the rendering, if required, of written opinions pertaining thereto.

SECTION 9: SUSPENSION BY CITY FOR CONVENIENCE. The City may, at any time without cause, order CONSULTANT in writing to suspend, delay or interrupt its services in whole or in part for such period of time as City may determine for City's convenience. Such order shall be by written notice to the CONSULTANT providing at least ten (10) days advance notice unless such order is immediately necessary for the protection of the public health, safety or welfare or for the protection of property.

SECTION 10: INDEMNIFICATION. The CONSULTANT shall indemnify and hold harmless the City, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence of the CONSULTANT, its officers, directors, employees, representatives, and agents employed or utilized by the CONSULTANT in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the CONSULTANT, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 11: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 12: SUB-CONSULTANTS. The City reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant and approve all qualifications of any subconsultant in order to make a determination as to the capability of the subconsultant to perform properly under this Agreement. All subconsultants providing professional services to the CONSULTANT under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement for the CONSULTANT. In the event that a subconsultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the CONSULTANT shall indemnify and hold harmless the City for any claim in excess of the subconsultant's insurance coverage, arising out of the negligent acts, errors or omissions of the subconsultant. Nothing contained herein shall create any contractual relationship between any subconsultant and the City.

SECTION 13: FEDERAL AND STATE TAX. The City is exempt from payment of Florida State Sales and Use Tax. The CONSULTANT is not authorized to use the City's Tax Exemption Number.

SECTION 14: INSURANCE. Prior to commencing any services, the CONSULTANT shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the City and the CONSULTANT. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations	\$1,000,000 per occurrence
Contractual, insurance broad form property, Independent CONSULTANT, personal injury)	\$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits

The commercial general liability and automobile policies will name the City as an additional insured on primary, non-contributory basis and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve CONSULTANT of its liability and obligations under this Agreement.

Additional Insured status shall be provided pursuant and subject to ISO Form CG 20 10 12 19 (ongoing operations) and, if applicable, CG 20 37 12 19 (completed operations), or equivalent forms for coverages other than Commercial General Liability, to the extent that the loss or claim in question is caused by the CONSULTANT's negligence in its operations in and during the performance of the services, and to no greater extent than is necessary to provide insurance coverage for the covered indemnity obligations expressly assumed by CONSULTANT under this Agreement, it being the express intent and understanding of the Parties that, up to specified limits, additional insured status is provided hereunder as a support to performance of CONSULTANT's expressly assumed, covered indemnity obligations hereunder.

SECTION 15: SUCCESSORS AND ASSIGNS. The City and the CONSULTANT each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 16: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County, Florida. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce the Agreement or disputes arising out of the Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given

hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 17: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 18: NONDISCRIMINATION. The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 19: AUTHORITY TO PRACTICE. The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 20: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 21: PUBLIC ENTITY CRIMES. CONSULTANT acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The CONSULTANT will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 22: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and if sent to the CONSULTANT, shall be sent to:

Chen Moore And Associates, Inc.
Attn: Peter Moore, President
500 Australian Avenue South, Suite 850
West Palm Beach, FL 33401

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 23: ENTIRETY OF AGREEMENT AND CONTROLLING PROVISIONS. This Agreement consists of the terms and conditions set forth in this Agreement (inclusive of all exhibits hereto) and any City issued Task Orders. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement (inclusive of all exhibits hereto) and a City issued Task Order, the terms and conditions of this Agreement shall prevail with the City issued Task Order next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 24: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 25: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the City reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 26: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event CONSULTANT fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to the CONSULTANT to terminate for cause.

SECTION 27: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Agreement is executed by the City.

SECTION 28: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 29: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 30: COUNTERPARTS. This Agreement may be executed in one or more counterparts electronically or digitally, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all the signatories hereto have signed a counterpart of this Agreement.

SECTION 31: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of the CONSULTANT, the undersigned hereby represents to the City that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the CONSULTANT for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 33: PUBLIC RECORDS. The CONSULTANT shall comply with Florida’s Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City’s custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONSULTANT does not transfer the records to the City.
- (d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If the CONSULTANT transfers all public records to the City upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City’s custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION. Each party (the “Receiving Party”) will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software (“Confidential Information”) obtained from the other party (the “Disclosing Party”); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party’s Confidential Information, (iv) that is already in the Receiving Party’s possession at the time of disclosure, or (v) that is required to be released by law.

SECTION 35: EXPORT ADMINISTRATION. Each party agrees to comply with all export laws and regulations of the United States (“Export Laws”) to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

SECTION 36: NO THIRD-PARTY BENEFICIARIES. There are no third party beneficiaries under this Agreement.

SECTION 37: SCRUTINIZED COMPANIES.

(a) The CONSULTANT certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, the CONSULTANT certifies that it and its subconsultants are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) The CONSULTANT agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(d) The CONSULTANT agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Agreement, including any and all renewals.

(e) The CONSULTANT agrees that if it or any of its subconsultants' status changes in regards to any certification herein, the CONSULTANT shall immediately notify the City of the same.

(f) As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above stated contracting prohibitions then they shall become inoperative.

SECTION 38: E-VERIFY. Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONSULTANT shall:

(a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subconsultants (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subconsultants' newly hired employees;

(b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subconsultant does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

(c) Maintain copies of all subconsultant affidavits for the duration of this Agreement and provide the same to the City upon request;

(d) Comply fully, and ensure all subconsultant comply fully, with Section 448.095, Florida Statutes;

(e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited) shall be grounds for termination of this Agreement; and,

(f) Be aware that if the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONSULTANT may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Continuing Professional Services Agreement for Energy Management & Engineering Services as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Betty Resch, Mayor

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT:

CHEN MOORE AND ASSOCIATES, INC.

By: _____

[Corporate Seal]

STATE OF FLORIDA _____)
COUNTY OF BROWARD _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 23 day of February, 2023, by **Chen Moore and Associates, Inc.** a Florida Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Notary Public Signature

Notary Seal:



EXHIBIT "A"
(Sample Task Order)

Note: Task Order Number will be issued by the City, leave the line number empty.

TASK ORDER No. _____

**CONTINUING PROFESSIONAL SERVICES
(Energy Management & Engineering Services)**

THIS TASK ORDER FOR CONTINUING PROFESSIONAL SERVICES (“Task Order”) is made on the day of _____, between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Chen Moore And Associates, Inc.** a Florida CORPORATION (“CONSULTANT”).

1.0 Project Description:

The City desires the CONSULTANT to provide those services as identified herein for the Project. The Project is described in the CONSULTANT’s Proposal, dated _____ and services are generally described as: _____ (the “Project”).

2.0 Scope

Under this Task Order, the CONSULTANT will provide the City of Lake Worth Beach _____ with Energy Management & Engineering Services for the Project as specified in the **CONSULTANT’s proposal attached hereto and incorporated herein as Exhibit “1”**.

3.0 Schedule

The services to be provided under this Task Order shall be completed within _____ calendar days from the City’s approval of this Task Order or the issuance of a Notice to Proceed.

4.0 Compensation

This Task Order is issued for a lump sum, not to exceed amount of _____. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

5.0 Project Manager

The Project Manager for the CONSULTANT is _____, phone (_____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The CONSULTANT shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Authorization

This Task Order is issued pursuant to the Continuing Professional Services Agreement (Energy Management & Engineering Services) based on RFQ#23-300 between the City of Lake Worth Beach and the CONSULTANT, dated _____ (“Agreement” hereafter). If there are any conflicts between the terms and conditions of this Task Order and the Agreement, the terms and conditions of the Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Task Order No. _____ as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

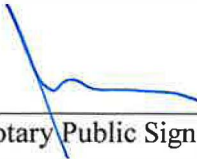
CONSULTANT: **CHEN MOORE AND ASSOCIATES, INC.**

By: **DO NOT SIGN – SAMPLE ONLY**

[Corporate Seal]

STATE OF FLORIDA _____
COUNTY OF BROWARD _____

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 23 day of February, 2023, by **Chen Moore and Associates, Inc.** a Florida Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.



Notary Public Signature

Notary Seal:



Exhibit “B”

Consultant’s Rate Schedule



2023 Hourly Rate Schedule

<u>Labor Category</u>	<u>Hourly Rate</u>
President	\$450
Principal	\$350
Principal Engineer	\$240
Senior Engineer	\$200
Project Engineer	\$140
Associate Engineer	\$120
Engineer	\$110
Principal Landscape Architect	\$220
Senior Landscape Architect	\$150
Project Landscape Architect	\$120
Associate Landscape Architect	\$110
Landscape Designer	\$110
Principal Planner	\$230
Senior Planner	\$120
Project Planner	\$90
Associate Planner	\$75
Senior Environmental Scientist	\$150
Senior Designer	\$150
Designer	\$110
Senior Technician	\$100
Technician	\$95
Senior Construction Specialist	\$140
Construction Specialist	\$95
Administrative Staff	\$85
Intern	\$65

Exhibit "C"

Federal Contract Provisions

The Consultant hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this RFQ, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Consultant agrees as follows:

- (1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.
- (4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of

September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Consultant debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Consultant or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

- (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Consultant agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

- (1) The Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Consultant agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Consultant is required to verify that none of the Consultant’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated

funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

(i) In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

(ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(iii) The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

(1) The Consultant agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Consultant agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the City and the Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Consultant acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Consultant will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Consultant, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant’s actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Consultant intends to subcontract any portion of the work covered by this Contract, the Consultant must take all necessary affirmative steps to assure that small and minority businesses, women’s business

enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

(1) As appropriate and to the extent consistent with law, the Consultant should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(2) For purposes of this section:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

(1) The Consultant is prohibited from obligating or expending loan or grant funds to:

(a) Procure or obtain;

(b) Extend or renew a contract to procure or obtain; or

(c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

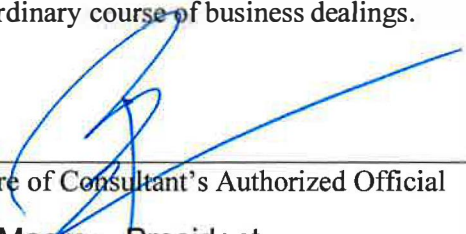
This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant is required to confirm that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Consultant, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Consultant to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that

the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



Signature of Consultant's Authorized Official

Peter Moore - President

Name and Title of Consultant's Authorized Official

February 23, 2023

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Consultant's Authorized Official

Peter Moore - President

Name and Title of Consultant's Authorized Official

February 23, 2023

Date

CONTINUING PROFESSIONAL SERVICES AGREEMENT
RFQ#23-300
(Energy Management & Engineering Services)

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **RCM Technologies (USA), Inc.**, a Florida Corporation registered to do business in the State of Florida (“CONSULTANT”).

RECITALS

WHEREAS, the City issued Request for Qualifications (No. 23-300) for civil engineering, geotechnical engineering, surveying, architecture, hydrogeological services, transportation and mobility planning, energy management and engineering services, construction management and project management and related professional services in accordance with the Consultants’ Competitive Negotiations Act, section 287.055, Florida Statutes (“RFQ”); and

WHEREAS, the CONSULTANT submitted its qualifications in response to the RFQ; and

WHEREAS, the City desires to award the RFQ to the CONSULTANT based on CONSULTANT’s qualifications and experience to provide Energy Management & Engineering Services; and

WHEREAS, the CONSULTANT has significant experience in assisting municipal organizations in providing engineering services; and

WHEREAS, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the CONSULTANT agrees that any services performed pursuant to the RFQ and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, FEMA policies, procedures, and directives and special clauses as provided for in **Exhibit “C”**; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by the CONSULTANT to the City; and,

WHEREAS, the City finds entering this Agreement with the CONSULTANT serves a valid public purpose.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the CONSULTANT agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement by reference and acknowledged as true and correct statements.

SECTION 2: CONSULTANT’S SERVICES. The City has awarded the CONSULTANT the non-exclusive right to provide the City with Energy Management & Engineering Services (“services”).

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that CONSULTANT will act hereunder as an independent contractor and none of the CONSULTANT’s, officers, directors, employees, independent contractors, representatives or agents performing services for CONSULTANT pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and CONSULTANT is that of independent contractors, and

neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM, TIME AND TERMINATION.

(a) Term. This non-exclusive Agreement shall become effective upon approval by the City Commission and execution by the City, and shall have an initial term of three (3) years with three (3) optional, one (1) year renewals. The City Manager is authorized to exercise the optional one (1) year renewals. Each fiscal year of this Agreement and any renewals will be subject to the availability of funds lawfully appropriated for its purpose by the City Commission. Notwithstanding the foregoing, this Agreement may be terminated as stated herein. The term may be extended by written agreement of the parties for further services related to those services identified herein.

(b) Time for Completion. Time is of the essence in the performance of this Agreement. The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the project schedule set forth by the City.

(c) Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, regulations, epidemic or pandemic. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible. Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to perform the services and, if the CONSULTANT's failure to perform was without its or its sub-consultants' fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

(d) Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination.

(e) Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) days from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) days, then this Agreement shall terminate at the end of the three (3) day period without further notice or demand.

(f) Early Termination. If this Agreement is terminated before the completion of all services by either party, the CONSULTANT shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

(g) Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement is subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify CONSULTANT of such occurrence and either the City or CONSULTANT may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay CONSULTANT for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

(a) Fee Schedule. The fee schedule attached as **Exhibit "B"** shall remain firm for the first three (3) years of this Agreement. After the first three (3) years, the CONSULTANT may request a change to the fee schedule. No changes to the fee schedule shall occur unless approved in writing by the City, which may be by an approved amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSULTANT and in any approved task order.

(b) Task Order(s). This non-exclusive Agreement does not guarantee that the City will utilize CONSULTANT in any capacity or for any services identified herein. When the City identifies a need for the CONSULTANT's services, the City will request a proposal from the CONSULTANT to provide the services requested. The CONSULTANT's proposal shall be submitted in the format of the sample task order, attached hereto and incorporated herein as **Exhibit "A"** and shall be based on the CONSULTANT's currently hourly fee set forth in the CONSULTANT's proposal and attached hereto as **Exhibit "B"**. If a sub-consultant(s) is to be utilized for services under a task order, the CONSULTANT shall obtain a written proposal from the sub-consultant(s) and attach the same with to the CONSULTANT's proposal submitted to the City. Upon receipt of the CONSULTANT's proposal, the City shall decide in its sole discretion whether to award the task order to the CONSULTANT. Depending on the lump sum, not to exceed amount of each proposed task order, the task order may be awarded by the City Manager (if within her purchasing authority of \$50,000 or less) or the City Commission. If the task order is awarded to the CONSULTANT, the CONSULTANT shall commence the identified services upon receipt of a Notice to Proceed from the City or upon the CONSULTANT's receipt of a fully executed task order for the services. The City reserves the right to reject any and all proposals submitted by the CONSULTANT.

(c) Invoices. Unless otherwise agreed in an issued Task Order, the CONSULTANT shall render monthly invoices to the City for services that have been rendered in conformity with this Agreement in the previous month. The invoices shall specify the services performed and the time spent on such work. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. Invoices will be paid within thirty (30) days following the City's receipt of the CONSULTANT's invoice.

(d) Reimbursable Expenses. The CONSULTANT's reimbursable, out-of-pocket expenses including, but not limited to, travel, per diem and other living expenses, shall be identified in an approved task order. The City shall not be responsible for payment of any such reimbursable, out-of-pocket expenses except as provided for in an approved task order or amendment thereto. Reimbursement for mileage shall only be for travel required outside of Palm Beach County. CONSULTANT shall not be reimbursed for

travel within Palm Beach County and all travel shall be proposed and reimbursed pursuant to section 112.061, Florida Statutes.

(e) Direct Project Expenses. Unless otherwise specifically stated in an approved task order, charges for printing, reproduction, use of computer-aided design equipment, field equipment, and any laboratory analysis performed by the CONSULTANT or its subconsultants or its subcontractors, and the use of the CONSULTANT's and employee's automobiles shall be identified in an approved task order. The City shall not be responsible for payment of any other direct project expenses. All direct project expenses shall be billed at cost to the City and the CONSULTANT shall not mark-up or charge an administrative fee in addition to the direct cost for such expenses.

(f) Additional Services. If the City seeks to utilize the CONSULTANT for any additional services related to the services identified herein, the City and CONSULTANT will meet and negotiate a reasonable fee for such services. The negotiated fee shall be approved by the City in the form of an Amendment prior to said services being provided.

(g) Status Report. The CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice at no additional cost to the City (format may be provided by City or CONSULTANT for each approved task order).

(h) Fiscal Non-funding. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the CONSULTANT of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City. The CONSULTANT will be paid for all services rendered through the date of termination.

SECTION 6: TERMS OF PERFORMANCE

(a) Starting Work. The CONSULTANT will not begin any of the services until authorized in writing by a Notice to Proceed from the City or upon the CONSULTANT's receipt of an approved Task Order for the services.

(b) Ownership of Documents. The drawings, specifications, calculations, supporting documents, or other work products which are prepared for the City by the CONSULTANT under this Agreement, a City issued Task Order, or amendments thereto ("Work Product"), shall be and shall become the property of the City upon delivery or completion by the CONSULTANT or receipt of payment from the City for the same. The CONSULTANT may keep copies or samples thereof and shall have the right to use such Work Product. The City accepts sole responsibility for its reuse of any Work Product in a manner other than as initially intended, or for any use of incomplete Work Product unless prior written approval is obtained from the CONSULTANT.

(c) Accounting Records. The CONSULTANT's accounting records, insofar as they pertain to invoicing the City or for disbursements made from the CONSULTANT's account for services under this Agreement, shall be open to City's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Backup documentation for out-of-pocket expenses exceeding Twenty-Five Dollars (\$25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

(d) Approval of Changes. The City, through the City Manager must approve in writing any changes in the scope of services which result in additional costs or expenses to the City, extension of the schedule or which would change the underlying purpose of the services. Changes include, but are not limited to, issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

(e) Authorized Representative. Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City to represent and act for the CONSULTANT and shall inform the City in writing of the name and address of such representative together with a clear definition of the scope of their authority. The CONSULTANT shall keep the City informed of any subsequent changes in the foregoing. The authorized representative of the City shall be the City Manager or designee.

(f) Design/Construction Phase Services. Visits to construction sites and observations made by the CONSULTANT as part of construction phase services, if any, shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the construction contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Safety precautions administered by the CONSULTANT, if any, to protect the CONSULTANT's personnel shall meet those policies enacted by the City. Further, CONSULTANT shall endeavor to make reasonable efforts to guard the City against defects and deficiencies in the services of the construction contractor(s) and to help determine if the provisions of the construction contract documents are being fulfilled. This paragraph does not, however, release the CONSULTANT from any liability which might be attributable to its negligent acts, errors, or omissions, including but not limited to design, construction phase services, or other services as defined in this Agreement, of the CONSULTANT.

(g) Personnel. The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The CONSULTANT shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. All of the CONSULTANT's personnel (and all subconsultants) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of CONSULTANT's personnel furnished by the CONSULTANT upon written notice by City to CONSULTANT of the cause for such replacement.

(h) Conflict of Interest. The 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, as provided for in Section 112.311, Florida Statutes. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said performance. The CONSULTANT shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the City shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the CONSULTANT under the terms of this Agreement.

(i) News Releases / Publicity. The CONSULTANT shall not make any news releases, publicity releases, or advertisements relating to this Agreement or the services hereunder without prior written City approval.

SECTION 8: CITY'S RESPONSIBILITIES

(a) Service of Others. The City shall furnish to the CONSULTANT, if required for performance of the Consultant's services, all available data prepared by or the result of the services of others, including without limitation (as may be appropriate): building plans and related drawings, core borings, probings, and subsurface explorations, hydraulic surveys, laboratory tests, and inspections of samples, materials, and equipment, appropriate professional interpretations of all of the foregoing; environmental assessments and impact statements, appropriate professional interpretations of all of the foregoing; property boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; zoning, deed, and other land use restrictions; and any other special data or consultations relating to the Project.

(b) Examine Work of the Consultant. Within a reasonable time so as not to delay the services of the CONSULTANT, the City shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor, or other consultants, as the City deems appropriate, for such examinations and the rendering, if required, of written opinions pertaining thereto.

SECTION 9: SUSPENSION BY CITY FOR CONVENIENCE. The City may, at any time without cause, order CONSULTANT in writing to suspend, delay or interrupt its services in whole or in part for such period of time as City may determine for City's convenience. Such order shall be by written notice to the CONSULTANT providing at least ten (10) days advance notice unless such order is immediately necessary for the protection of the public health, safety or welfare or for the protection of property.

SECTION 10: INDEMNIFICATION. The CONSULTANT shall indemnify and hold harmless the City, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence of the CONSULTANT, its officers, directors, employees, representatives, and agents employed or utilized by the CONSULTANT in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the CONSULTANT, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 11: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 12: SUB-CONSULTANTS. The City reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant and approve all qualifications of any subconsultant in order to make a determination as to the capability of the subconsultant to perform properly under this Agreement. All subconsultants providing professional services to the CONSULTANT under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement for the CONSULTANT. In the event that a subconsultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the CONSULTANT shall indemnify and hold harmless the City for any claim in excess of the subconsultant's insurance coverage, arising out of the negligent acts, errors or omissions of the subconsultant. Nothing contained herein shall create any contractual relationship between any subconsultant and the City.

SECTION 13: FEDERAL AND STATE TAX. The City is exempt from payment of Florida State Sales and Use Tax. The CONSULTANT is not authorized to use the City's Tax Exemption Number.

SECTION 14: INSURANCE. Prior to commencing any services, the CONSULTANT shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the City and the CONSULTANT. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent CONSULTANT, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits

The commercial general liability and automobile policies will name the City as an additional insured on primary, non-contributory basis and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve CONSULTANT of its liability and obligations under this Agreement.

Additional Insured status shall be provided pursuant and subject to ISO Form CG 20 10 12 19 (ongoing operations) and, if applicable, CG 20 37 12 19 (completed operations), or equivalent forms for coverages other than Commercial General Liability, to the extent that the loss or claim in question is caused by the CONSULTANT's negligence in its operations in and during the performance of the services, and to no greater extent than is necessary to provide insurance coverage for the covered indemnity obligations expressly assumed by CONSULTANT under this Agreement, it being the express intent and understanding of the Parties that, up to specified limits, additional insured status is provided hereunder as a support to performance of CONSULTANT's expressly assumed, covered indemnity obligations hereunder.

SECTION 15: SUCCESSORS AND ASSIGNS. The City and the CONSULTANT each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 16: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County, Florida. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce the Agreement or disputes arising out of the Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given

hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 17: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 18: NONDISCRIMINATION. The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 19: AUTHORITY TO PRACTICE. The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 20: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 21: PUBLIC ENTITY CRIMES. CONSULTANT acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The CONSULTANT will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 22: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and if sent to the CONSULTANT, shall be sent to:

RCM Technologies (USA), Inc.
Attn: Anthony Myers, Key Account Manager
2000 PGA Blvd. Suite 4400
Palm Beach Gardens, FL 33408

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 23: ENTIRETY OF AGREEMENT AND CONTROLLING PROVISIONS. This Agreement consists of the terms and conditions set forth in this Agreement (inclusive of all exhibits hereto) and any City issued Task Orders. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement (inclusive of all exhibits hereto) and a City issued Task Order, the terms and conditions of this Agreement shall prevail with the City issued Task Order next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 24: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 25: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the City reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 26: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event CONSULTANT fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to the CONSULTANT to terminate for cause.

SECTION 27: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Agreement is executed by the City.

SECTION 28: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 29: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 30: COUNTERPARTS. This Agreement may be executed in one or more counterparts electronically or digitally, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all the signatories hereto have signed a counterpart of this Agreement.

SECTION 31: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of the CONSULTANT, the undersigned hereby represents to the City that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the CONSULTANT for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 33: PUBLIC RECORDS. The CONSULTANT shall comply with Florida’s Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City’s custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONSULTANT does not transfer the records to the City.

(d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If the CONSULTANT transfers all public records to the City upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City’s custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION. Each party (the “Receiving Party”) will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software (“Confidential Information”) obtained from the other party (the “Disclosing Party”); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party’s Confidential Information, (iv) that is already in the Receiving Party’s possession at the time of disclosure, or (v) that is required to be released by law.

SECTION 35: EXPORT ADMINISTRATION. Each party agrees to comply with all export laws and regulations of the United States (“Export Laws”) to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

SECTION 36: NO THIRD-PARTY BENEFICIARIES. There are no third party beneficiaries under this Agreement.

SECTION 37: SCRUTINIZED COMPANIES.

(a) The CONSULTANT certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, the CONSULTANT certifies that it and its subconsultants are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) The CONSULTANT agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(d) The CONSULTANT agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Agreement, including any and all renewals.

(e) The CONSULTANT agrees that if it or any of its subconsultants' status changes in regards to any certification herein, the CONSULTANT shall immediately notify the City of the same.

(f) As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above stated contracting prohibitions then they shall become inoperative.

SECTION 38: E-VERIFY. Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONSULTANT shall:

(a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subconsultants (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subconsultants' newly hired employees;

(b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subconsultant does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

(c) Maintain copies of all subconsultant affidavits for the duration of this Agreement and provide the same to the City upon request;

(d) Comply fully, and ensure all subconsultant comply fully, with Section 448.095, Florida Statutes;

(e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited) shall be grounds for termination of this Agreement; and,

(f) Be aware that if the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONSULTANT may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Task Order No. _____ as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: RCM TECHNOLOGIES (USA), INC.

By: _____
Adam Adesso

[Corporate Seal]

STATE OF New Jersey
COUNTY OF Passaic

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 1st day of March, 2023, by RCM Technologies, Inc., a New Jersey Corporation, who is personally known to me or who has produced (known to me) as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Stefanie Ziegler
Notary Public Signature

Notary Seal:

STEFANIE ZIEGLER
NOTARY PUBLIC OF NEW JERSEY
Comm. # 50095441
My Commission Expires 12/17/2023



EXHIBIT "A"
(Sample Task Order)

Note: Task Order Number will be issued by the City, leave the line number empty.

TASK ORDER No. _____

**CONTINUING PROFESSIONAL SERVICES
(Energy Management & Engineering Services)**

THIS TASK ORDER FOR CONTINUING PROFESSIONAL SERVICES (“Task Order”) is made on the day of _____, between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **RCM Technologies (USA), Inc.**, a Florida CORPORATION (“CONSULTANT”).

1.0 Project Description:

The City desires the CONSULTANT to provide those services as identified herein for the Project. The Project is described in the CONSULTANT’s Proposal, dated _____ and services are generally described as: _____ (the “Project”).

2.0 Scope

Under this Task Order, the CONSULTANT will provide the City of Lake Worth Beach _____ with Energy Management & Engineering Services for the Project as specified in the **CONSULTANT’s proposal attached hereto and incorporated herein as Exhibit “1”**.

3.0 Schedule

The services to be provided under this Task Order shall be completed within _____ calendar days from the City’s approval of this Task Order or the issuance of a Notice to Proceed.

4.0 Compensation

This Task Order is issued for a lump sum, not to exceed amount of _____. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

5.0 Project Manager

The Project Manager for the CONSULTANT is _____, phone (_____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The CONSULTANT shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Authorization

This Task Order is issued pursuant to the Continuing Professional Services Agreement (Energy Management & Engineering Services) based on RFQ#23-300 between the City of Lake Worth Beach and the CONSULTANT, dated _____ (“Agreement” hereafter). If there are any conflicts between the terms and conditions of this Task Order and the Agreement, the terms and conditions of the Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Task Order No. _____ as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: **RCM TECHNOLOGIES (USA), INC.**

By: **DO NOT SIGN – SAMPLE ONLY**

[Corporate Seal]

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____, 2023, by **RCM Technologies (USA), Inc.**, a Florida Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Notary Public Signature

Notary Seal:

Exhibit “B”

Consultant’s Rate Schedule

Consultant Classification Services Labor Rates for 3 Years Terms

Consultant Name: RCM Technologies

Engineering Discipline: Substation and Protection & Control Engineering Services

Bid Date: Friday, February 10, 2023

#	Classification	2023 Hourly Blended Rate
1	Principal Engineer	\$ 160.00
2	Senior Engineer/Project Manager	\$ 130.00
3	Lead Engineer/Project Manager	\$ 125.00
4	Project Manager/Coordinator	\$ 165.00
5	Engineer (III,Staff, Assistance)	\$ 110.00
6	Engineer (Jr,II)	\$ 92.00
7	Engineer (1)	\$ 82.00
8	Senior Designer	\$ 90.00
9	Designer	\$ 85.00
10	Draftsman	\$ 80.00
11	CAD Designer (Sr,III)	\$ 70.00
12	CAD Designer (Jr,II)	\$ 60.00
13	CAD Designer (Tech, I)	\$ 50.00
14	Senior Technician	\$ 60.00
15	Junior Technician	\$ 50.00
16	QA/QC Coordinator	\$ 125.00
17	Site Manager	\$ 135.00
18	Project Accountant/Controls Manager	\$ 125.00
19	Project Accountant/Controls Technician	\$ 45.00
20	Clerical (Biller, Admin, Clerk, permitting)	\$ 50.00
21	Construction Lead / Professional	\$ 135.00
22	Permit Coordinator	\$ 44.00
23	Per Diem - Per Day	\$ 217.00
24	Senior Project Manager	\$ 120.00

Exhibit "C"

Federal Contract Provisions

The Consultant hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this RFQ, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Consultant agrees as follows:

(1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.

(4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of

September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Consultant debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Consultant or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

- (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Consultant agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

- (1) The Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Consultant agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Consultant is required to verify that none of the Consultant’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated

funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

(i) In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

(ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(iii) The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

(1) The Consultant agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Consultant agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the City and the Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Consultant acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Consultant will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Consultant, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant’s actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Consultant intends to subcontract any portion of the work covered by this Contract, the Consultant must take all necessary affirmative steps to assure that small and minority businesses, women’s business

enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

(1) As appropriate and to the extent consistent with law, the Consultant should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(2) For purposes of this section:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

(1) The Consultant is prohibited from obligating or expending loan or grant funds to:

(a) Procure or obtain;

(b) Extend or renew a contract to procure or obtain; or

(c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant is required to confirm that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Consultant, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Consultant to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that

the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



Signature of Consultant's Authorized Official

Adam Adesso

Name and Title of Consultant's Authorized Official

3/1/2023

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant RCM Technologies USA, Inc. certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Consultant's Authorized Official

Adam Adesso, General Manager
Name and Title of Consultant's Authorized Official

3/1/2023
Date

CONTINUING PROFESSIONAL SERVICES AGREEMENT
RFQ#23-300
(Energy Management & Consulting Services)

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **nFront Consulting, LLC.**, a Florida Limited Liability Company registered to do business in the State of Florida (“CONSULTANT”).

RECITALS

WHEREAS, the City issued Request for Qualifications (No. 23-300) for civil engineering, geotechnical engineering, surveying, architecture, hydrogeological services, transportation and mobility planning, energy management and engineering services, construction management and project management and related professional services in accordance with the Consultants’ Competitive Negotiations Act, section 287.055, Florida Statutes (“RFQ”); and

WHEREAS, the CONSULTANT submitted its qualifications in response to the RFQ; and

WHEREAS, the City desires to award the RFQ to the CONSULTANT based on CONSULTANT’s qualifications and experience to provide Energy Management & Consulting Services specific to utility studies and system modelling, analytics and other energy services; and

WHEREAS, the CONSULTANT has significant experience in assisting municipal organizations in providing consulting services; and

WHEREAS, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the CONSULTANT agrees that any services performed pursuant to the RFQ and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, FEMA policies, procedures, and directives and special clauses as provided for in **Exhibit “C”**; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by the CONSULTANT to the City; and,

WHEREAS, the City finds entering this Agreement with the CONSULTANT serves a valid public purpose.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and the CONSULTANT agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement by reference and acknowledged as true and correct statements.

SECTION 2: CONSULTANT’S SERVICES. The City has awarded the CONSULTANT the non-exclusive right to provide the City with Energy Management & Consulting Services specific to utility studies and system modelling, analytics and other energy services (“services”).

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that CONSULTANT will act hereunder as an independent contractor and none of the CONSULTANT’s, officers, directors, employees, independent contractors, representatives or agents performing services for CONSULTANT pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this

Agreement. The relationship between the City and CONSULTANT is that of independent contractors, and neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM, TIME AND TERMINATION.

(a) Term. This non-exclusive Agreement shall become effective upon approval by the City Commission and execution by the City, and shall have an initial term of three (3) years with three (3) optional, one (1) year renewals. The City Manager is authorized to exercise the optional one (1) year renewals. Each fiscal year of this Agreement and any renewals will be subject to the availability of funds lawfully appropriated for its purpose by the City Commission. Notwithstanding the foregoing, this Agreement may be terminated as stated herein. The term may be extended by written agreement of the parties for further services related to those services identified herein.

(b) Time for Completion. Time is an important and material consideration in the performance of this Agreement. The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the project schedule set forth by the City.

(c) Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, regulations, epidemic or pandemic. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible. Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to perform the services and, if the CONSULTANT's failure to perform was without its or its sub-consultants' fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

(d) Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination. If the City terminates without cause, the City shall compensate CONSULTANT for all work completed or in progress up to the date of the notice of termination provided by the City for which CONSULTANT has not already been compensated by the City, based on the agreed upon compensation for the terminated services.

(e) Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) days (or such other timeframe as mutually agreed upon by the parties) from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) days (or such other timeframe as mutually agreed upon by the parties), then this Agreement shall terminate at the end of the three (3) day period (or such other timeframe as mutually agreed upon by the parties) without further notice or demand.

(f) Early Termination. If this Agreement is terminated before the completion of all services by either party, the CONSULTANT shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.

2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

(g) Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement is subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify CONSULTANT of such occurrence and either the City or CONSULTANT may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay CONSULTANT for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

(a) Fee Schedule. The fee schedule attached as **Exhibit "B"** shall remain firm for the first three (3) years of this Agreement. After the first three (3) years, the CONSULTANT may request a change to the fee schedule. No changes to the fee schedule shall occur unless approved in writing by the City, which may be by an approved amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSULTANT and in any approved Task Order.

(b) Task Order(s). This non-exclusive Agreement does not guarantee that the City will utilize CONSULTANT in any capacity or for any services identified herein. When the City identifies a need for the CONSULTANT's services, the City will request a proposal from the CONSULTANT to provide the services requested. The CONSULTANT's proposal shall be submitted substantially in the format of the sample Task Order, attached hereto and incorporated herein as **Exhibit "A"** and shall be based on the CONSULTANT's currently hourly fee set forth in the CONSULTANT's proposal and attached hereto as **Exhibit "B"**. If a sub-consultant(s) is to be utilized for services under a Task Order, the CONSULTANT shall obtain a written proposal from the sub-consultant(s) and attach the same to the CONSULTANT's proposal submitted to the City. Upon receipt of the CONSULTANT's proposal, the City shall decide in its sole discretion whether to award the Task Order to the CONSULTANT. Depending on the lump sum, not to exceed amount of each proposed Task Order, the Task Order may be awarded by the City Manager (if within her purchasing authority of \$50,000 or less) or the City Commission. If the Task Order is awarded to the CONSULTANT, the CONSULTANT shall commence the identified services upon receipt of a Notice to Proceed from the City or upon the CONSULTANT's receipt of a fully executed Task Order for the services. The City reserves the right to reject any and all proposals submitted by the CONSULTANT.

(c) Invoices. Unless otherwise agreed in an issued Task Order, the CONSULTANT shall render monthly invoices to the City for services that have been rendered in conformity with this Agreement in the previous month. The invoices shall specify the services performed and the time spent on such work. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. Invoices will be paid within thirty (30) days following the City's receipt of the CONSULTANT's invoice.

(d) Reimbursable Expenses. The CONSULTANT's reimbursable, out-of-pocket expenses including, but not limited to, travel, per diem and other living expenses, shall be identified in an approved

Task Order. The City shall not be responsible for payment of any such reimbursable, out-of-pocket expenses except as provided for in an approved Task Order or amendment thereto. Reimbursement for mileage shall only be for travel required outside of Palm Beach County. CONSULTANT shall not be reimbursed for travel within Palm Beach County and all travel shall be proposed and reimbursed pursuant to section 112.061, Florida Statutes.

(e) Direct Project Expenses. Unless otherwise specifically stated in an approved Task Order, charges for printing, reproduction, use of computer-aided design equipment, field equipment, and any laboratory analysis performed by the CONSULTANT or its subconsultants or its subcontractors, and the use of the CONSULTANT's and employee's automobiles shall be identified in an approved Task Order. The City shall not be responsible for payment of any other direct project expenses. All direct project expenses shall be billed at cost to the City and the CONSULTANT shall not mark-up or charge an administrative fee in addition to the direct cost for such expenses.

(f) Additional Services. If the City seeks to utilize the CONSULTANT for any additional services related to the services identified herein, the City and CONSULTANT will meet and negotiate a reasonable fee for such services. The negotiated fee shall be approved by the City in the form of an Amendment prior to said services being provided.

(g) Status Report. Solely as agreed upon in a Task Order, the CONSULTANT shall complete and submit a technical summary and budgetary status report with each invoice at no additional cost to the City (format may be provided by City or CONSULTANT for each approved Task Order).

(h) Fiscal Non-funding. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the CONSULTANT of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the City. The CONSULTANT will be paid for all services rendered through the date of termination.

SECTION 6: TERMS OF PERFORMANCE

(a) Starting Work. The CONSULTANT will not begin any of the services until authorized in writing by a Notice to Proceed from the City or upon the CONSULTANT's receipt of an approved Task Order for the services.

(b) Ownership of Documents. The drawings, specifications, calculations, supporting documents, or other work products which are prepared for the City by the CONSULTANT under this Agreement, a City issued Task Order, or amendments thereto ("Work Product"), shall be and shall become the property of the City upon delivery or completion by the CONSULTANT or receipt of payment from the City for the same. The CONSULTANT may keep copies or samples thereof and shall have the right to use such Work Product. The City accepts sole responsibility for its reuse of any Work Product in a manner other than as initially intended, or for any use of incomplete Work Product or excerpts from a Work Product unless prior written approval is obtained from the CONSULTANT.

(c) Accounting Records. The CONSULTANT's accounting records, insofar as they pertain to invoicing the City or for disbursements made from the CONSULTANT's account for services under this Agreement, shall be open to City's inspection and audit at the CONSULTANT's office upon reasonable prior notice and during normal business hours. Backup documentation for out-of-pocket expenses exceeding Twenty-Five Dollars (\$25.00) each shall be available at the CONSULTANT's office. These records will be retained by the CONSULTANT for five (5) years after the calendar year in which the services to which they pertain were rendered or the disbursements were made.

(d) Approval of Changes. The City, through the City Manager must approve in writing any changes in the scope of services which result in additional costs or expenses to the City, extension of the schedule or which would change the underlying purpose of the services. Changes include, but are not limited to,

issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

(e) Authorized Representative. Before starting work, the CONSULTANT shall designate an authorized representative acceptable to the City to represent and act for the CONSULTANT and shall inform the City in writing of the name and address of such representative together with a clear definition of the scope of their authority. The CONSULTANT shall keep the City informed of any subsequent changes in the foregoing. The authorized representative of the City shall be the City Manager or designee.

(f) Design/Construction Phase Services. Visits to construction sites and observations made by the CONSULTANT as part of construction phase services, if any, shall not relieve the construction contractor(s) of obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the construction contract documents, and shall not relieve the construction contractor(s) of full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto. Safety precautions administered by the CONSULTANT, if any, to protect the CONSULTANT's personnel shall meet those policies enacted by the City. Further, CONSULTANT shall endeavor to make reasonable efforts to guard the City against defects and deficiencies in the services of the construction contractor(s) and to help determine if the provisions of the construction contract documents are being fulfilled. This paragraph does not, however, release the CONSULTANT from any liability which might be attributable to its negligent acts, including but not limited to design, construction phase services, or other services as defined in this Agreement, of the CONSULTANT.

(g) Personnel. The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The CONSULTANT shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. All of the CONSULTANT's personnel (and all subconsultants) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of CONSULTANT's personnel furnished by the CONSULTANT upon written notice by City to CONSULTANT of the cause for such replacement.

(h) Conflict of Interest. The 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, as provided for in Section 112.311, Florida Statutes. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said performance. The CONSULTANT shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the CONSULTANT. The City agrees to notify the CONSULTANT of its opinion within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the City shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the CONSULTANT under the terms of this Agreement.

(i) News Releases / Publicity. The CONSULTANT shall not make any news releases, publicity

releases, or advertisements relating to this Agreement or the services hereunder without prior written City approval. CONSULTANT shall be able to reference providing services (including a description of the services provided) to the City in CONSULTANT's general marketing materials, including proposals and statements of qualifications.

SECTION 8: CITY'S RESPONSIBILITIES

(a) Service of Others. The City shall furnish to the CONSULTANT, if required for performance of the Consultant's services, all available data prepared by or the result of the services of others, including without limitation (as may be appropriate): building plans and related drawings, core borings, probings, and subsurface explorations, hydraulic surveys, laboratory tests, and inspections of samples, materials, and equipment, appropriate professional interpretations of all of the foregoing; environmental assessments and impact statements, appropriate professional interpretations of all of the foregoing; property boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; zoning, deed, and other land use restrictions; and any other special data or consultations relating to the Project.

(b) Examine Work of the Consultant. Within a reasonable time so as not to delay the services of the CONSULTANT, the City shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor, or other consultants, as the City deems appropriate, for such examinations and the rendering, if required, of written opinions pertaining thereto.

SECTION 9: SUSPENSION BY CITY FOR CONVENIENCE. The City may, at any time without cause, order CONSULTANT in writing to suspend, delay or interrupt its services in whole or in part for such period of time as City may determine for City's convenience. Such order shall be by written notice to the CONSULTANT providing at least ten (10) days advance notice unless such order is immediately necessary for the protection of the public health, safety or welfare or for the protection of property.

SECTION 10: INDEMNIFICATION. The CONSULTANT shall indemnify and hold harmless the City, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence of the CONSULTANT, its officers, directors, employees, representatives, and agents employed or utilized by the CONSULTANT in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the CONSULTANT, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 11: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 12: SUB-CONSULTANTS. The City reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant and approve all qualifications of any subconsultant in order to make a determination as to the capability of the subconsultant to perform properly under this Agreement. All subconsultants providing professional services to the CONSULTANT under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement for the CONSULTANT. In the event that a subconsultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the CONSULTANT shall indemnify and hold harmless the City for any claim in excess of the subconsultant's insurance coverage, arising out of the negligent acts of the subconsultant. Nothing contained herein shall create any contractual relationship between any subconsultant and the City.

SECTION 13: FEDERAL AND STATE TAX. The City is exempt from payment of Florida State Sales and Use Tax. The CONSULTANT is not authorized to use the City’s Tax Exemption Number.

SECTION 14: INSURANCE. Prior to commencing any services, the CONSULTANT shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than “excellent” by A.M. Best or as mutually agreed upon by the City and the CONSULTANT. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent CONSULTANT, personal injury)	\$1,000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker’s Compensation	\$ statutory limits

The commercial general liability and automobile policies will name the City as an additional insured on primary, non-contributory basis and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve CONSULTANT of its liability and obligations under this Agreement.

Additional Insured status shall be provided pursuant and subject to ISO Form CG 20 10 12 19 (ongoing operations) and, if applicable, CG 20 37 12 19 (completed operations), or equivalent forms for coverages other than Commercial General Liability, to the extent that the loss or claim in question is caused by the CONSULTANT’s negligence in its operations in and during the performance of the services, and to no greater extent than is necessary to provide insurance coverage for the covered indemnity obligations expressly assumed by CONSULTANT under this Agreement, it being the express intent and understanding of the Parties that, up to specified limits, additional insured status is provided hereunder as a support to performance of CONSULTANT’s expressly assumed, covered indemnity obligations hereunder.

SECTION 15: SUCCESSORS AND ASSIGNS. The City and the CONSULTANT each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 16: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator’s fee equally. The mediation shall be held in Palm Beach County, Florida. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce the Agreement or disputes arising out of the Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by

any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 17: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 18: NONDISCRIMINATION. The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 19: AUTHORITY TO PRACTICE. The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 20: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 21: PUBLIC ENTITY CRIMES. CONSULTANT acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The CONSULTANT will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 22: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and if sent to the CONSULTANT, shall be sent to:

nFront Consulting, LLC.
Attn: John F. Painter, Manager and CEO
2465 Southern Hills Ct.
Oviedo, FL 32765

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 23: ENTIRETY OF AGREEMENT AND CONTROLLING PROVISIONS. This Agreement consists of the terms and conditions set forth in this Agreement (inclusive of all exhibits hereto) and any

City issued Task Orders. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement (inclusive of all exhibits hereto) and a City issued Task Order, the terms and conditions of this Agreement shall prevail with the City issued Task Order next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 24: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 25: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the City reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 26: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event CONSULTANT fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to the CONSULTANT to terminate for cause.

SECTION 27: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the City Commission. The Effective Date is the date this Agreement is executed by the City.

SECTION 28: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 29: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 30: COUNTERPARTS. This Agreement may be executed in one or more counterparts electronically or digitally, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all the signatories hereto have signed a counterpart of this Agreement.

SECTION 31: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of the CONSULTANT, the undersigned hereby represents to the City that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the CONSULTANT for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 33: PUBLIC RECORDS. The CONSULTANT shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City’s custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONSULTANT does not transfer the records to the City.
- (d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If the CONSULTANT transfers all public records to the City upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City’s custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION. Each party (the “Receiving Party”) will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software (“Confidential Information”) obtained from the other party (the “Disclosing Party”); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who to Receiving Party’s knowledge is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party’s Confidential Information, (iv) that is already in the Receiving Party’s possession at the time of disclosure, or (v) that is required to be released by law.

SECTION 35: EXPORT ADMINISTRATION. Each party agrees to comply with all export laws and regulations of the United States (“Export Laws”) to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

SECTION 36: NO THIRD-PARTY BENEFICIARIES. There are no third party beneficiaries under this Agreement.

SECTION 37: SCRUTINIZED COMPANIES.

- (a) The CONSULTANT certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or

any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, the CONSULTANT certifies that it and its subconsultants are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subconsultants are found to have submitted a false certification; or if the CONSULTANT or any of its subconsultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) The CONSULTANT agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(d) The CONSULTANT agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Agreement, including any and all renewals.

(e) The CONSULTANT agrees that if it or any of its subconsultants' status changes in regards to any certification herein, the CONSULTANT shall immediately notify the City of the same.

(f) As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above stated contracting prohibitions then they shall become inoperative.

SECTION 38: E-VERIFY. Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONSULTANT shall:

(a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subconsultants (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subconsultants' newly hired employees;

(b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subconsultant does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

(c) Maintain copies of all subconsultant affidavits for the duration of this Agreement and provide the same to the City upon request;

(d) Comply fully, and ensure all subconsultant comply fully, with Section 448.095, Florida Statutes;

(e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited) shall be grounds for termination of this Agreement; and,

(f) Be aware that if the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONSULTANT may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

SECTION 39: WAIVER OF CONSEQUENTIAL DAMAGES: Neither the CONSULTANT nor the City nor either party's suppliers, agents, officers, and directors shall have any liability regardless of the theory of recovery, including breach of contract or negligence, to the other party or any other person or entity for any indirect, incidental, special, or consequential damages, cost or expense whatsoever, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss. This waiver of consequential damages is made regardless that (i) either party has been advised of the possibility of such damages and (ii) that such damages may be foreseeable.

SECTION 40: LIMITATION OF LIABILITY: For each proposed Task Order under this Agreement, the CONSULTANT may propose a limitation of liability provision based on the proposed services to be performed under the Task Order. The City will review the proposed limitation of liability provision and agree to accept, modify or reject the same in its sole discretion. If the City rejects the proposed limitation of liability provision of the City and CONSULTANT cannot agree on a modified provision, the City will have no obligation to approve the proposed Task Order and may request the same services from another firm.

SECTION 41: CONSULTANT EMPLOYEE/PRINCIPAL LIABILITY. No principal or employee of CONSULTANT shall have individual liability to the City for damages resulting from negligence.

IN WITNESS WHEREOF, the parties hereto have made and executed this Continuing Professional Services Agreement for Energy Management & Consulting Services as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Betty Resch, Mayor

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: nFRONT CONSULTING, LLC.

By: Bradley Kushner
Bradley Kushner, Manager, nFront Consulting LLC

[Corporate Seal]

STATE OF Florida)
COUNTY OF Orange)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 12th day of March, 2023, by **nFront Consulting, LLC.**, a Florida Limited Liability Company, who is personally known to me ~~or who has produced _____ as identification~~, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Sandra D. Kupetz
Notary Public Signature

Notary Seal:



Sandra D. Kupetz
Comm.: HH 120309
My Commission Expires:
June 4, 2025

EXHIBIT "A"
(Sample Task Order)

Note: Task Order Number will be issued by the City, leave the line number empty.

TASK ORDER No.

**CONTINUING PROFESSIONAL SERVICES
(Energy Management & Consulting Services)**

THIS TASK ORDER FOR CONTINUING PROFESSIONAL SERVICES (“Task Order”) is made on the day of _____, between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **nFront Consulting, LLC.**, a Florida Limited Liability Company (“Consultant”)

1.0 Project Description:

The City desires the CONSULTANT to provide those services as identified herein for the Project. The Project is described in the CONSULTANT’s Proposal, dated _____ and services are generally described as: _____(the “Project”).

2.0 Scope

Under this Task Order, the CONSULTANT will provide the City of Lake Worth Beach _____with Energy Management & Consulting Services for the Project as specified in the **CONSULTANT’s proposal attached hereto and incorporated herein as Exhibit “1”**.

3.0 Schedule

The services to be provided under this Task Order shall be completed within _____calendar days from the City’s approval of this Task Order or the issuance of a Notice to Proceed.

4.0 Compensation

This Task Order is issued for a lump sum, not to exceed amount of _____. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

5.0 Project Manager

The Project Manager for the CONSULTANT is _____, phone (_____; email: _____; and, the Project Manager for the City is _____, phone: _____; email:_____.

6.0 Progress Meetings

The CONSULTANT shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Authorization

This Task Order is issued pursuant to the Continuing Professional Services Agreement (Energy Management & Consulting Services) based on RFQ#23-300 between the City of Lake Worth Beach and the CONSULTANT, dated _____(“Agreement” hereafter). If there are any conflicts between the terms and conditions of this Task Order and the Agreement, the terms and conditions of the Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Task Order No. _____ as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: **nFRONT CONSULTING, LLC.**

By: **DO NOT SIGN – SAMPLE ONLY**

[Corporate Seal]

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____, 2023, by **nFront Consulting, LLC.**, a Florida Limited Liability Company, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

Notary Public Signature

Notary Seal:

Exhibit "B"

Consultant's Rate Schedule

Hourly Billing Rates

Position Title	\$/Hour
Managing Director	\$300
Executive Consultant	\$285
Senior Consultant	\$240-260
Analyst/Consultant	\$115-185
Administrative	\$115

Exhibit “C”

Federal Contract Provisions

The Consultant hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this RFQ, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Consultant agrees as follows:

(1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.

(4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of

September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Consultant debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Consultant or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

(1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Consultant agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

(1) The Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Consultant agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Consultant is required to verify that none of the Consultant’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated

funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

(i) In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

(ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(iii) The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

(1) The Consultant agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Consultant agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the City and the Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Consultant acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Consultant will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Consultant, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant’s actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Consultant intends to subcontract any portion of the work covered by this Contract, the Consultant must take all necessary affirmative steps to assure that small and minority businesses, women’s business

enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

(1) As appropriate and to the extent consistent with law, the Consultant should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(2) For purposes of this section:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

(1) The Consultant is prohibited from obligating or expending loan or grant funds to:

(a) Procure or obtain;

(b) Extend or renew a contract to procure or obtain; or

(c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant is required to confirm that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Consultant, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Consultant to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that

the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



Signature of Consultant's Authorized Official

Bradley E. Kushner, Manager, nFront Consulting LLC

Name and Title of Consultant's Authorized Official

March 13, 2023

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Consultant's Authorized Official

Bradley E. Kushner, Manager, nFront Consulting LLC

Name and Title of Consultant's Authorized Official

March 13, 2023

Date

STAFF REPORT UTILITY MEETING

AGENDA DATE: March 28, 2023

DEPARTMENT: City Commission

TITLE:

Discussion regarding raising the rooftop solar limits brought forward by Vice Mayor McVoy

SUMMARY:

Vice Mayor McVoy is seeking to raise the allowable limit on rooftop solar.

BACKGROUND AND JUSTIFICATION:

Vice Mayor McVoy would like the Commission to vote on raising the allowable limits of rooftop solar from the current Tier 1 (10 kiloWatt [kW] limit) to Tier 2 (10-100kW limit). Electric Utility Director Ed Liberty at various times has mentioned that this is a policy decision that the Commission is free to adopt. It would be one of the steps toward the Zero Emissions resolution the Commission passed on Feb 28, 2023.

The Vice Mayor requested that staff prepare a resolution for the procedure change, if needed, and is seeking approval from the Commission.

MOTION:

Direction is sought regarding raising the allowable limits of rooftop solar from Tier 1 to Tier 2.

STAFF REPORT UTILITY MEETING

AGENDA DATE: March 28, 2023

DEPARTMENT: City Commission

TITLE:

Discussion regarding rooftop solar procedure brought forward by Vice Mayor McVoy

SUMMARY:

Vice Mayor McVoy is seeking to change the procedure for approving rooftop solar.

BACKGROUND AND JUSTIFICATION:

Vice Mayor McVoy would like to have the Commission vote on changing the procedure for approving rooftop solar to allow homeowners (and businesses) to be free to set the size of their systems (within the Tier limits) as they see fit. Currently the utility ties it to the average of the previous 12 months of electric bills. A tie to retroactive usage does not make sense if a household is moving toward electrification. Simple examples would be buying an electric vehicle, installing heat pumps, or switching from gas to induction stove. It would be very reasonable for a homeowner to want to size their solar system to encompass these future increased needs.

The Vice Mayor requested that staff prepare a resolution for the policy change, if needed, and is seeking approval from the Commission.

MOTION:

Direction is sought regarding changing the procedure for approving rooftop solar.