



**AGENDA  
CITY OF LAKE WORTH BEACH  
REGULAR CITY COMMISSION MEETING (REVISION 2)  
CITY HALL COMMISSION CHAMBER  
TUESDAY, MARCH 21, 2023 - 6:00 PM**

**ROLL CALL:**

**INVOCATION OR MOMENT OF SILENCE:** led by Mayor Betty Resch

**PLEDGE OF ALLEGIANCE:** led by Commissioner Reinaldo Diaz

**AGENDA - Additions / Deletions / Reordering:**

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

- A. Historic Preservation Board Update by Board Chair Stephen Pickett
- B. Planning & Zoning Board Update by Board Member Alexander Cull
- C. Proclamation declaring March 31, 2023 as The Lord's Place SleepOut to End Homelessness Awareness Day
- D. Proclamation declaring March 2023 as National Ethics Awareness Month
- E. Proclamation declaring March 2023 as Florida Bicycle Month

**COMMISSION LIAISON REPORTS AND COMMENTS:**

**CITY MANAGER'S REPORT:**

**PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:**

**APPROVAL OF MINUTES:**

- A. [Regular Meeting - March 7, 2023](#)
- B. [Pre-Agenda Work Session - March 8, 2023](#)

**PUBLIC HEARINGS:**

- A. [Ordinance 2023-02 - First Reading - Consideration of an ordinance amending Chapter 23 "Land Development Regulations," Article 2 "Administration," Division 3 "Permits," Section 23.2-39 "Affordable/Workforce Housing Program" to provide clarification on the combination of incentives, qualifications for affordability, participation in other entity programs, and providing additional affordability buy downs provisions](#)
- B. [Ordinance Nos. 2023-03 & 2023-04 - First Reading - A City-initiated small-scale Future Land Use Map \(FLUM\) amendment \(Ordinance 2023-03\) and a Zoning Map amendment \(Ordinance 2023-04\) on behalf of For The Children Inc \(Lessee\) located on City owned property at 1718 South Douglas Street](#)

**UNFINISHED BUSINESS:**

- A. [Discussion on Solicitation for L & M Streets Property Development](#)

- B. [Resolution No. 07-2023 – Approving the Amendment to the Fees & Charges for Mobile Home Park Solid Waste & Recycling](#)

**NEW BUSINESS:**

- A. [Continuing Contracts for Professional Services for Civil Engineering - Water category](#)  
B. [Continuing Contracts for Professional Services for Civil Engineering - Transportation Category](#)  
C. [Continuing Contracts for Professional Services for Hydrogeological Category](#)  
D. [Continuing Contracts for Professional Services for Architecture Category](#)  
E. [Continuing Contracts for Professional Services for Surveying Category](#)  
F. [Agreement with Advanced Data Solutions to provide digitizing of property files](#)  
G. [Agreement with AndCo Consulting LLC for Investment Consulting Services](#)  
H. [Resolution No. 06-2023 – Clarifying Article III, Section 3 of the City Charter so that the designation of appointments be done annually at the first meeting in April](#)  
I. [Resolution No. 09-2023 -- opposing House Bill 1011 \(HB1011\) that only specified flags may be flown by local governments](#)

**CITY ATTORNEY'S REPORT:**

**UPCOMING MEETINGS AND WORK SESSIONS:**

March 22 - Pre-agenda Work Session @ 9 am  
March 28 - Utility @ 6 pm  
April 4 - Regular @ 6 pm

**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  
REGULAR CITY COMMISSION MEETING  
CITY HALL COMMISSION CHAMBER  
TUESDAY, MARCH 7, 2023 – 6:00 PM**

The meeting was called to order by Mayor Resch on the above date at 6:00 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, Kimberly Stokes and Reinaldo Diaz. Also present were City Manager Carmen Davis, City Attorney Glen Torcivia and City Clerk Melissa Ann Coyne.

**INVOCATION OR MOMENT OF SILENCE:** (1:22) was led by Vice Mayor Christopher McVoy.

**PLEDGE OF ALLEGIANCE:** (1:03) was led by Mayor Betty Resch.

**ADDITIONS/DELETIONS/REORDERING:** (2:09)

Unfinished Business B, Discussion on Solicitation for L & M Streets Property Development, was deleted from the agenda and would be heard at a future meeting.

**Action:** Motion made by Commissioner Malega 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:** (2:43) (there is no public comment on Presentation items)

- A. Presentation of CMC (Certified Municipal Clerk) designation to Shayla Ellis, Deputy City Clerk, by Renee Basel, Palm Beach County Municipal Clerk Association President (2:46)
- B. Proclamation declaring March 2023 as Women's History Month (10:30)
- C. Proclamation declaring March 2023 as Let's Move Palm Beach County Month (12:40)
- D. Proclamation declaring March 2023 as Palm Beach Pride Month (15:42)

**COMMISSION LIAISON REPORTS AND COMMENTS:** (19:51)

**CITY MANAGER'S REPORT:** (32:12)

City Manager Davis provided the following report:

- enjoyed the employee barbecue where she could spend time with the staff
- attended a training on Saturday called “why did you stop me” through PBSO

**PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:** (35:17)

**APPROVAL OF MINUTES:** (47:23)

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

- A. Regular Meeting - February 21, 2023
- B. Pre-Agenda Work Session - February 22, 2023

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

**CONSENT AGENDA:**

There were no Consent Agenda items on the agenda.

**PUBLIC HEARINGS:**

There were no Public Hearing items on the agenda.

**UNFINISHED BUSINESS:** (47:48)

- A. Discussion of proposal received in response to Request for Proposals (RFP) for Housing Emergency Study and Rent Control Ordinance Analysis

**Action:** Motion made by Commissioner Diaz and seconded by Commissioner Malega to approve directing City Staff to enter into more detailed discussions and negotiations with Florida Atlantic University aimed at arriving at a finalized agreement, with such Agreement to be brought back to the City Commission for further consideration, with additional funding for a translator.

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

- B. (deleted) Discussion on Solicitation for L & M Streets Property Development

**NEW BUSINESS:**

There were no New Business items on the agenda.

**CITY ATTORNEY'S REPORT:**

City Attorney Torcivia did not provide a report.

**UPCOMING MEETINGS AND WORK SESSIONS:**

March 8 - Pre-agenda work session @ 9 AM

March 21 - Regular @ 6 PM

**ADJOURNMENT:** (1:39:40)

**Action:** Motion made by Commissioner Stokes and seconded by Vice Mayor McVoy to adjourn the meeting at 7:40 PM.

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

\_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, City Clerk

Minutes approved March 21, 2023.

Item time stamps correspond to the video recording of the meetings on YouTube.

**MINUTES  
CITY OF LAKE WORTH BEACH  
CITY COMMISSION PRE-AGENDA WORK SESSION  
CITY HALL COMMISSION CHAMBER  
WEDNESDAY, MARCH 8, 2023 - 9:00 AM**

The meeting was called to order by Mayor Resch on the above date at 9:00 AM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

**ROLL CALL:** (0:12) Present were Mayor Betty Resch; Vice Mayor Christopher McVoy and Commissioners Sarah Malega and, Reinaldo Diaz (arrived at 9:35). Also present were City Manager Carmen Davis, City Attorney Glen Torcivia and City Clerk Melissa Ann Coyne. Commissioner Kimberly Stokes was absent.

**UPDATES / FUTURE ACTION / DIRECTION:**

**Action:** Consensus to bring a resolution clarifying Article III, Section 3 of the Charter that the designations for Vice Mayor and Vice Mayor Pro Tem and the appointments to the various organizations and boards be done annually at the first meeting in April. (9:15)

**Action:** Consensus to have a work session on the advisory boards before holding board interviews. (45:15)

**ADJOURNMENT:** (59:27)

The meeting adjourned at 10:01 AM.

ATTEST:

\_\_\_\_\_  
Betty Resch, Mayor

\_\_\_\_\_  
Melissa Ann Coyne, City Clerk

Minutes Approved: March 21, 2023

Item time stamps correspond to the recording of the meeting on YouTube.

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** Community Sustainability

**TITLE:**

Ordinance 2023-02 - First Reading - Consideration of an ordinance amending Chapter 23 “Land Development Regulations,” Article 2 “Administration,” Division 3 “Permits,” Section 23.2-39 “Affordable/Workforce Housing Program” to provide clarification on the combination of incentives, qualifications for affordability, participation in other entity programs, and providing additional affordability buy downs provisions

**SUMMARY:**

The subject ordinance would establish provisions to create additional affordability through buy down options in the City’s Affordable/Workforce Housing Program, and modify the text of LDR Section 23.2-39 for clarity.

**BACKGROUND AND JUSTIFICATION:**

The recently adopted (10/6/2022) Ordinance 2022-12 created the City’s Affordable/Workforce Housing Program to encourage the development of affordable and/or workforce housing units within the City. The program allows several incentives, including a 15% density bonus and additionally flexibility in unit size, parking requirements and financial incentives provided that no less than 15% of the total dwelling units are deed restricted as affordable. The City Commission subsequently directed staff to develop additional affordability buy down options. Further, in the recent implementation of the ordinance, staff has identified some minor housekeeping changes that would provide additional clarity on the program’s implementation. The subject ordinance would both create the buy down options and modify the text of LDR Section 23.2-39 for clarity.

**MOTION:**

Move to approve/disapprove Ordinance 2023-02 on First Reading, and to schedule second reading and public hearing for April 4, 2023

**ATTACHMENT(S):**

Ordinance 2023-02  
PZHP Staff Report

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**ORDINANCE 2023-02 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 SECTION 23.2-39 “AFFORDABLE/WORKFORCE HOUSING PROGRAM,” PROVIDING FOR CLARIFICATION ON COMBINATION OF INCENTIVES, QUALIFICATIONS FOR AFFORDABILITY AND PARTICIPATION IN OTHER ENTITY PROGRAMS AND PROVIDING FOR ADDITIONAL AFFORDABILITY BUY DOWN PROVISIONS; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE**

**WHEREAS**, as provided in Section 2(b), Article VIII of the Constitution of the State of Florida, and Section 166.021(1), Florida Statutes, the City of Lake Worth Beach (the “City”), enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

**WHEREAS**, as provided in Section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

**WHEREAS**, the City wishes to amend Chapter 23, Article 2 “Administration,” to amend, Section 23.2-39 – Affordable/Workforce Housing Program to provide for additional buy down options for the affordable/workforce housing program within the City of Lake Worth Beach; and

**WHEREAS**, the City of Lake Worth Beach, Florida (the “City”), is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the Planning and Zoning Board, in its capacity as the local planning agency, considered the proposed amendments at a duly advertised public hearing; and

**WHEREAS**, the Historic Resources Preservation Board, in its capacity as the local planning agency, considered the proposed amendments at a duly advertised public hearing; and

**WHEREAS**, the City Commission finds and declares that the adoption of this ordinance is appropriate, and in the best interest of the health, safety and welfare of the City, its residents and visitors.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:**

**Section 1:** The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this ordinance as if set forth herein.



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**Section 2:** Chapter 23 “Land Development Regulations,” Article 2 “Administration,” Section 23.2-39 “Affordable/Workforce Housing Program” is hereby amended to read as follows:

**Sec. 23.2-39. – Affordable/Workforce Housing Program.**

- a) *Intent.* The Affordable/Workforce Housing Program is intended to implement Objective 3.1.2 of the city comprehensive plan future land use element and provisions therein regarding affordable and workforce housing. The Affordable/Workforce Housing Program provides for a density bonus and a reduction in overall housing unit areas for developments that incorporate residential units with restrictive covenants that meet the requirements of the program.
  
- b) *Purpose.* The purpose of the Affordable/Workforce Housing Program is to encourage the inclusion of affordable and workforce housing units within both residential and mixed-use projects as well as planned developments of all types to provide for broader and more accessible housing options within the City. The Affordable/Workforce Housing Program offers the following as “Program Incentives”.
  - 1. Tier One: may apply to all development projects consistent with the provisions of this section
    - (a) Up to a fifteen percent (15%) increase in overall project density;
    - (b) Up to a fifteen percent (15%) reduction in the gross area requirements based on unit type;
    - (c) Up to a twenty five percent (25%) reduction in required parking, provided that each residential dwelling unit is provided at least one (1) parking space. This reduction may not be combined with other parking reduction provisions of these LDRs;
    - (d) Any additional density and/or other benefits provided under this tier shall require that those units benefiting from the provisions be restricted as affordable/workforce housing meeting the requirements of this section through a restrictive covenant.
    - (e) Additional financial incentives may be considered on a case by case basis by the applicable decision-making entity if the project provides more affordable/workforce units that the minimum required.
  - 2. Tier Two: applies to all projects utilizing other city incentive and/or bonus program(s)
    - (a) For all projects utilizing any other city incentive or bonus program(s), fifteen percent (15%) of the total number of dwelling units within the project must be restricted as affordable/workforce dwelling units meeting the requirements of this section through a restrictive covenant.
    - ~~(b) Any combination of Tier One incentives with other city incentive and/or bonus program(s) related to density, intensity and/or height shall require that all units benefiting from these increases and/or incentives~~

98 ~~be restricted as affordable/workforce dwelling units meeting the~~  
99 ~~requirements of this section through a restrictive covenant.~~

100 3. Tier One and Tier Two Combination: applies to all projects that combine the Tier  
101 One Incentives with other available city incentives

102 (a) For all projects combining a Tier One density incentive with other City incentive  
103 and/or bonus program(s) related to density, all units benefitting from the  
104 additional density incentive under Tier One shall be restricted as  
105 affordable/workforce dwelling units meeting the requirements of this section  
106 through a restrictive covenant in addition to the units required to be restricted  
107 under (Tier Two) other city incentive and/or bonus program(s).

108  
109 c) *Application and Review Process.*

110  
111 1. *Application.* All development proposals seeking increased density of up to  
112 fifteen percent (15%) and/or reductions in overall unit sizes of up to fifteen  
113 percent (15%) shall submit an affordable/workforce housing program  
114 application as provided by the department of community sustainability. The  
115 application shall accompany the standard City of Lake Worth Beach Universal  
116 Development Application for the development proposal. The  
117 affordable/workforce housing program application shall include all of the  
118 following:

119  
120 (a) A project fact sheet with building specifications including the number of  
121 additional units, unit types and unit sizes proposed.

122  
123 (b) The affordability criteria for each unit proposed to be included in the project.

124  
125 (c) Draft restrictive covenant should the City's version not be submitted.

126  
127 (d) Any other additional information (d) ensure the timely and efficient evaluation  
128 of the project by city staff to ensure that the requirements of the  
129 Affordable/Workforce Housing Program are being met.

130  
131 (e) Intent to meet the requirements of the Affordable/Workforce Housing  
132 Program through participation in another entity's program, including  
133 relevant program criteria and restrictive covenant.

134  
135 2. *Review/decision.* The development review official shall review the application  
136 along with the zoning approvals otherwise required of the development  
137 proposal under these LDRs. Development applications that require further  
138 review or approval by a decision-making board shall also include the  
139 development review official's recommendation regarding the award of  
140 additional density and/or unit size reduction under the Affordable/Workforce  
141 Housing Program. Any decision on the award shall be made by the planning  
142 and zoning board, the historic resources planning board, or the city commission  
143 as applicable. A decision on an award may be appealed under the procedures  
144 applicable to the development application with which it is associated. No waiver  
145 or variance may be granted regarding the award. The award of bonus density,

146 height or intensity under the Affordable/Workforce Housing Program shall be  
147 based on the following criteria:

- 148
- 149 (a) Is the award calculated correctly, consistent with the density and unit size  
150 reduction(s) that are allowed under the Affordable/Workforce Housing  
151 Program, including that the affordable/workforce housing unit type mix be  
152 reflective of the overall unit type mix for the entire project;
- 153
- 154 (b) Do the proposed income restrictions meet the intent of the  
155 Affordable/Workforce Housing Program;
- 156
- 157 (c) Do the proposed annual rents and/or mortgage costs meet the intent of the  
158 Affordable/Workforce Housing Program; and
- 159
- 160 (d) Do the proposed restrictive covenants to maintain affordability meet the  
161 intent of the Affordable/Workforce Housing Program?
- 162

163 d) *Qualifying income restrictions.* The following provisions outline the required  
164 income limits and overall percentage of household income to qualify units as being  
165 affordable/workforce under the Affordable/Workforce Housing Program. All  
166 income values shall be based on the then current area (County) median household  
167 income published annually by the US Department of Housing & Urban  
168 Development. Whether with a rental unit or for a fee simple, for sale unit, the  
169 overall housing expense (rent, mortgage, property taxes, and insurances) for the  
170 unit shall not exceed thirty percent (30%) of the income limit provided for each unit  
171 type, based upon the number of bedrooms.

- 172
- 173 1. For a studio unit, the annual gross household income shall not exceed forty five  
174 percent (45%) of area median income and minimum household size is one (1)  
175 person, not to exceed two (2) people.
- 176
- 177 2. For a one-bedroom unit, the annual gross household income shall not exceed  
178 sixty five percent (65%) of the area median income and minimum household  
179 size of one (1) person, not to exceed two (2) people.
- 180
- 181 3. For a two-bedroom unit, the annual gross household income shall not exceed  
182 eighty five percent (85%) of the area median income and minimum household  
183 size of two (2) people, not to exceed two (2) people per bedroom.
- 184
- 185 4. For a three-bedroom unit, the annual gross household income shall not exceed  
186 one hundred and five percent (105%) of the area median income and minimum  
187 household size of three (3) people, not to exceed two (2) people per bedroom.
- 188
- 189 5. For a four or more-bedroom unit, the annual gross household income shall not  
190 exceed one hundred and twenty five percent (125%) of the area median income  
191 and minimum household size of four (4) people, not to exceed two (2) people  
192 per bedroom.
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6. For fee simple ownership, the limits provided above may be increased by fifteen (15%) based on unit type and shall include the overall housing expense.
  
7. Alternatively, if participating in another entity’s workforce (80% to 140% of Area Median Income) or affordable housing (less than 80% of Area Median Income) program, the income restrictions may adhere to the following guidelines shall not exceed the City’s income guidelines singularly or in combination with the alternative program for the units required to be income restricted under the City’s program. The applicant also shall comply fully with the requisite criteria requirements of the alternative program selected.
  - ~~a. “Affordable Housing Eligible Households” means a household with an annual gross household income at or less than eighty percent (80%) of the Area Median Income, calculated as percentages of the Median Family Income for Palm Beach County, as published annually by the US Department of Housing and Urban Development.~~
  
  - ~~b. “Workforce Housing Eligible Households” means a household with an annual gross household income within the following income categories: Moderate (80%-100%) and Middle (101%-140%) of the Area Median Income, calculated as percentages of the Median Family Income for Palm Beach County, as published annually by the US Department of Housing and Urban Development.~~
  
- e) *Additional restrictions.* The following requirements outline the restrictive covenant that shall be recorded and maintained on each unit awarded under the Affordable/Workforce Housing Program.
  1. The restrictive covenant shall be in a legal form acceptable to the department of community sustainability and the city attorney’s office or as otherwise provided by the city and shall require each unit awarded be maintained at the awarded level of affordability, in accordance with the Affordable/Workforce Housing Program, for a minimum of twenty-five (2025) years.
  
  2. The restrictive covenant shall include the more restrictive program requirements, which shall govern the project if other affordable/workforce housing incentives are combined with use of the Affordable/Workforce Housing Program.
  
  3. The restrictive covenant shall require an annual report of the project’s compliance with the restrictive covenants and the requirements of the Affordable/Workforce Housing Program be provided to the City or its designee for evaluation, review and approval. Should the annual report not be submitted or should it demonstrate the project is not meeting the requirements of the Affordable/Workforce Housing Program, the project owner shall pay the city, as a penalty, an amount no less than fifteen dollars (\$15) per square foot for each unit that did not comply with the program’s requirements for the previous year, or portion thereof. If the report is not submitted, the penalty payment will be

242 calculated as though no units met the requirements of the Affordable/Workforce  
243 Housing Program for the reporting period. The per square foot penalty value  
244 may increase based on the annual U.S. Consumer Price Index (CPI) and shall  
245 be reflected in the City's adopted annual Schedule of Fees and Charges. Any  
246 required penalty payment shall be made within ten (10) days of notification from  
247 the city of the calculated payment based on the report or failure to submit the  
248 report and the annual penalty value as adopted by the city.

- 249  
250 4. The restrictive covenant shall provide for extension of the affordability period,  
251 as set forth in this section. If the property is qualified through its participation in  
252 another entity's affordability program, a separate restrictive covenant may be  
253 utilized to provide for the extension of the affordability period in accordance  
254 with the terms of this section.  
255

256 f) *Financial incentives.* The following are parameters for financial incentive values  
257 based on unit type, which may be utilized to ensure more than the required fifteen  
258 percent (15%) of the dwelling units available after the density increase incentive  
259 remain affordable for a guaranteed twenty-five (25) year period as governed  
260 through a covenant and/or deed restriction. Values may be paid through utilization  
261 of Sustainable Bonus Incentive Values, Transfer Development Right Values or  
262 cash payments from the City from the Affordable/Workforce Housing Program  
263 Trust Fund, Sustainable Bonus Incentive Trust Account or the Transfer  
264 Development Rights Trust Account or other legally approved funding source(s).  
265

- 266 1. For a studio dwelling unit, a one-time payment of \$40,000 or 50% percent of  
267 the area median income, whichever is greater;  
268  
269 2. For a one-bedroom dwelling unit, a one-time payment of \$60,000 or 75%  
270 percent of the area median income, whichever is greater;  
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272 3. For a two-bedroom dwelling unit, a one-time payment of \$80,000 or 100%  
273 percent of the area median income, whichever is greater;  
274  
275 4. For a three-bedroom dwelling unit, a one-time payment of \$100,000 or 125%  
276 percent of the area median income, whichever is greater;  
277  
278 5. For a four or more-bedroom dwelling unit, a one-time payment of \$120,000 or  
279 150% percent of the area median income, whichever is greater;  
280  
281 6. For a fee simple ownership dwelling unit, an additional one-time payment of  
282 \$25,000 may be provided; and  
283  
284 7. Payments shall be made at time of dwelling units receiving a final certificate of  
285 occupancy or certificate of completion.  
286

287 g) *Affordability extension(s).* The City shall have the express right, in its sole  
288 discretion, to extend the affordability deed restrictions and covenants for another  
289 period of no less than twenty-five (25) years) through the provision of a then current

290 economic incentive payment based on unit size. The affordability extension shall  
291 be available to the City pursuant to this subsection regardless of whether the  
292 original affordability period was under the Affordable/Workforce Housing Program  
293 or another entity's program.

- 294
- 295 1. The City shall provide formal notice of intent to extend affordability of units a  
296 minimum of six (6) months prior to the expiration of the affordability deed  
297 restrictions and covenants.
- 298
- 299 2. The City's notice shall include the number and type of units having affordability  
300 extended and the economic incentive to be provided for those units.
- 301
- 302 3. The affordability extension may not exceed the original number and type of  
303 units governed by the Affordable/Workforce Housing Program.
- 304
- 305 4. There shall be no limit on the number of affordability extensions the city may  
306 fund for a project.
- 307
- 308 5. The extension incentive payment shall follow the parameters as set forth in f)  
309 of this section based on the values established for the year that the extension  
310 is authorized.
- 311
- 312 6. Financial incentives and buy-down options, if part of the original approval, may  
313 each also be extended by mutual agreement of the City and the property  
314 owner(s) and payment by the City under the provisions of those sections at the  
315 time of the extension.
- 316
- 317 7. If the original affordability period was under another entity's program, upon the  
318 City's notice of intent to extend affordability the covenant and/or deed restriction  
319 may be extended as-is or may be amended to comply with the provisions of the  
320 Affordable/Workforce Housing Program instead of the other entity's program,  
321 consistent with the provisions in the original recorded covenant and/or deed  
322 restriction providing for the affordability extension.
- 323

324 h) Additional Buy Down Provisions for Affordability. The following are parameters for  
325 additional buy down values based on unit type, which may be utilized to reduce  
326 the individual unit type household income limits by an additional fifteen percent  
327 (15%) in order to provide expanded affordability for a guaranteed twenty-five (25)  
328 year period as governed through a covenant and/or deed restriction. Values will  
329 be paid as cash payments from the City from the Affordable/Workforce Housing  
330 Program Trust Fund or other legally approved funding source(s).

- 331
- 332 1. For a studio dwelling unit, a one-time payment of \$40,000 or 50% percent  
333 of the area median income, whichever is greater;
- 334
- 335 2. For a one-bedroom dwelling unit, a one-time payment of \$60,000 or 75%  
336 percent of the area median income, whichever is greater;
- 337

- 338 3. For a two-bedroom dwelling unit, a one-time payment of \$80,000 or 100%  
339 percent of the area median income, whichever is greater;  
340
- 341 4. For a three-bedroom dwelling unit, a one-time payment of \$100,000 or  
342 125% percent of the area median income, whichever is greater;  
343
- 344 5. For a four or more-bedroom dwelling unit, a one-time payment of \$120,000  
345 or 150% percent of the area median income, whichever is greater;  
346
- 347 6. For a fee simple ownership dwelling unit, an additional one-time payment  
348 of \$25,000 may be provided; and  
349
- 350 7. Payments shall be made at time of dwelling units receiving a final certificate  
351 of occupancy or certificate of completion.  
352

353 i) *Policies and Procedures.* The city's director for community sustainability is hereby  
354 authorized to establish policies and procedures including covenants, accountability  
355 and reporting to ensure effective implementation of the Affordable/Workforce  
356 Housing Program and clarify the requirements and procedures as set forth herein.  
357

358 j) *Trust Fund.* There is hereby established an Affordable/Workforce Housing  
359 Program Trust Fund. The trust fund will be a separate line item in the City's budget.  
360

- 361 1. Payments required by the Affordable/Workforce Housing Program due to non-  
362 compliance with restrictive covenants shall be paid into the trust fund.  
363
- 364 2. Funds in the trust fund will be used to fund the financial incentives and the  
365 affordability extensions under the Affordable/Workforce Housing Program.  
366
- 367 3. At least once each fiscal period, the city manager shall present to the city  
368 commission a report on funds held in the trust fund, including any accrued  
369 interest, and any proposed use thereof. Monies, including any accrued interest,  
370 not assigned in any fiscal period shall be retained in the trust fund until the next  
371 fiscal period.  
372

373 k) *In Lieu Payment Provision.* In some instances, projects including Density, Intensity  
374 and/or Height Bonuses may not be appropriate for participation in the Program. In  
375 these cases, the project may pay an in lieu of payment based on the following  
376 provisions;

- 377 1. The fee shall be calculated on fifteen percent (15%) of the gross area of the  
378 bonuses requested for the project.
- 379 2. The fee shall be a one-time payment of \$50 or 0.0625% of the area median  
380 income, whichever is greater, per gross square foot.
- 381 3. Projects eligible for an in lieu of payment may include the following:  
382 i. Single or multiple use projects that do not include a residential use;  
383 ii. Mixed use projects that include residential and fewer than 25  
384 residential units;  
385 iii. Residential only projects that include fewer than 15 residential units;

386 iv. Any project that includes a residential use(s) and all of the dwelling  
387 units are for sale, home ownership such as condominiums,  
388 townhouses and/or single-family residences of which none are deed  
389 restricted as affordable/workforce housing.

390 4. Fee payment shall be due prior to issuance of any building permits related  
391 to the project.

392  
393 l) *Exemptions.* Projects in specific locations are exempt from the requirements of  
394 this section due to their maximum allowed density and/or to their allowed uses.

395 1. Individual residential dwelling units in the Single Family Residential (SF-R)  
396 and Single Family/Two Family Residential (SF/TF) Zoning Districts unless  
397 units are part of a project requesting additional densities under the  
398 provisions of one of the city’s incentive programs.

399 2. Projects within the Public (P), Public Recreation and Open Space (PROS),  
400 Beach and Casino (BAC), Conservation (C) and Industrial Park of  
401 Commerce (I-POC) Zoning Districts.

402  
403 **Section 4:** Severability. If any section, subsection, sentence, clause, phrase or  
404 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of  
405 competent jurisdiction, such portion shall be deemed a separate, distinct, and  
406 independent provision, and such holding shall not affect the validity of the remaining  
407 portions thereof.

408  
409 **Section 5:** Repeal of Laws in Conflict. All ordinances or parts of ordinances in  
410 conflict herewith are hereby repealed to the extent of such conflict.

411  
412 **Section 6:** Codification. The sections of the ordinance may be made a part of  
413 the City Code of Laws and ordinances and may be re-numbered or re-lettered to  
414 accomplish such, and the word “ordinance” may be changed to “section”, “division”, or  
415 any other appropriate word.

416  
417 **Section 7:** Effective Date. This ordinance shall become effective 10 days after  
418 passage.

419  
420 The passage of this ordinance on first reading was moved by \_\_\_\_\_, seconded by  
421 \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- 422  
423 Mayor Betty Resch  
424 Vice Mayor Christopher McVoy  
425 Commissioner Sarah Malega  
426 Commissioner Kimberly Stokes  
427 Commissioner Reinaldo Diaz

428  
429 The Mayor thereupon declared this ordinance duly passed on first reading on the  
430 \_\_\_\_ day of \_\_\_\_\_, 2023.

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DATE: January 23, 2023

TO: Members of the Planning & Zoning and Historic Resources Preservation Boards

FROM: William Waters, Director Community Sustainability

MEETING: February 1 & 8, 2023

SUBJECT: **Ordinance 2023-02:** Consideration of an ordinance amending Chapter 23 “Land Development Regulations,” Article 2 “Administration,” Division 3 “Permits,” Section 23.2-39 “Affordable/Workforce Housing Program” to provide clarification on the combination of incentives, qualifications for affordability, participation in other entity programs, and providing additional affordability buy downs provisions.

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**PROPOSAL / BACKGROUND/ ANALYSIS:**

The recently adopted (10/6/2022) Ordinance 2022-12 created the City’s Affordable/Workforce Housing Program to encourage the development of affordable and/or workforce housing units within the City. The program allows several incentives, including a 15% density bonus and additionally flexibility in unit size, parking requirements and financial incentives provided that no less than 15% of the total dwelling units are deed restricted as affordable. The City Commission has subsequently directed staff to develop additional affordability buy down options. Further, in the recent implementation of the ordinance, staff has identified some minor housekeeping changes that would provide additional clarity on the program’s implementation.

The proposed ordinance would amend the recently adopted new section of the LDR in Chapter 23 of the City’s Code of Ordinances:

- Article 2, Section 23.2-39 – Affordable/Workforce Housing Program

**STAFF RECOMMENDATION:**

Staff recommends that the Planning and Zoning Board and Historic Resources Preservation Board recommend that the City Commission adopt Ordinance 2023-02.

**POTENTIAL MOTION:**

I move to RECOMMEND/NOT RECOMMEND TO THE CITY COMMISSION **TO ADOPT** the proposed LDR text amendments included in Ordinance 2023-02.

**Attachments**

- A. Draft Ordinance 2023-02

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** Community Sustainability

**TITLE:**

Ordinance Nos. 2023-03 & 2023-04 - First Reading - A City-initiated small-scale Future Land Use Map (FLUM) amendment (Ordinance 2023-03) and a Zoning Map amendment (Ordinance 2023-04) on behalf of For The Children Inc (Lessee) located on City owned property at 1718 South Douglas Street

**SUMMARY:**

The proposed City-initiated FLUM amendment would amend the FLU designation for approximately 4.65 acres (2 subject properties) from the Public Recreation and Open Space (PROS) FLU to the Public (P) FLU. The proposed concurrent rezoning request would amend the zoning district on the subject properties from the Public Recreation and Open Space (PROS) zoning district to the Public (P) zoning district. The proposed map amendments would recognize the existing educational and community uses, and would allow for the expansion of facilities and use area on the site.

The proposed FLUM amendment is eligible for processing as a small-scale future land use map (FLUM) amendment per F.S. 163.3187. If adopted, the proposed amendment would be transmitted to the Florida Department of Economic Opportunity (DEO) upon adoption and become effective 31 days after adoption if not challenged within 30 days. The effective date of the rezoning would be the same day as the concurrent FLUM amendment.

**BACKGROUND AND JUSTIFICATION:**

The FLUM and Zoning Map amendments are proposed on property owned by City of Lake Worth Beach with a portion (4.62 acres) that is leased to the non-profit organization, For the Children, Inc. The historic Osborne School is located on this property. For The Children has secured a grant to expand the facilities to provide additional services to children in the area and to rehabilitate the existing historic structure. In addition to the new facilities, the project will include an interactive educational component about The Osborne School, which is listed on the National Register of Historic Places for its role in the history of public education in Lake Worth Beach. The Osborne School is the only public school to be built for African-American students in the City. The school served residents of the City's segregated African-American Osborne neighborhood between 1948 and 1971. The subject amendments are corrective as the current uses are not permitted in the PROS zoning district, and would not allow the future expansion of site's facilities and use area.

The staff report was prepared in accordance with the requirements of Chapter 163 of the Florida Statutes, and provides the required, relevant and appropriate data based the City's community goals and vision and consistency with level of service requirements. The amendment is supported by and is consistent with the City's Comprehensive Plan, the Land Development Regulations, and Strategic Plan as described in the data and analysis contained in the attached advisory board staff report. There is no fiscal impact for this proposed amendment as the property's ownership and use is not proposed to be changed, and the proposed FLU and zoning district is Public (P).

The Planning & Zoning Board (PZB) unanimously voted to recommend approval of the proposed future land use map and zoning map amendments to the City Commission at their March 1, 2023 meeting.

**MOTION:**

Move to approve/disapprove Ordinance 2023-03 on First Reading, and schedule the second reading and public hearing for April 4, 2023.

Move to approve/disapprove Ordinance 2023-04 on First Reading, and schedule the second reading and public hearing for April 4, 2023.

**ATTACHMENT(S):**

Ordinance 2023-03

Ordinance 2023-04

PZB Staff Report

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**ORDINANCE NO. 2023-03 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING THE CITY’S COMPREHENSIVE PLAN FUTURE LAND USE MAP THROUGH A SMALL SCALE MAP AMENDMENT FROM THE FUTURE LAND USE (FLU) DESIGNATION OF PUBLIC RECREATION AND OPEN SPACE (PROS) TO THE PUBLIC (P) FLU DESIGNATION ON THE PROPERTY GENERALLY LOCATED AT THE EAST SIDE OF SOUTH DOUGLAS STREET, WEST OF THE FEC RAILWAY, SOUTH OF LATONA AVENUE, AND NORTH HILLBRATH DRIVE AT 1718 SOUTH DOUGLAS STREET, AND AS MORE PARTICULARLY DESCRIBED IN EXHIBIT A; PROVIDING THAT CONFLICTING ORDINANCES ARE REPEALED; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, the Florida Local Government Comprehensive Planning and Land Development Regulation Act, section 163.3220, *et seq.*, Florida Statutes, requires each municipality to adopt a comprehensive plan, including a future land use map and authorizes amendments to an adopted comprehensive plan; and

WHEREAS, this is a City-initiated request for two (2) parcels with a total of 4.65 acres described in Exhibit A (the “Property”) attached hereto and incorporated herein, for a small-scale map amendment to change the future land use designation of the property; and

WHEREAS, City staff has prepared and reviewed an amendment to the Future Land Use Map of the City’s Comprehensive Plan to change the land use designations of the property described below from a City of Lake Worth Beach future land use designation of Public Recreation and Open Space (PROS) to a City future land use designation of Public (P); and

WHEREAS, on March 1, 2023, the City Planning and Zoning Board, sitting as the duly constituted Local Planning Agency for the City, recommended approval of the Future Land Use Map Amendment to the Comprehensive Plan of the City; and

WHEREAS, the amendment qualifies and meets the criteria to be reviewed and approved as a small scale map amendment in accordance with section 163.3187, Florida Statutes; and

WHEREAS, the City Commission acknowledges that this Future Land Use Map Amendment is subject to the provisions of Section 163.3187, and 163.3189, Florida Statutes, and that the City shall maintain compliance with all provisions thereof; and

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WHEREAS, the City has received public input and participation through hearings before the Local Planning Agency and the City Commission in accordance with Section 163.3181, Florida Statutes; and

WHEREAS, the City Commission has determined that the adoption of this Ordinance is in the best interest of the citizens and residents of the City of Lake Worth Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

Section 1. The foregoing recitals are hereby affirmed and ratified.

Section 2. The property of land more particularly described in **Exhibit A** is hereby designated Public (P) on the City's Future Land Use Map in **Exhibit B**.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. If any provision of this ordinance, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable,

Section 5. The effective date of this small scale map amendment shall be thirty-one (31) days after the Department of Economic Opportunity notifies the City that the plan amendment package is complete. If timely challenged, this amendment does not become effective until the Department of Economic Opportunity or the Administration Commission enters a final order determining the adopted amendment to be in compliance..

The passage of this ordinance on first reading was moved by \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

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The Mayor thereupon declared this ordinance duly passed on first reading on the \_\_\_\_ of March, 2023.

The passage of this ordinance on second reading was moved by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, as amended and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this ordinance duly passed on the \_\_ day of \_\_\_\_\_, 2023.

LAKE WORTH BEACH CITY COMMISSION

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, City Clerk

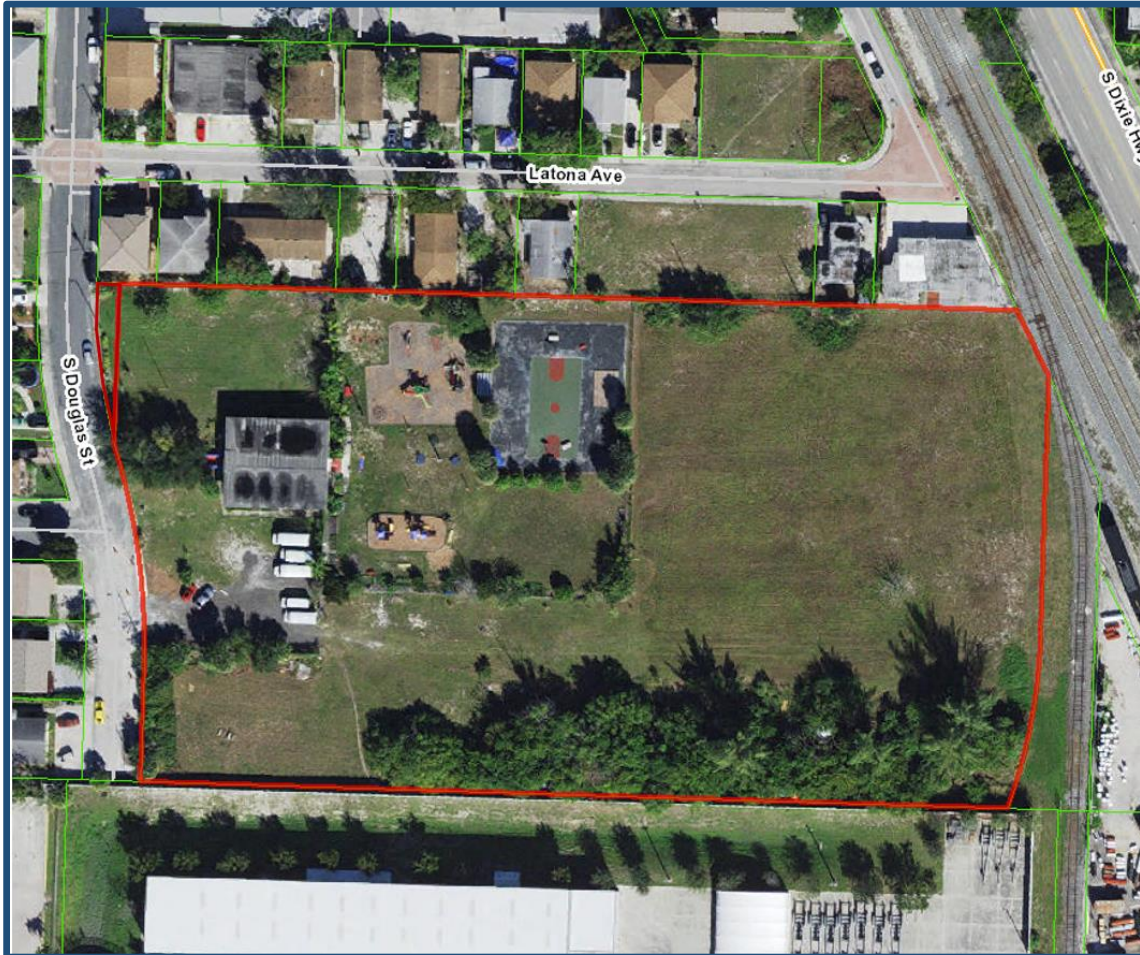
## Exhibit A Property Location

**Address:** 1718 South Douglas Street

**PCN:** 38-43-44-34-00-000-3020 (4.62 acres) & 38-43-44-34-03 -000-0310 (0.03 acres)

**Size:** 4.65 acres

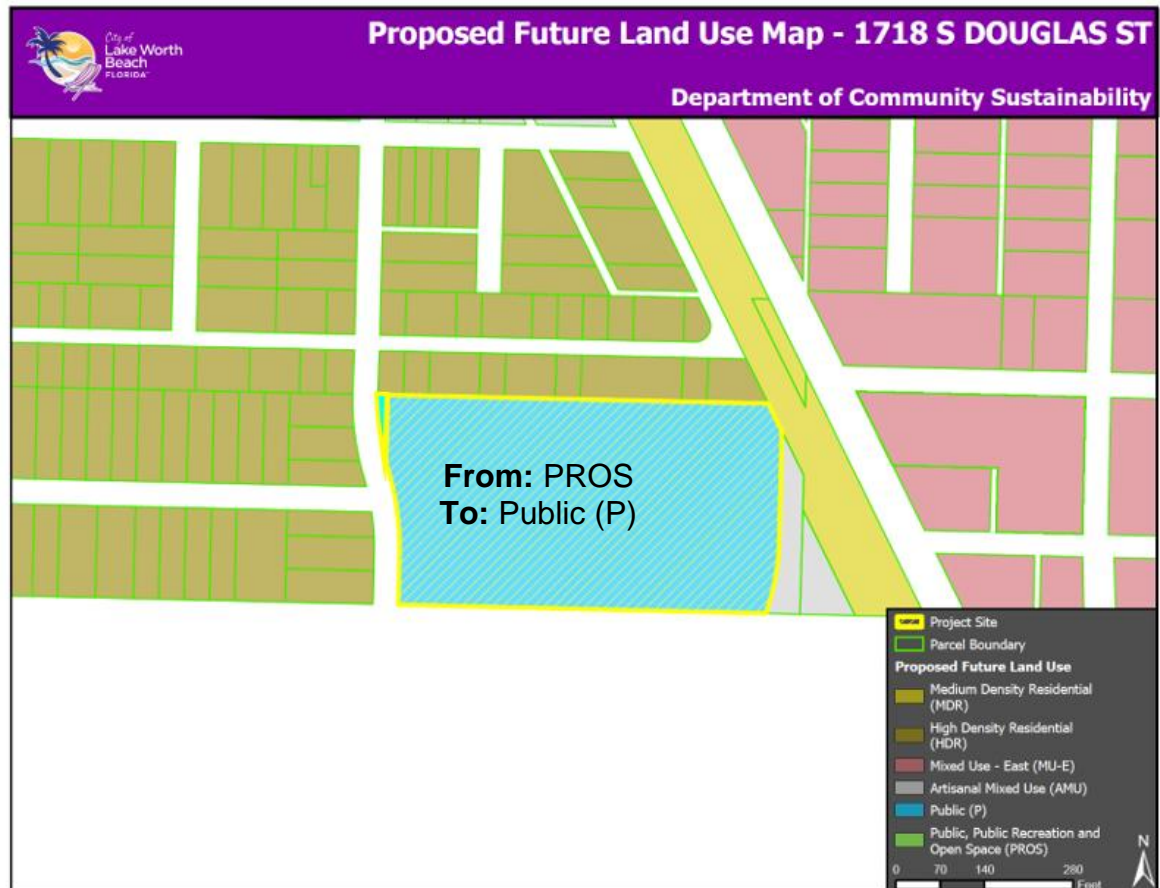
**General Location:** East side of South Douglas Street, west of the FEC Railway, south of Latona Avenue, and north of Hillbrath Drive.





## Exhibit B

### Future Land Use Map (FLUM) Amendment From: Public Recreation and Open Space (PROS) To: Public (P) Future Land Use Designation



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**ORDINANCE NO. 2023-04 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING THE CITY’S OFFICIAL ZONING MAP FROM THE ZONING DISTRICT OF PUBLIC RECREATION AND OPEN SPACE (PROS) TO PUBLIC (P) ON THE PROPERTIES GENERALLY LOCATED AT THE EAST SIDE OF SOUTH DOUGLAS STREET, WEST OF THE FEC RAILWAY, SOUTH OF LATONA AVENUE, AND NORTH HILLBRATH DRIVE AT 1718 SOUTH DOUGLAS STREET, AND AS MORE PARTICULARLY DESCRIBED IN EXHIBIT A; PROVIDING THAT CONFLICTING ORDINANCES ARE REPEALED; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, the City Commission of the City of Lake Worth Beach, Florida, pursuant to the authority granted in Chapters 163 and 166, Florida Statutes, and the Land Development Regulations, as adopted by the City of Lake Worth Beach, is authorized and empowered to consider amending the City’s Official Zoning Map; and

WHEREAS, this is a City-initiated request for a zoning map amendment to change the zoning district of the properties as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, City staff has prepared and reviewed an amendment to the City’s Official Zoning Map to change the zoning district of the properties described below from Public Recreation and Open Space (PROS) to Public (P), pursuant to the City of Lake Worth Beach Land Development Regulations and Comprehensive Plan; and

WHEREAS, on March 1, 2023, the City Planning and Zoning Board, sitting as the duly constituted Local Planning Agency for the City, considered a concurrent future land use map (FLUM) amendment to the P future land use;

WHEREAS, on March 1, 2023, the City Planning and Zoning Board, sitting as the duly constituted Local Planning Agency for the City, recommended approval of the subject zoning map amendment to the City’s Official Zoning Map; and

WHEREAS, the City has received public input and participation through hearings before the Local Planning Agency and the City Commission in accordance with Section 163.3181, Florida Statutes; and

47 WHEREAS, the City Commission has considered all of the testimony and  
48 evidence and has determined that rezoning meets the rezoning review criteria of  
49 the Land Development Regulations, Section 23.2-36 and is consistent with the  
50 City's Comprehensive Plan and Strategic Plan.

51  
52 WHEREAS, the City Commission has considered all of the testimony and  
53 evidence and has determined that the adoption of this Ordinance is in the best  
54 interest of the citizens and residents of the City of Lake Worth Beach.

55  
56 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF  
57 THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

58  
59 Section 1. The foregoing recitals are hereby affirmed and ratified.

60  
61 Section 2. The two (2) parcels of land (4.65 acres) more particularly described  
62 in **Exhibit A** is hereby designated Public (P) on the City's Official Zoning Map.

63  
64 Section 3. The City's zoning maps shall be updated to reflect the changes to  
65 the property described in **Exhibit B**.

66  
67 Section 4. Repeal of Laws in Conflict. All ordinances or parts of ordinances  
68 in conflict herewith are hereby repealed to the extent of such conflict.

69  
70 Section 5. Severability. If any provision of this ordinance or the application  
71 thereof is held invalid by a court of competent jurisdiction, the invalidity shall not  
72 affect other provisions of the ordinance which can be given effect without the  
73 invalid provision or application, and to this end the provisions of this ordinance  
74 are declared severable.

75  
76 Section 6. Effective Date. This ordinance shall become effective upon the  
77 same day  
78 as the concurrent Future Land Use Map amendment (Ordinance 2023-03). Per  
79 Florida Statute 163.3187. The Future Land Use Map amendment (Ordinance  
80 2023-03) shall be effective 31 days after adoption provided there is no challenge.

81  
82 The passage of this ordinance on first reading was moved by  
83 \_\_\_\_\_, seconded by \_\_\_\_\_ and upon being put to a vote, the  
84 vote was as follows:

85  
86 Mayor Betty Resch  
87 Vice Mayor Christopher McVoy  
88 Commissioner Sarah Malega  
89 Commissioner Kimberly Stokes  
90 Commissioner Reinaldo Diaz

91  
92 The Mayor thereupon declared this ordinance duly passed on first reading  
93 on the 1<sup>st</sup> day of March 1, 2023.

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The passage of this ordinance on second reading was moved by \_\_\_\_\_, seconded by \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this ordinance duly passed on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

LAKE WORTH BEACH CITY COMMISSION

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:  
  
\_\_\_\_\_  
Melissa Ann Coyne, City Clerk

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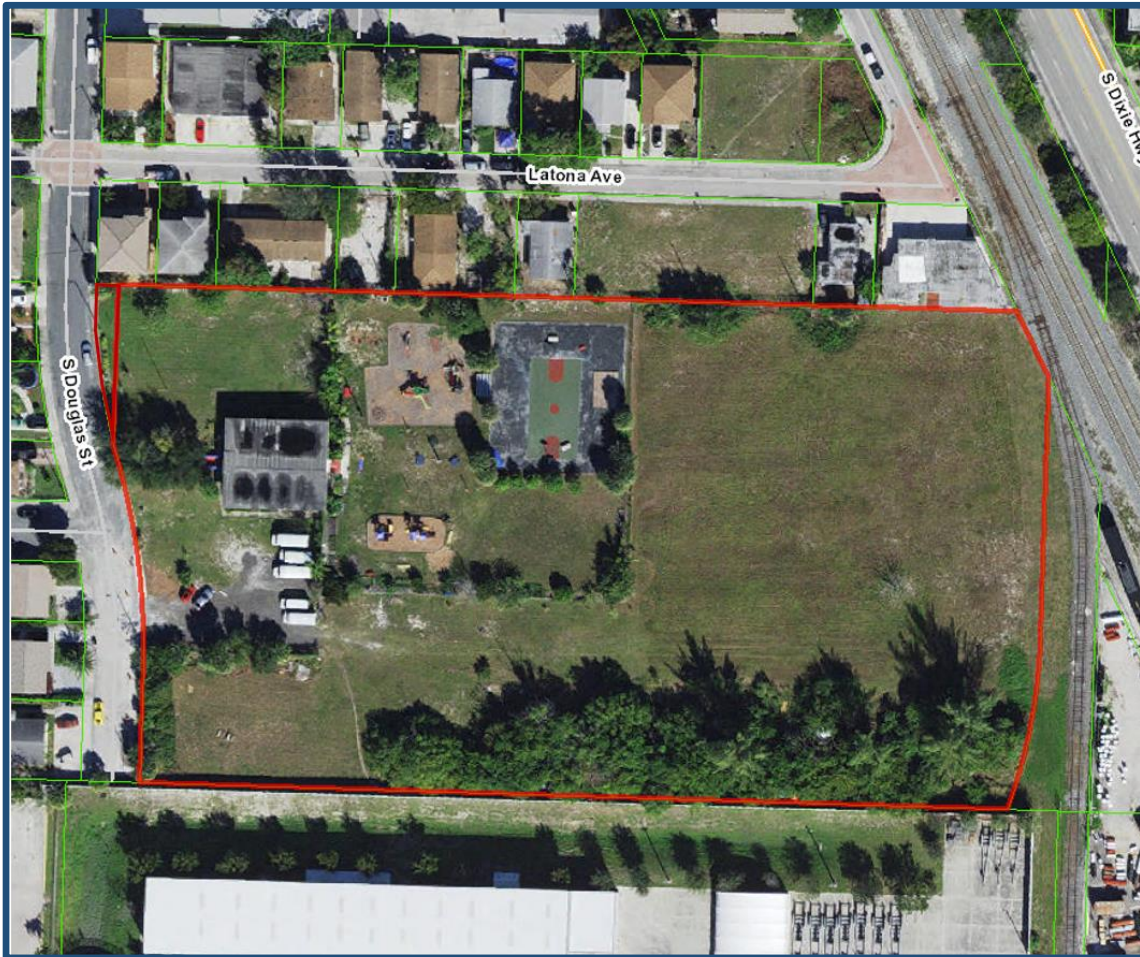
## Exhibit A Property Location

**Address:** 1718 South Douglas Street

**PCN:** 38-43-44-34-00-000-3020 (4.62 acres) & 38-43-44-34-03 -000-0310 (0.03 acres)

**Size:** 4.65 acres

**General Location:** East side of South Douglas Street, west of the FEC Railway, south of Latona Avenue, and north of Hillbrath Drive.

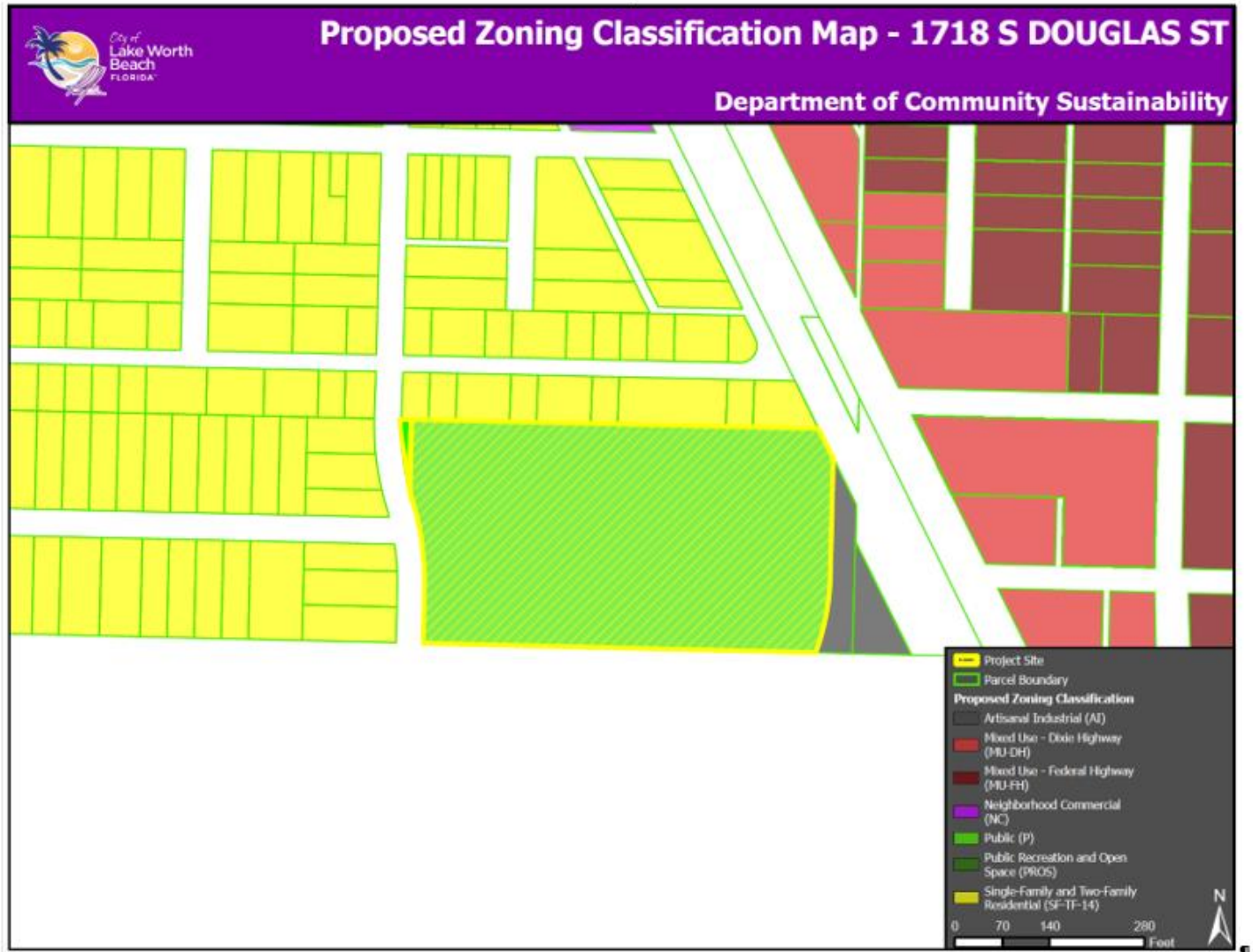


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**Exhibit B**  
**Amended Zoning District**  
Public Recreation and Open Space (PROS) to Public (P) Zoning District

11



## PLANNING AND ZONING BOARD REPORT

**PZB 23-00300001 & 23-01300001**: City-initiated small-scale Future Land Use Map (FLUM) amendment (Ordinance 2023-03) and Zoning Map amendment (Ordinance 2023-04) on behalf of For The Children Inc (Lessee) requesting for the property located at 1718 South Douglas Street:

- A corrective FLUM amendment from the Public Recreation and Open Space (PROS) FLU to the Public (P) FLU; and,
- A corrective rezoning from the Public Recreation and Open Space (PROS) zoning district to the Public (P) zoning district.

**Transmittal Date:** February 22, 2023

**Meeting Date:** March 1, 2023

**Property Owner:** City of Lake Worth Beach

**Address:** 1718 South Douglas Street

**PCN:** 38-43-44-34-00-000-3020 (4.62 acres) & 38-43-44-34-03-000-0310 (0.03 acres)

**Size:** 4.65 acres

**General Location:** East side of South Douglas Street, west of the FEC Railway, south of Latona Avenue, and north of Hillbrath Drive.

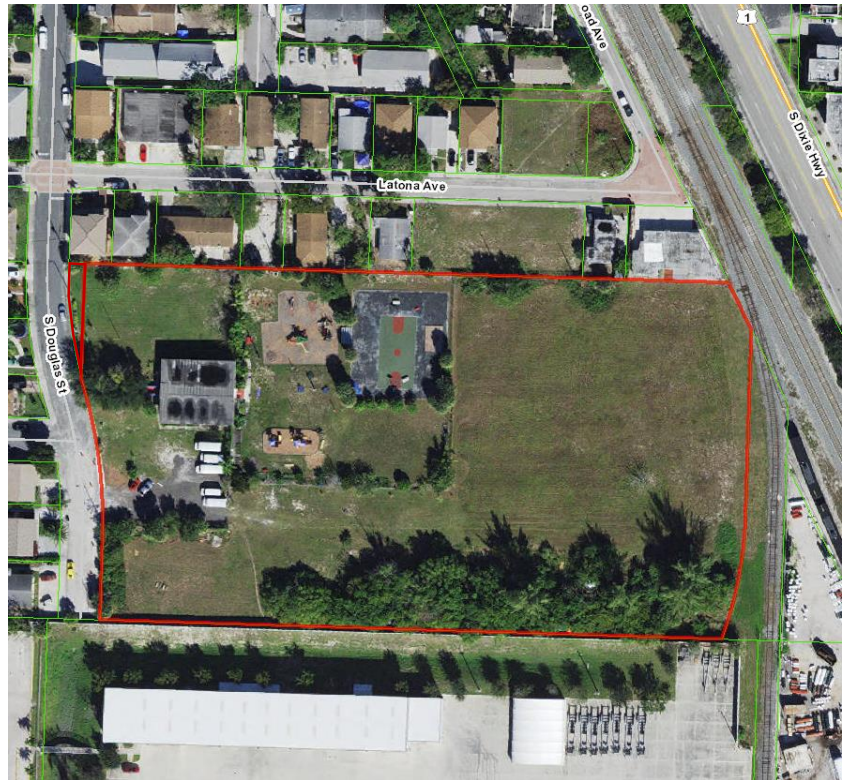
**Existing Land Use:** Charitable organization offering child care, educational support and community center uses (4.62 acres); and vacant (0.03 acres)

**Current Future Land Use Designation:** Public Recreation and Open Space (PROS)

**Proposed Future Land Use Designation:** Public (P)

**Current Zoning District:** Public Recreation and Open Space (PROS)

**Proposed Zoning District:** Public (P)



## RECOMMENDATION

The data and analysis in support of the proposed FLUM amendment was prepared in accordance with F.S. 163.3177. The proposed FLUM amendment is consistent with the purpose, intent, and requirements of the Comprehensive Plan, including the level of service requirements and the Strategic Plan. Therefore, staff recommends that the Planning and Zoning Board recommend to the City Commission to adopt the proposed small scale FLUM amendment (**PZB/HRPB 23-00300001**).

The proposed rezoning is consistent with the Comprehensive Plan, Strategic Plan, and the guidelines and standards found in the City of Lake Worth Beach Land Development Regulations (LDRs). Therefore, staff recommends that the Planning and Zoning Board recommend to the City Commission to approve the proposed rezoning request (**PZB/HRPB 23-01300001**).

## PROJECT DESCRIPTION

The proposed City-initiated FLUM amendment is a corrective amendment that would amend the FLU designation for approximately 4.65 acres (subject property) from the Public Recreation and Open Space (PROS) FLU to the Public (P) FLU. The proposed concurrent rezoning request would amend the zoning district on the subject property from the Public Recreation and Open Space (PROS) district to the Public (P) district. The proposed map amendments would recognize the historic use of the property as an educational institution and provide for greater flexibility for future expansions. The applicant has a received grant funding to expand its facilities, which includes a historic preservation component, to better serve local families. Furthermore, the amendments are supported by and are consistent with the Comprehensive Plan and City Strategic Plan as described in the respective Comprehensive Plan and Strategic Plan Analysis sections of this report for each request.

The data and analysis section of this staff report for the FLUM amendment was prepared in accordance with the requirements of F.S. 163.3177 and provides relevant and appropriate data based on the City's community goals and vision and consistency with level of service requirements. The proposed FLUM amendment is eligible for processing as a small-scale future land use map amendment per F.S.163.3187. If adopted, the proposed amendment would be sent to the Florida Department of Economic Opportunity (DEO) upon adoption and become effective 31 days after adoption if not challenged within 30 days.

The data and analysis section of this staff report for the concurrent Zoning Map amendment analyzes the proposed request for consistency with the City's Comprehensive Plan, Strategic Plan, and LDR Section 23.2-36(4): Review Criteria for the Rezoning of Land.

## COMMUNITY OUTREACH

Staff has not received letters of support or opposition for these applications.

## BACKGROUND

The proposed FLUM and Zoning Map amendments include two parcels owned by the City of Lake Worth Beach with a total 4.65 acres. For The Children Inc is located on the larger parcel (4.62 acres) that contains The Osborne School. For The Children has a secured a grant to expand the facilities to provide additional services to children in the area and to rehabilitate the existing historic structure. In addition to the new facilities, the project will include an interactive educational component about The Osborne School, which is listed on the National Register of Historic Places for its role in the history of public



education in Lake Worth Beach. The Osborne School is the only public school to be built for African-American students in the City. The school served residents of the City's segregated African-American Osborne neighborhood between 1948 and 1971.

In 1917, a five-block, ten-acre neighborhood in Lake Worth Beach located west of the FEC railroad and Dixie Highway was reserved for Black laborers and their families. The original plat entered in the Palm Beach Land Records was labeled "Osborne Colored Addition to Lake Worth." The name Osborne was presumably derived from nearby Lake Osborne. Original residents of the Osborne neighborhood moved to this area from the Bahamas and South Georgia. Family surnames of these original settlers included Glinton, Gibson, Jackson, Knowles, and Grimes. After 1922, several residents moved to the Osborne neighborhood from Lantana, which had passed an ordinance prohibiting "members of the colored races and people of foreign birth" from owning property in the town.

Although the Osborne neighborhood was laid out in 1917, the Palm Beach County Board made no provision for the local education of the residents' school-age children. Until the early 1940s, most African-American students in Lake Worth were bused to segregated schools in Delray Beach, nearly 15 miles to the south. By the 1940s, population growth in Palm Beach County spurred the construction of several schools for African-American students. On August 13, 1945, the Palm Beach County Board of Public Instruction authorized the purchase of land in the Osborne section of Lake Worth scheduled for sale for tax delinquency. The Board declared that the land was to be used for a public elementary school.

On February 25, 1947, the Board of Public Instruction authorized drawing up plans for a new Osborne School. The Board instructed its architect, Edgar S. Wortman, to utilize surplus lumber from the newly decommissioned Camp Murphy. Wortman, who was the unofficial architect for the Palm Beach County School Board, was responsible for many other schools in the county (including Pahokee School, Riviera Beach Junior High School, and part of Palm Beach High School) during the 1930s and 1940s.

Lake Worth Beach was hit by a severe hurricane on September 16, 1947. At a special meeting of the Palm Beach County Board of Instruction, the Board noted that the Osborne School was one of several in the county badly damaged by the hurricane and needed to be replaced by a more permanent building. On October 17, 1947, Wortman submitted a new set of plans for the Osborne School, utilizing concrete block construction instead of wood frame.

The Osborne school quickly became a center of the African-American community's educational and social life and was a source of community pride. Many of its teachers were locally trained and educated. The school closed in 1971, but reopened as a Head Start and community education facility in 1980. In 1985, the property was purchased by the City of Lake Worth Beach, and then leased to local community groups, who operated the school as an after-school training and educational facility. For The Children Inc began operating an after school program in 2000.

*Source: Osborne School – National Register of Historic Places Registration Form*

#### **FUTURE LAND USE MAP (FLUM) AMENDMENT ANALYSIS**

The proposed Public (P) FLU for the subject properties is compatible with the High Density Residential and Artisanal Mixed Use FLU designations of surrounding properties. The following outlines the FLU designations for the adjacent areas:

Subject Property FLU	Adjacent Direction	Adjacent Future Land Use	Existing Use(s)
Public Recreation and Open Space	North	High Density Residential	Single Family, Two-Family, Multi-Family, and Vacant
	South	Outside of City Limits	N/A
	East	Artisanal Mixed Use	Vacant and Utilities
	West	High Density Residential	Single Family, Two-Family, and Multi-Family

The Public (P) zoning district implements the Public (P) future land use category of the Lake Worth Beach Comprehensive Plan. The Public zoning district is specifically used for public school, institutional, community and public uses; and, provides land development regulations for publicly owned lands. As the district allows for a diversity of uses, the expansion of existing uses and the approval of new uses requires board approval at a public hearing to ensure community notice and comment on the use of public lands. The subject amendments to the FLUM and rezoning would allow for the site to be expanded as an after school educational facility and community center use with additional classrooms, assembly space, parking, and sports recreation for the students and staff. The current and historic use of the site is not permitted in the PROS zoning district. Expansion of these educational and community uses would help the City of Lake Worth Beach achieve educational, cultural, and historic preservation goals enumerated in its Strategic Plan and as consistent with the Comprehensive Plan.

**Consistency with the Comprehensive Plan**

The proposed FLUM amendments are consistent and in support of the following associated Objectives and Policies of the City of Lake Worth Beach’s Comprehensive Plan. The proposed amendment is amending the subject site from one public land use category to another. The underlined text emphasizes key concepts, strategies and objectives within these objectives and policies that are furthered by the subject amendments.

**1. FUTURE LAND USE ELEMENT**

**Objective 1.1.2: Future Land Use Map and Criteria for Delineating Land Use Designation Boundaries**  
 The City of Lake Worth Future Land Use Element contains a system of land use designations. The Future Land Use Map allocates those land uses spatially to outline the desired future development pattern for the City of Lake Worth

**Policy 1.1.2.13: Locational Criteria for the Public and Public Recreation and Open Designations**  
The Public and Public Recreation and Open Space land use designations are mapped on sites where such uses already exist. The mapping of these uses on these sites indicates that no alternative use of these sites should be established without a properly considered and enacted Future Land Use Map amendment. Public school sites have been delineated in areas proximate to residential land. Lands contiguous to school sites which are owned by the School Board, and proposed for school expansion are intended to be included in this category. The City retains the right to impose reasonable site planning standards when existing schools are proposed for expansion or new school sites are developed. Schools are allowed in all zoning districts except Industrial.

**Goal 1.2:** To strive to foster the City of Lake Worth as a livable community where live, work, play and learn become part of the daily life of residents and visitors.

**GOAL 1.3:** To preserve and enhance the City's character as a quality residential community and business center within Palm Beach County's urban area

**GOAL 1.4:** Encourage preservation and rehabilitation of natural, historic and archaeological resources and where appropriate restrict development that would damage or destroy these resources.

**Objective 1.4.2:** To provide for the protection, preservation or sensitive reuse of historic resources. Policy 1.4.2.1: The City shall refine and maintain regulations to provide for protection, preservation or sensitive reuse of designated historic neighborhoods and historic sites listed on the National Register, Local Designation and/or Florida Site File.

## 2. EDUCATION ELEMENT

**Goal 10.1:** Advocate for the educational needs of the citizens of Lake Worth by fostering and further developing relationships between the City, Non-Profit partners, Colleges and Universities, Government Entities and the School District of Palm Beach County (the District).

**OBJECTIVE 10.1.4:** The City shall work to promote an approach to education that is coordinated with ancillary facilities such as: parks, libraries, recreational facilities, and Non-profit agencies.

**Policy 10.1.4.2:** The City shall encourage the location and development of facilities such as university campuses, testing centers, private educational facilities, satellite educational programs, magnet facilities, teaching universities, and technical centers that will enhance the educational opportunities in Lake Worth for children and adults alike. These public and private facilities shall be located in areas that meet the location criteria and site development conditions adopted in the Land Development Regulations.

## 3. HOUSING AND NEIGHBORHOODS ELEMENT

Policy 3.3.1.7: Strengthen the positive attributes and distinctive character of each neighborhood to help sustain Lake Worth as a healthy, vital City.

- Strengthen the sense of place in each neighborhood with adequate and well-designed, public facilities such as libraries, schools, recreation centers, fire stations and streetscapes.
- Continue to support public art and historic preservation as a focus for neighborhood identity and pride.
- Recognize that every neighborhood has assets that identify that neighborhood and contribute to the well-being of the people who live there. Understand what those are and look for opportunities to enhance them and leverage them for neighborhood improvement. Assets include trees, large yards, schools, people and independent businesses.

**4. ECONOMIC DEVELOPMENT ELEMENT**

Policy 11.1.7.1: The City shall encourage education and training institutions to provide education and research programs that meet the needs of targeted cluster industries, and encourage supplemental education to support existing businesses and programs to stimulate new business development.

**Consistency with the Strategic Plan**

The proposed amendments further the City’s Strategic Plan that is committed to building a vibrant and diverse economy, planning thoughtfully for the future, and support the Strategic Pillars of positioning Lake Worth Beach to be a competitive viable location of choice, strengthening Lake Worth Beach as a “Community of Neighborhoods,” and navigating towards a sustainable community.

Specifically, the proposed amendments are consistent with the following Strategic Plan Pillars:

**Pillar I: Positioning Lake Worth Beach to be a competitive viable location of choice**

- A: Ensure effective economic development incentives and zones
- E: Provide superior public amenities and services to retain existing and entice new residents and businesses

**Pillar II: Strengthening Lake Worth Beach as a ‘Community of Neighborhoods’**

- D: Preserve the character and protect historic resources.
- F: Deliver sustainable indoor-outdoor leisure opportunities (Parks and Open Spaces).

**Pillar IV: Navigating Towards a Sustainable Community**

- D: Influence the supply and expansion of jobs.
- E: Ensure facility placement, construction and development that anticipates and embraces the future.

**Level of Service Analysis**

Pursuant to Chapter 163 of the Florida Statutes, any FLU amendment must be evaluated to determine if the proposed future land use will have a significant impact on the long-range level of service (LOS) for public facilities (i.e. drainage, potable water, wastewater, solid waste, parks, schools, and traffic) that service the property and the surrounding area. The LOS for public facilities is analyzed based on the maximum development potential for the existing and proposed FLU, and whether or not each public facility has capacity to accommodate any additional demands.

According to the City’s Comprehensive Plan, there is no change in the potential development. The existing Public Recreation and Open Space (PROS) FLU maximum development potential is 0 du/acre and the proposed Public FLU is also 0 du/acre. Public FLU generates the same demands as Public Recreation and Open Space FLU. Community facilities and services are available in the area to sustain the future demands and long-range Level of Service (LOS) can be met with current and planned system capacities. The following table provides a LOS summary.

**FLUM AMENDMENT LOS SUMMARY TABLE**

Type of Facility:	Existing FLU Designations: (at 0 du/acre for Public Recreation and Open Space)	Proposed FLU Designations: (at 0 du/acre for Public)
Drainage	3-year, 1-hour storm duration, as recorded in the FDOT Drainage Manual IDF curves, current edition and fully contained onsite.	Both FLU designations meet the 3 yr. – 1 hr. drainage LOS requirements. Site improvements may be required to provide drainage collection and conveyance systems to positive outfall.

<b>Potable Water</b>	105 gpcpd (gallons per capita per day).	The City facilities have available capacity to accommodate both FLU designations.
<b>Sanitary Sewer</b>	Collection and treatment of 100 gallons per capita per day at secondary treatment level, or 250 gallons per ERU per day.	The City facilities have available capacity to accommodate both FLU designations.
<b>Solid Waste</b>	Collection and disposal of 6.5 pounds of solid waste per capita per day.	The Solid Waste Authority has available capacity to accommodate the demand of both FLU designations.
<b>Parks</b>	2.5 acres of community parks for every 1,000 persons and 2.0 acres of neighborhood parks for every 1,000 persons.  Public Use No increase in demand.	Public Use No increase in demand / No density Expansion of the existing facilities are planned to be added in the future on this property, which would include some recreational facilities.
<b>Schools</b>	Public Use No Increase in School Capacity Required.	Public Use No Increase in School Capacity Required/ No density
<b>Traffic</b>	Site historically utilized as school, recreational, and community center uses.	This item is a corrective amendment. The expansion of the site’s facilities in the future would be subject to review by the City Engineer, and PBC County-wide concurrency to ensure any additional uses and structures will meet required levels of service by both the City and Palm Beach County.

**ZONING MAP AMENDMENT ANALYSIS**

**Consistency with the Comprehensive Plan and Strategic Plan**

The subject property currently has a Future Land Use (FLU) designation of Public Recreation and Open Space (PROS). Per **Comprehensive Plan Future Land Use Element Policy 1.1.1.11**, the PROS land use category “designates locations for parks and other outdoor open space areas intended for active use or passive use. Sites designated in the Public Recreation and Open Space category should not be used for other than public recreation purposes or essential services without careful consideration of the most appropriate use and a properly enacted amendment to the land use plan. The implementing zoning district is PROS.” The property’s historic use as an educational site is not consistent with the current PROS zoning district. While the site does offer some recreational opportunities, the primary use has been as school or as educational program for local children. The intention is to change the zoning district of the property from PROS to Public (P) with a concurrent FLUM change from the current PROS future land use to Public (P) future land use (FLU) to better reflect the existing use of the site, and allow for expansion of the use over time. Approval of the FLU map amendment and rezoning request would allow For The Children Inc to improve the site while being consistent with the intent of the requested zoning district and future land use designation.

Additionally, the proposed changes to the property's Zoning District and FLU Designation are consistent with **Future Land Use Element Policy 1.1.2.13 (Locational Criteria for the Public and Public Recreation and Open Designations)** as this site is adjacent to residential uses to the north and west. **Future Land Use Element Goal 1.2 states:** "To strive to foster the City of Lake Worth as a livable community where live, work, play and learn become part of the daily life of residents and visitors." Approval of the rezoning request would be consistent with the educational and community uses and would be in keeping with the intent of **Goal 1.2**.

Furthermore, the **Education Element Policy 10.1.4.2** provides for encouragement of the location and development of educational facilities that will enhance the educational opportunities in Lake Worth Beach.

**The City's Strategic Plan** sets goals and ideals for the City's future vision and lays out methods to achieve them. Pillar Two, Section F seeks to "Collaborate with schools to foster rich, diverse and culturally enriching educational opportunities for all". Approval of the rezoning will result in the continued educational use of the site as well as opportunities to expand in concert with the permitted uses under the Public Zoning District. These expansions will allow for more diverse programs that can be implemented on site and in keeping with the City's Strategic Plan. Additionally, the proposal, if approved, would be consistent with **Strategic Plan Pillar I. A and E** ensuring effective economic development and superior public amenities and services, and **Strategic Plan Pillar IV. D and E** influencing the supply and expansion of jobs, and ensuring facilities that anticipate and embrace the future.

#### **Consistency with the City's Land Development Regulations**

Rezoning of the subject site will reflect the current educational use of the property and allow for future educational development of the property. Schools are not permitted in the PROS zoning district which is inconsistent with the historic use of the property. The property is adjacent to residential uses on the north and west sides and would be subject to the development regulations for sites adjacent to residentially zoned lands (**Section 23.3-26.c.1-5**).

The LDRs also require all rezoning requests with a concurrent Future Land Use Map (FLUM) Amendment be analyzed for consistency with the review criteria in Section 23.2-36(4). Staff's full analysis of the review criteria is provided below. The analysis demonstrates that the proposed rezoning complies with the review criteria and that the required findings can be made in support of the rezoning.

#### **Section 23.2-36(4): Review Criteria for the Rezoning of Land**

The Department of Community Sustainability is tasked in the Code to review rezoning applications for consistency with the findings for granting rezoning applications in LDR Section 23.2-36 and to provide a recommendation for whether the application should be approved, approved with conditions, or denied.

At the hearing on the application, the Planning and Zoning Board or Historic Resources Preservation Board shall consider the rezoning/FLUM amendment application and request, the staff report including recommendations of staff, and shall receive testimony and information from the petitioner, the owner, city staff, and public comment. At the conclusion of the hearing, the Board shall make a recommendation on the rezoning/FLUM amendment request to the City Commission.

The land development regulations require all rezoning requests with a concurrent FLUM Amendment be analyzed for consistency with **Section 23.2-36(4)**. Staff has reviewed the rezoning against this section and has determined that the rezoning complies with the following review criteria:

**a. Consistency:** Whether the proposed rezoning amendment would be consistent with the purpose and intent of the applicable comprehensive plan policies, redevelopment plans, and land development regulations. Approvals of a request to rezone to a planned zoning district may include limitations or requirements imposed on the master plan in order to maintain such consistency.

**Analysis:** If the FLUM amendment and the rezoning are approved, the new P zoning district would be consistent with the existing uses on the property, and further the purpose and intent of the P FLU designation. Additionally, the existing educational, recreational and community uses on the site are consistent with both the P FLU designation and P zoning district. **Meets Criterion.**

**b. Land use pattern.** Whether the proposed FLUM amendment would be contrary to the established land use pattern, or would create an isolated land use classification unrelated to adjacent and nearby classifications, or would constitute a grant of special privilege to an individual property owner as contrasted with the protection of the public welfare. This factor is not intended to exclude FLUM amendments that would result in more desirable and sustainable growth for the community.

**Analysis:** The rezoning request will not be contrary or incompatible to the established land pattern, nor will it create an isolated zoning district unrelated to the adjacent and nearby classifications or constitute a grant of special privilege to the petitioner as contrasted with the protection of the public welfare. The proposed Public zoning district is consistent with the current and future use of the property. Both the current and proposed zoning districts are for publicly owned lands. Below is a table outlining the existing zoning and future land use designations of adjacent properties. **Meets Criterion.**

Subject Property FLU	Adjacent Direction	Adjacent Future Land Use Designations	Adjacent Zoning Districts	Existing Use
Public Recreation and Open Space	North	High Density Residential	Single-Family and Two-Family Residential	Single Family, Two-Family, Multi-Family, and Vacant
	South	Outside of City Limits	Outside of City Limits	N/A
	East	Artisanal Mixed Use	Artisanal Industrial	Vacant and Utilities
	West	High Density Residential	Single-Family and Two-Family Residential	Single Family, Two-Family, and Multi-Family

**c. Sustainability:** Whether the proposed rezoning would support the integration of a mix of land uses consistent with smart growth or sustainability initiatives, with an emphasis on 1) complementary land uses; 2) access to alternative modes of transportation; and 3) interconnectivity within the project and between adjacent properties.

**Analysis:** The rezoning request supports the integration of a mix of land uses consistent with smart growth and sustainability initiatives with an emphasis on complementary land uses. Approval of the rezoning request would reflect existing educational land use of the Osborne School. Further, the proposed rezoning would allow the City to benefit from increased efficiency and the proximity of educational services on already-developed land that compliments the existing educational, community and recreational uses and facilities. The uses immediately surrounding the properties are primarily single-family residential, and multi-family residential. The site’s existing uses are considered complementary uses in function and nature to residential uses. Approval of the rezoning will allow for continuation of these complementary uses. **Meets Criterion.**

**d. Availability of public services/infrastructure:** Requests for rezoning to planned zoning districts shall be subject to review pursuant to section 23.5-2.

**Analysis:** This criterion is only applicable to requests to rezone land to a planned zoning district. As this request seeks approval to rezone the subject properties to the conventional Public zoning district and not a planned development district, this criterion does not apply. **Criterion not applicable.**

**e. Compatibility:** The application shall consider the following compatibility factors:

1. Whether the proposed FLUM amendment would be compatible with the current and future use of adjacent and nearby properties, or would negatively affect the property values of adjacent and nearby properties.

**Analysis:** The proposed Public (P) FLU for the subject property is compatible with the residential and mixed-use FLU designations of surrounding properties and will not affect the property values of the neighborhoods. The existing zoning district of the subject site is not reflective of the current uses on the site. Rezoning of the subject site and the land use change to Public would be consistent with the current use of the site, allow for future modernization/expansion, and restoration of the historic structure. **Meets Criterion.**

**f. Direct community sustainability and economic development benefits:** For rezoning involving rezoning to a planned zoning district, the review shall consider the economic benefits of the proposed amendment, specifically, whether the proposal would:

1. Further implementation of the city's economic development (CED) program;
2. Contribute to the enhancement and diversification of the city's tax base;
3. Respond to the current market demand or community needs or provide services or retail choices not locally available;
4. Create new employment opportunities for the residents, with pay at or above the county average hourly wage;
5. Represent innovative methods/technologies, especially those promoting sustainability;
6. Support more efficient and sustainable use of land resources in furtherance of overall community health, safety and general welfare;
7. Be complementary to existing uses, thus fostering synergy effects; and
8. Alleviate blight/economic obsolescence of the subject area.

**Analysis:** The rezoning request does not include rezoning to a planned zoning district nor does it have a concurrent site plan application in review at this time. As such, this criterion is not applicable. **Criterion not applicable.**

**g. Economic development impact determination for conventional zoning districts:** For rezoning to a conventional zoning district, the review shall consider whether the proposal would further the economic development program, and also determine whether the proposal would:

1. Represent a potential decrease in the possible intensity of development, given the uses permitted in the proposed land use category; and
2. Represent a potential decrease in the number of uses with high probable economic development benefits.

**Analysis:** The proposed rezoning to the P zoning district will not result in a decrease in development intensity or of a public amenity for the neighborhood. The education use is consistent with the City's goal to encourage education and training institutions to provide education and research programs and support existing businesses and programs to stimulate new business development. **Meets Criterion.**

**h. Commercial and industrial land supply.** The review shall consider whether the proposed FLUM amendment would reduce the amount of land available for commercial/industrial development. If such determination is made, the approval can be recommended under the following conditions:

1. The size, shape, and/or location of the property makes it unsuitable for commercial/industrial development; or
2. The proposed FLUM amendment provides substantiated evidence of satisfying at least four (4) of the direct economic development benefits listed in subparagraph "f" above; and
3. The proposed FLUM amendment would result in comparable or higher employment numbers, building size and valuation than the potential of existing land use designation.



**Analysis:** If approved, the proposed rezoning will not result in a reduction of land available for commercial and industrial development. Commercial (apart from recreational) and industrial uses are not permitted under the existing zoning. Therefore, the change from PROS to P zoning district would not reduce or change the commercial and industrial development potential of the subject properties. **Meets Criterion.**

*i. Alternative sites.* Whether there are sites available elsewhere in the city in zoning districts which already allow the desired use.

**Analysis:** The purpose of the rezoning request is to reflect the long-standing existing uses on the subject properties as a Public use. As such the proposed P rezoning is appropriate for the subject properties. **Meets Criterion.**

*j. A Master plan and site plan compliance with land development regulations.* When master plan and site plan review are required pursuant to section 2.D.1.e. above, both shall comply with the requirements of the respective zoning district regulations of article III and the site development standards of section 23.2-32.

**Analysis:** The rezoning request does not require or include a concurrent site plan application as it is a corrective amendment. As such, this **criterion is not applicable.**

The analysis has shown that the required findings can be made in support of the rezoning. Therefore, the proposed rezoning is consistent with the review criteria for rezoning as outlined in LDR Section 23.2-36.

## CONCLUSION

The proposed FLUM amendment request is consistent with the purpose, intent, and requirements of the Comprehensive Plan. The proposed rezoning is also consistent with the purpose, intent, and requirements of the Comprehensive Plan and LDRs. Therefore, staff recommends that the Board recommend approval to the City Commission of both the FLUM amendment and the Zoning Map amendment based on the data and analysis in this report and the findings summarized below:

- The amendments are consistent with the existing uses of the subject property, and would allow for future expansion of these uses, which would provide additional educational, recreational, and cultural resources and opportunities for the City's residents;
- The amendments are supported by and are consistent with the Comprehensive Plan and City Strategic Plan as described in the respective Comprehensive Plan and Strategic Plan Analysis sections of this report;
- The FLUM amendment is supported by data and analysis prepared in accordance with the requirement of F.S. 163.3177 that provides relevant and appropriate data based on the City's community goals and vision and consistency with level of service requirements; and
- The Zoning Map amendment is consistent with the proposed FLUM amendment.

## BOARD POTENTIAL MOTION:

I MOVE TO RECOMMEND APPROVAL OF PZB PROJECT NUMBER 23-00300001 & 23-01300001 of the proposed amendments to the Future Land Use Map and the Zoning Map based on the data and analysis in the staff report and the testimony at the public hearing.

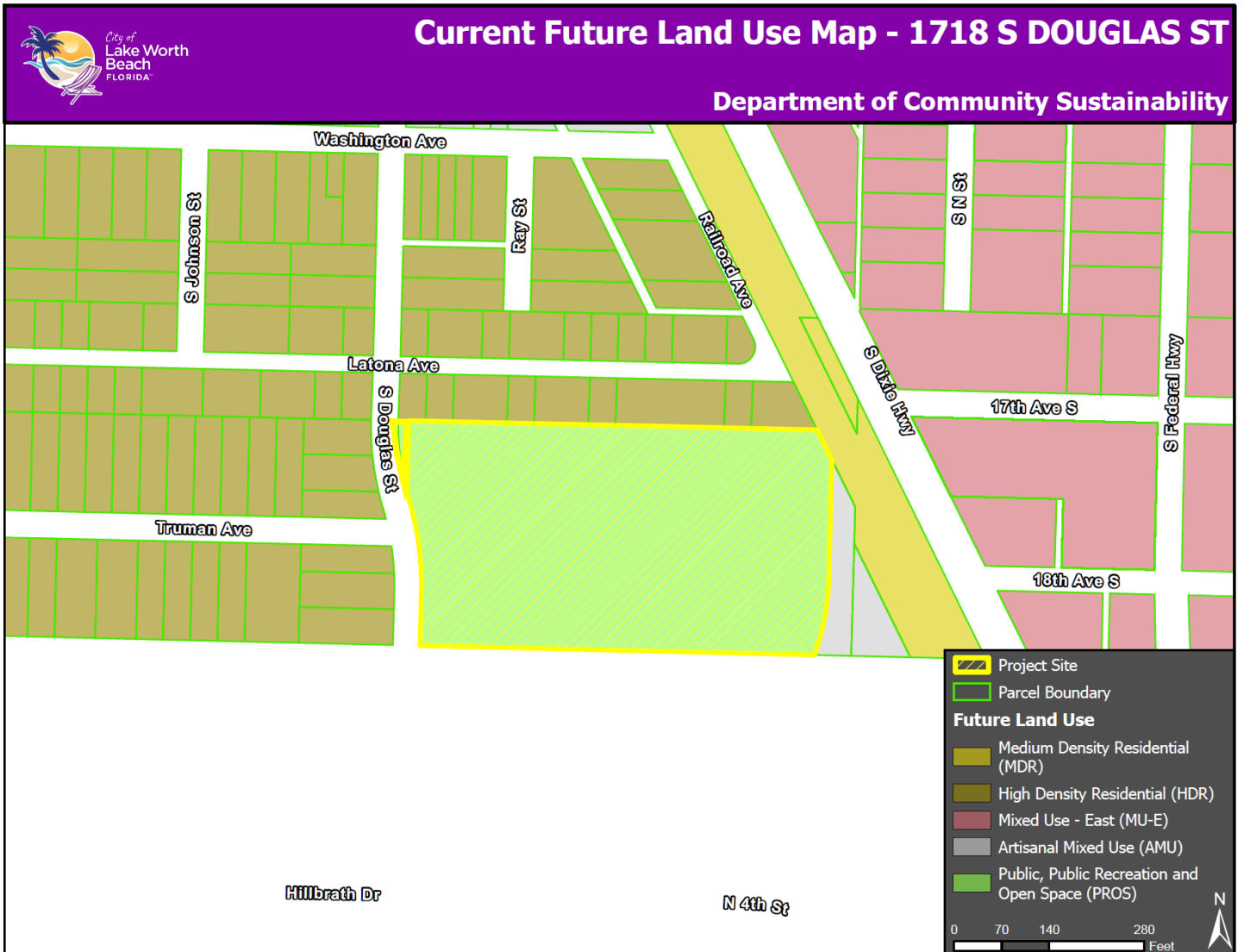
I MOVE TO NOT RECOMMEND APPROVAL OF PZB PROJECT NUMBER 23-00300001 & 23-01300001 of the proposed amendments to the Future Land Use Map and Zoning Map as the proposal is not consistent with the City's Comprehensive Plan and Strategic Plan for the following reasons [Board member please state reasons.]

**Consequent Action:** The Planning and Zoning Board will be making a recommendation to the City Commission on the FLUM and Zoning Map amendment requests.

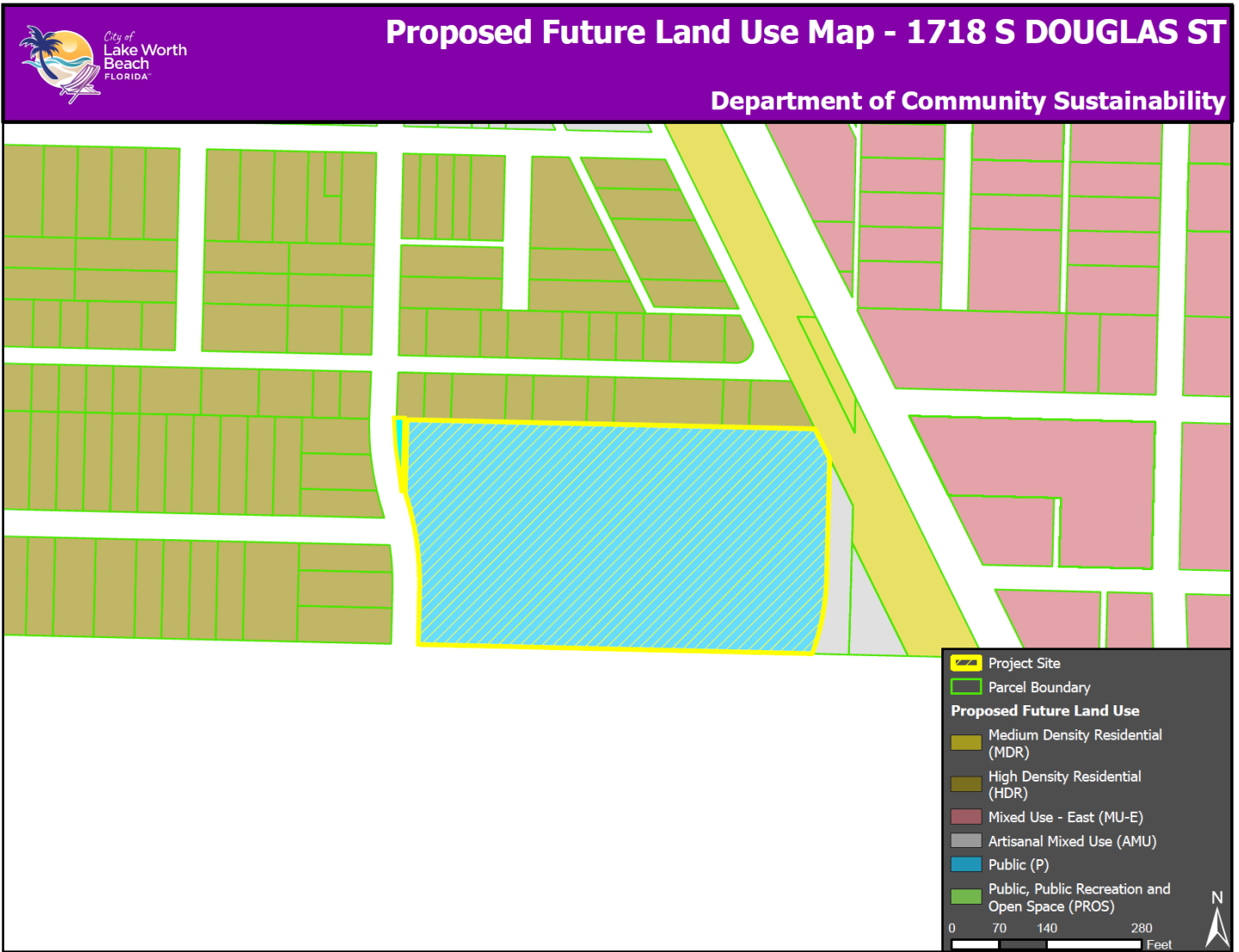
#### **ATTACHMENTS**

- A. Current FLU Map of property
- B. Proposed FLU Map of property
- C. Current Zoning Map of property
- D. Proposed Zoning Map of property
- E. DRAFT Ordinance 2023-03
- F. DRAFT Ordinance 2023-04

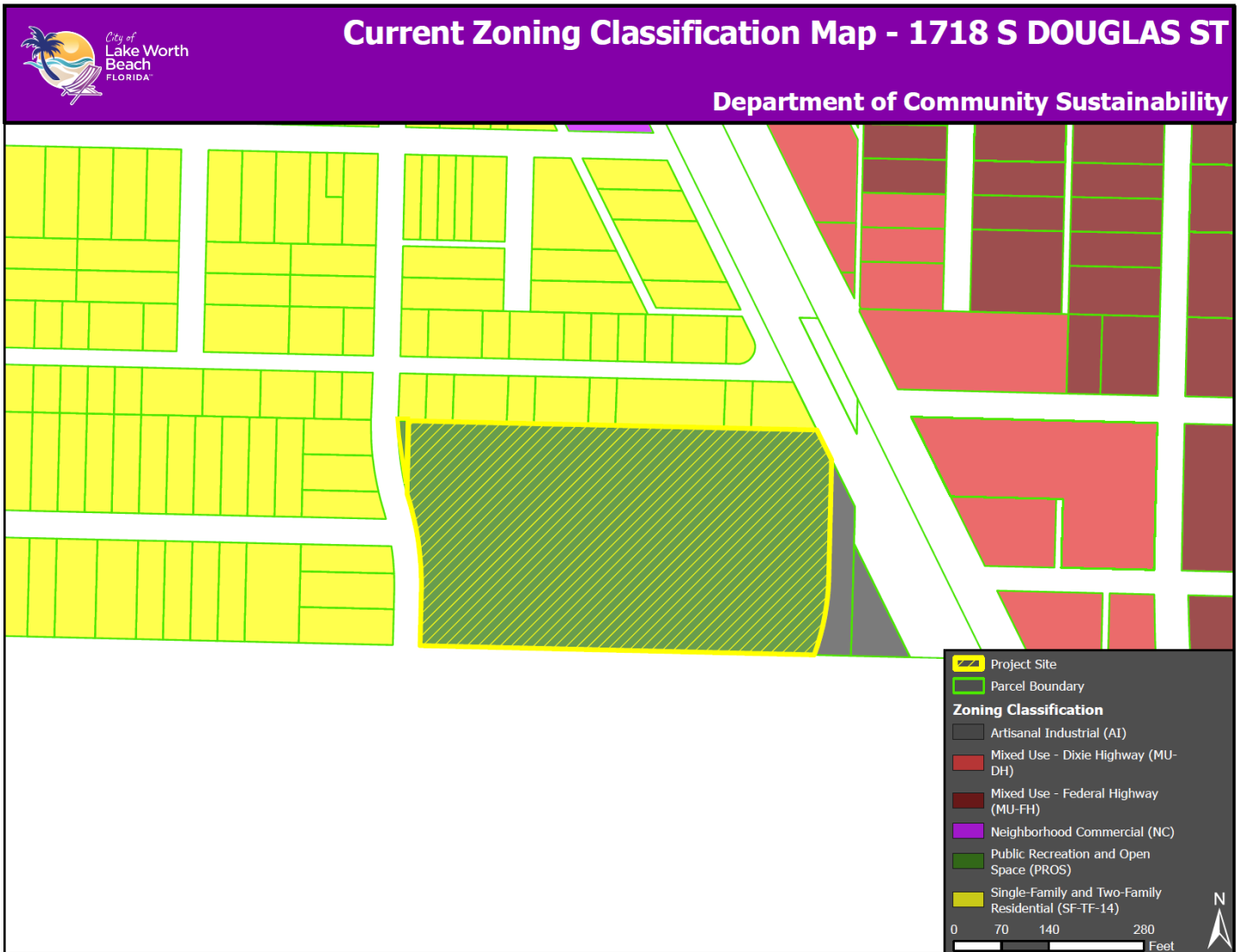
**ATTACHMENT A**  
**Current FLU Map of Subject Properties**



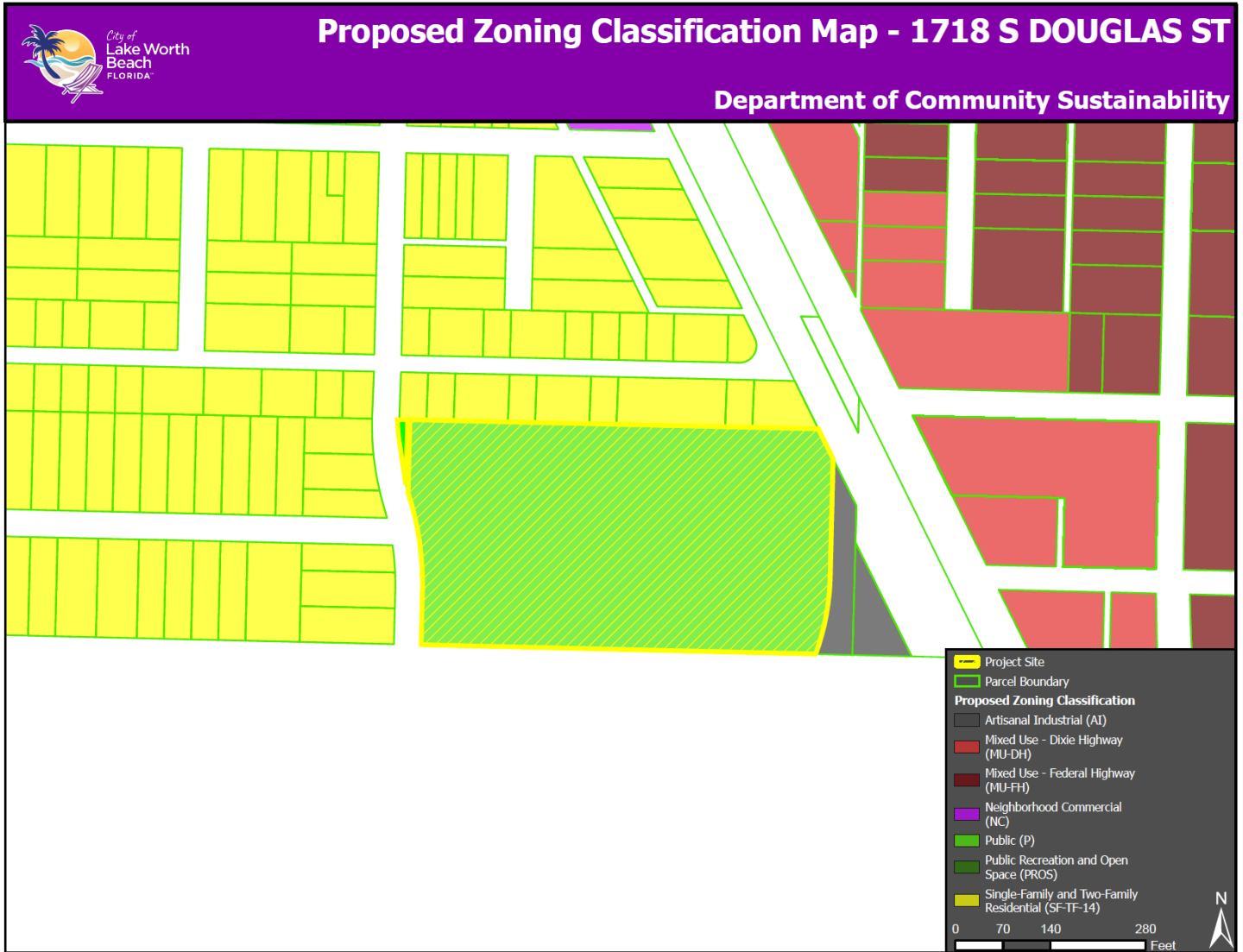
**ATTACHMENT B**  
**Proposed FLU Map of Subject Properties**



ATTACHMENT C  
CURRENT ZONING MAP



ATTACHMENT D  
PROPOSED ZONING MAP



# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** Community Sustainability &  
Finance Department

**TITLE:**

Discussion on Solicitation for L & M Streets Property Development

**SUMMARY:**

Discussion on solicitation to be applicable for L and M Property Development

**BACKGROUND AND JUSTIFICATION:**

In December of 2021, the City Commission approved a contract with TCRPC to undertake a comprehensive study of the downtown, specifically the properties purchased by both the City and Community Redevelopment Agency (CRA), to garner public input and dialogue as to the appropriate redevelopment future for the area, which is all within the City's Old Town Historic District.

Actions taken by staff from the TCRPC were a formal multi-day Charrette and public outreach exercise hosted at The Hatch in April of 2022, conversations with downtown stakeholders, interviews with the Mayor and Commissioners, presentations to advisory boards and other outreach exercises. Over the course of the following months, an initial draft master plan was developed that included various development scenario options including financial feasibility analyses, each based on the input and suggestions coming from the public outreach. Initial concepts were discussed with City and CRA Staff, who provided direction to further analyze the scenarios that had the greatest potential of being financially successful.

On January 24, 2023, a final draft Downtown Master Plan (Plan) was presented to the City Commission and the general public. The Plan includes the development program and financial proforma of the various schemes conceptualized including specific recommendations to address site and building design, land development regulations, major thoroughfare design guidelines, historic preservation guidelines, affordable/workforce housing program requirements and site and building qualitative and performance requirements as well as comprehensive plan issues.

**City Commission Direction Requested**

**A. Development Policy Consideration**

Based on the TCRPC Downtown Master Plan (Plan) recommendations, the following areas require policy consideration and direction from the City Commission:

- Sustainable Bonus Program Requirements
- Transfer Development Rights Program Requirements
- Affordable/Workforce Housing Program Requirements
- Site and Building Design Qualitative and Performance Standards
- Other areas that would require a major future land use plan amendment of the City's Comprehensive Plan and possibly other amendments to the Land Development Regulations would include the following:
  - Density

- Height measured in stories with potential of five (5) story building up to sixty-five feet (65 ft)
- Projects in downtown historic district being allowed to be by-right at three stories or five stories along Lake Avenue and Lucerne
- No minimum residential unit size
- Parking requirement reductions/exemptions

The policy direction in these areas is being sought so that it may be included in the proposed RFP. Depending on the policy direction provided, staff subsequently will prepare draft amendments to the City's Comprehensive Plan and Land Development Regulations, as appropriate, to facilitate the future entitlement application(s) of the selected project(s) coming forth from the RFP.

## **B. Solicitation Options**

At the same meeting, the City Commission accepted the proposal from the Downtown Master Plan and requested that the City staff recommend the best solution for solicitation of L and M Property Development.

Taking into consideration the complexity of the project and concern in meeting the City's code and financial requirements, the City and CRA Staff discussed the possible options and recommend that a two-phase Request for Proposal (RFP) is most advantageous for this project. The RFP shall contain the set of mandatory minimum qualification requirements to ensure that the City's code and financial requirements are met prior to proceeding in further evaluation of project proposals and designs from a select group of respondents.

### **Phase I: Qualifications**

Phase I of the RFP will focus on the qualifications of the proposers as experienced, professional architecture and development teams with a focus on not only preserving historic structures but also having undertaken a substantial redevelopment in a downtown setting that has a unique and distinctive flavor. To be considered a qualified proposer, the firm or firms will be required to show the financial capacity to complete a project of this size and with the intended vision as indicated in the Downtown Parcels Master Plan created by the Treasure Coast Regional Planning Council and the public as well as the City's Major Thoroughfare Design Guidelines and Historic Preservation Design Guidelines.

After receiving and reviewing the initial qualifications proposals, the Selection Team will short list three proposals for further consideration and will be invited to submit complete proposals that incorporate all the necessary portions and qualifications listed in PHASE II of the proposed solicitation (unless determined otherwise by City and CRA Staff).

### **Phase II – Full Proposal**

Phase II of the RFP at a minimum will require the respondents to submit site plans showing a general layout of the proposed development and financial considerations, including but not limited to at least the following:

- The land required for the project, including property boundaries and a definitive plan as to whether the Proposer envisions purchasing and developing all the land available.
- Existing buildings and new buildings that may be erected, including the approximate square footage for each, as well as, architectural elevations for each.
- Anticipated number of residential units and unit types.
- Anticipated square footage of commercial space.



- Parking areas and parking area access ways.
- Any additional features such as outdoor facilities, areas of significant landscaping, outbuildings, areas for future development, public parking opportunities, etc.
- Proposed purchased price including any requested incentives such as tax increment financing (TIF).
- Other appropriate information to demonstrate a commitment to the downtown vision of Lake Worth Beach and support the proposal.

A Selections Committee, led by CRA staff will complete the final evaluations and recommendations for Phase I and Phase II.

**MOTION:**

Move to approve/disapprove support for the issuance of a Request for Proposal (RFP) for the L and M Property Development as a two-phase solicitation, with Phase I being qualification process and Phase II final selection.

**ATTACHMENT(S):**

Downtown Master Plan

# STAFF REPORT SPECIAL MEETING

**AGENDA DATE:** January 24, 2023

**DEPARTMENT:** Community Sustainability

**TITLE:**

Presentation of the of Final Draft of the Downtown Master Plan by Treasure Coast Regional Planning Council (TCRPC)

**SUMMARY:**

Presentation and discussion with Dana Little of TCRPC of final draft Downtown Master Plan including recommendations for moving forward and language for future Request for Proposals (RFP)

**BACKGROUND AND JUSTIFICATION:**

In December of 2021, the City Commission approved a contract with TCRPC to undertake a comprehensive study of the downtown, specifically the properties purchased by both the City and Community Redevelopment Agency (CRA), to garner public input and dialogue as to the appropriate redevelopment future for the area, which is all within the City's Old Town Historic District.

Actions taken by staff from the TCRPC were a formal multi-day Charrette and public outreach exercise hosted at The Hatch in April of 2022, conversations with downtown stakeholders, interviews with the Mayor and Commissioners, presentations to advisory boards and other outreach exercises. Over the course of the following months, an initial draft master plan was developed that included various development scenario options including financial feasibility analyses, each based on the input and suggestions coming from the public outreach. Initial concepts were discussed with City and CRA Staff, who provided direction to further analyze the scenarios that had the greatest potential of being financially successful. By the end of 2022, a final draft Downtown Master Plan (Plan) was ready for formal presentation to the City Commission and the general public.

The Plan includes the development program and financial proforma of the various schemes conceptualized including specific recommendations to address site and building design, land development regulations, major thorough design guidelines, historic preservation guidelines, affordable/workforce housing program requirements and site and building qualitative and performance requirements as well as comprehensive plan issues.

**MOTION:**

Move to approve/disapprove the Final Draft Downtown Masterplan including direction as to the parameters to be included in any future Requests for Proposals for the redevelopment of the L and M properties.

**ATTACHMENT(S):**

Final Draft Downtown Master Plan  
TCRPC Presentation  
L and M Properties Documentation  
    Condemnation Memo  
    Condemnation Letters  
    Estimate of Probable Costs  
    Memo - Estimates of Probable Costs

# LAKE WORTH BEACH DOWNTOWN PARCELS MASTER PLAN

FINAL  
DECEMBER 2022



PREPARED BY THE  
TREASURE COAST REGIONAL PLANNING COUNCIL

## CITY COMMISSION

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<b>CHRISTOPHER MCVOY</b>	<b>DISTRICT 2</b>
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## CONSULTANTS FOR TCRPC

LAUREN MOSS CLARK ~ JOSE VENEGAS ~ TIM HERNANDEZ ~ SHAILENDRAH SINGH ~ STEVEN FETT ~ ANDREW GEORGIADIS

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## ABBREVIATIONS & TERMS

CRA	Community Redevelopment Agency
FDOT	Florida Department of Transportation
OTHD	Old Town Historic District
PBC	Palm Beach County
RFP	Request for Proposal
sf	Square Feet
TCRPC	Treasure Coast Regional Planning Council
TIF	Tax Increment Financing
TPA	Transportation Planning Agency

In accordance with the requirements of Title II of the American with Disabilities Act of 1990, the City of Lake Worth Beach will not discriminate against qualified individuals with disabilities on the basis of disability in the City’s services, programs, activities or facilities. In accordance with Title II of the ADA, when viewed in their entirety, City of Lake Worth Beach programs, services, activities and facilities are readily accessible to and usable by qualified individuals with disabilities. Those requiring ADA readable materials please contact the CRA offices directly at 561-493-2550 or by email at [info@lakeworthcra.org](mailto:info@lakeworthcra.org). Hearing impaired individuals are requested to telephone the Florida Relay System at #711.

## DOWNTOWN LAKE WORTH BEACH

This Master Plan report reflects the efforts and collaboration of the City of Lake Worth Beach (City), the Lake Worth Beach Community Redevelopment Agency (CRA), the Treasure Coast Regional Planning Council (TCRPC), and the residents and business owners of Lake Worth Beach. This multi-agency public planning process began in the fall of 2021 when TCRPC was requested to assist in developing a vision for multiple publicly owned parcels in downtown Lake Worth Beach. Over the course of many years, and with a variety of different funding sources, the City and CRA have assembled parcels at S. 'K' Street and 1st Avenue, and the block between 'L' and 'M' street from Lake Avenue to S. 1st Avenue. The sensitive location of these assemblages, being in the historic downtown and occupying the transition block between the Lake Avenue commercial corridor and the predominantly residential neighborhoods immediately south, generated community concern over the scale and character of future redevelopment. This report will chronicle the public outreach, planning process, design concepts, and financial analyses developed to assist the City and CRA in making decisions regarding the appropriate future of these properties.





Figure 1 Image: Acquisition funding source map



Figure 2 Image: Current ownership map

The images to the left show the key study area properties and which public entity purchased the property (top) and which entity currently owns the property. These maps are key as 1) many of the City acquired parcels were purchased with funds provided through the 2017 Palm Beach County “Penny Sales Tax” which requires utilization for a public purpose, and 2) the CRA has acquired the majority of the parcels (bottom left) for the purposes of redevelopment.

The area in question is within the Old Town Historic District as illustrated in the image below. A number of historically contributing structures existed on the parcels acquired.



Figure 3 Image: Map of the Old Town Historic District

# I. INTRODUCTION

In March of 2020 the CRA issued a Request for Proposals (RFP) for the publicly owned lands on S. 'K' Street and between S. 'L' and 'M' Streets. Identified as RFP Sites 1, 2 and 3 (image lower left), the development request sought residential and mixed-use redevelopment consistent with the city's Land Development Regulations which included incentives for additional height and density in return for compliance with extra sustainability requirements. The RFP submission deadline was extended to August 2020 due to the effects of the COVID-19 pandemic and in September 2020, the City and CRA reviewed and ranked the submissions. In October 2020 the CRA Board selected the recommended application for "Element Lake Worth Beach" (lower right). A development impact analysis for that proposal was prepared for the CRA in March 2021.

Despite the public RFP and application review process and compliance with the city code, there was growing concern within the community regarding the scale and character of the selected development proposal. The March 2021 municipal election, which brought in a new Mayor and three new City Commissioners, cemented the public opposition to the Element proposal and ultimately that application was withdrawn.





The community concerns over the RFP process and submittal, and the future of the contributing historic structures existing on the development sites, led to the creation of a counter-proposal by the Palm Beach architecture firm of Fairfax & Sammons. This alternative vision for the area recommended not one large scale building occupying all of the parcels, but a more incremental approach in keeping with the historic context of the area. The Fairfax & Sammons proposal (below) began to circulate throughout the community and was viewed by many as a desirable direction for the redevelopment of these publicly owned lands. In addition, their proposal sought to incorporate many of the existing contributing structures.



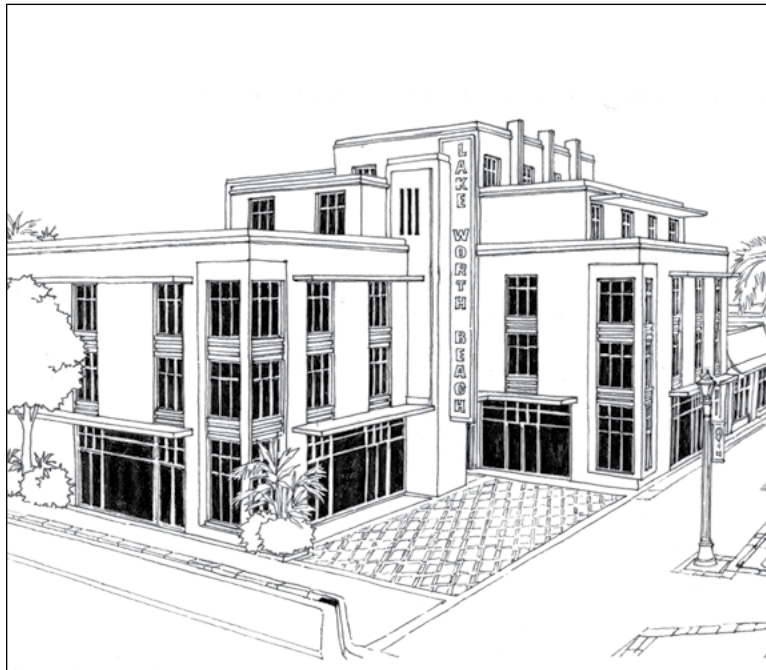
Figure 4 Image: Saturday public workshop hosted by the CRA at Hatch 1121.



With growing community concerns over the future of these sites, and the counter proposal developed by Fairfax & Sammons Architects illustrating an alternate approach, the City and the CRA sought to collaborate in a public outreach and design process to build consensus on the appropriate direction for this area.

In January 2022 the City entered into an Interlocal Agreement with TCRPC to conduct a public planning process and develop recommendations for the future of these sites. Initially planned as a “virtual” effort, the receding effects of the pandemic afforded the opportunity for an in-person, five-day public design charrette in April 2022. The CRA, which funded the planning effort, hosted the Saturday public workshop (see above) at the CRA offices at Hatch 1121.

After the Saturday, April 30th public workshop at Hatch 1121, the TCRPC design team established a design studio at the same location and worked through Wednesday, May 4th developing the ideas and concepts discussed during the workshop. A team of architects, planners, and a local developer was assembled to explore the physical and financial possibilities for future redevelopment. The public was welcome to, and frequently did, drop in to the studio to share ideas and discuss concepts with the team.



The following chapters of this report illustrate the design concepts, financial analyses, and redevelopment recommendations for the sites at S. 'K' Street and the S. 'L' and 'M' Streets block. The scale, architectural character, positioning and placement of buildings, historic preservation, financial feasibility, and other environmental and community sensitivities were taken into consideration in the development of this plan. While there may not be a single "right" answer to the development approach for these parcels, the City and the CRA should be commended for investing in this public dialogue.

### SCENARIOS

At the core of the public sentiment towards the redevelopment of the City and CRA owned properties is the desire for a smaller, incremental infill development consistent with the historic scale and character of the area. Located within the Old Town Historic District, these sensitivities are understandable and warranted. Triangulating these community desires with the financial feasibility of such redevelopment and the available development rights within the existing city codes is a considerable challenge. Add to that the interest of many to preserve the on site contributing historic structures, despite their current condition, complicates the equation further.

The parcels facing Lake Avenue have an existing zoning designation of DT (Downtown) which allows for a maximum density of 40 dwelling units per acre and a building height of two stories and up to five stories utilizing the sustainability incentives. The parcels facing 'L', 'M', and 1st Avenue South have a MU-E (Mixed-Use East) zoning designation which allows for a maximum density of 30 dwelling units per acre and a building height of two stories and up to three with incentives.

The design team explored a variety of ways to maximize densities, retain the contextual scale and character of the area, and accommodate parking across all of the development sites. Whether to keep or relocate existing contributing structures was also a factor in the creation of the conceptual design scenarios.

This chapter outlines a series of development scenarios believed to be consistent with input provided by the residents of Lake Worth Beach.



# II. TOUR OF THE SCENARIOS

## SITE KEY

- 1. L&M CONCEPTS (A,B,C)
- 2. K STREET CONCEPTS (D,E,F,G)
- 3. 1ST AVENUE SOUTH CONCEPTS (H,I)



OVERVIEW OF SCENARIOS

This page serves as a legend to the variety of different design scenarios that were developed throughout the charrette process. The previous page identifies the locations of the three sites considered (1, 2, and 3).

Below is a key to the different scenarios developed for each of the sites.

SITE 1 - L AND M STREETS

A



B



C

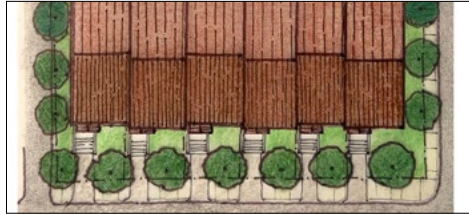


SITE 2 - K STREET

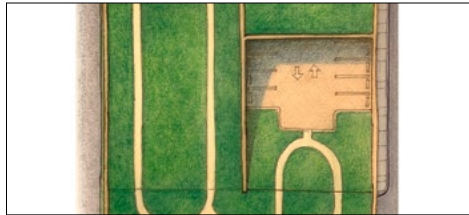
D



E



F



G



SITE 3 - 1ST AVENUE SOUTH

H



I



### L & M STREET CONCEPTS

Three different design scenarios were developed for site one - the block between 'L' and 'M' Streets south of Lake Avenue. Each of these concepts conceives of a larger, five story building facing Lake Avenue south to the alleyway. This is consistent with the Fairfax & Sammons proposal. Each of the scenarios keeps the existing restored historic structure facing 'M' street and contemplates different approaches to the contributing structures fronting 'L' Street. The proposed building facing Lake Avenue creates a publicly accessible plaza at the street level for outdoor dining and activities.

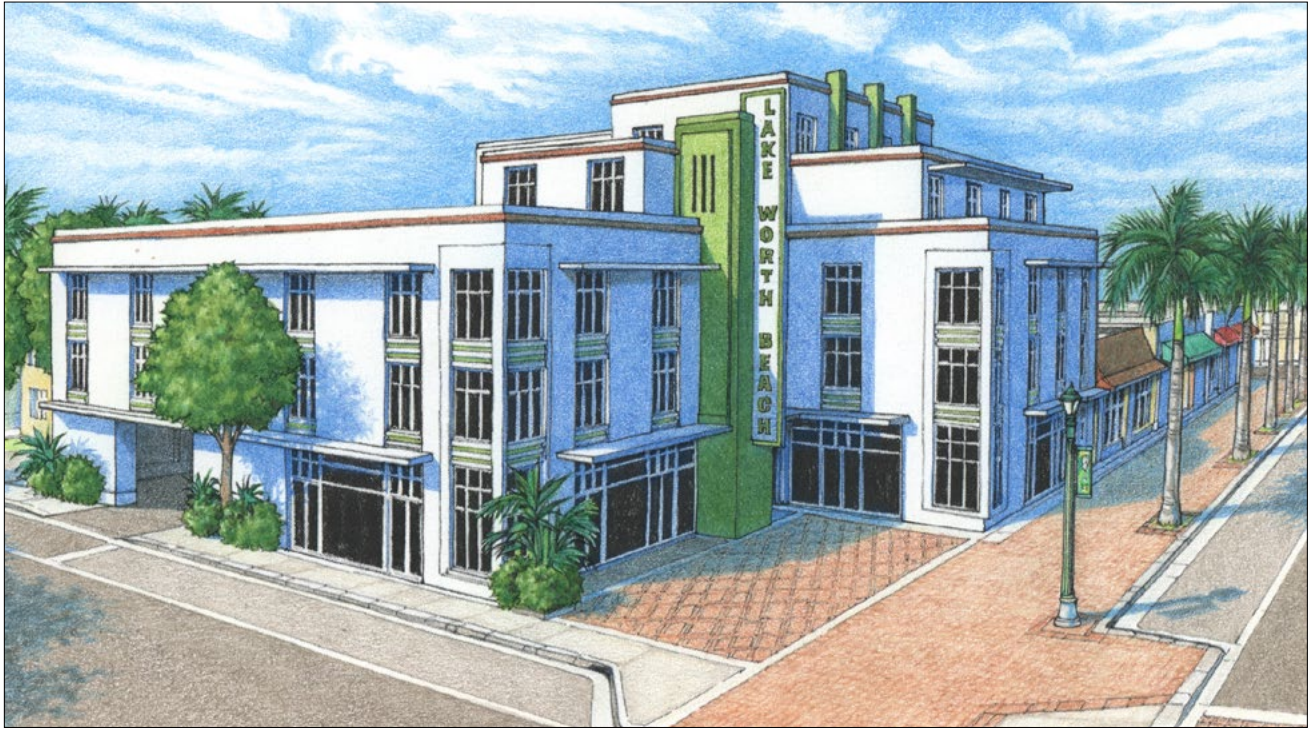


Figure 5 Lake Avenue Redevelopment Concept



CONTRIBUTING STRUCTURES

There are five historically contributing structures on the ‘L’ and ‘M’ block, all in varying conditions. The structure at 17 S. M Street (identified as building “a” below) has been completely restored by the previous owner and serves as the offices for the Leisure Services Department. At the time of the design charrette in April 2022, the fate of the remaining structures was uncertain so care was taken to try to include them in the different design scenarios. Since the charrette, the structures identified below as “d” and “e” have been approved for demolition by the City.

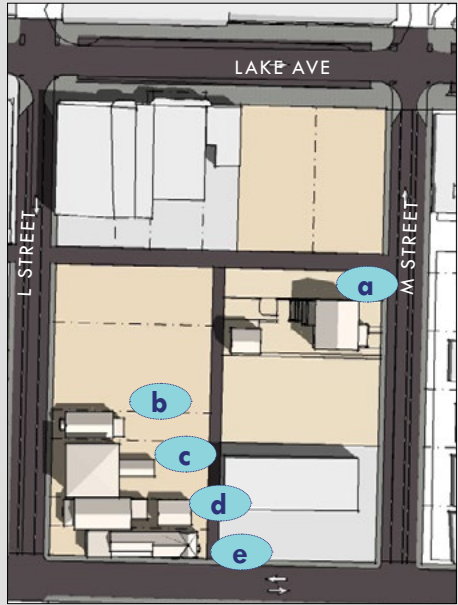
CONTRIBUTING STRUCTURES SUMMARY	
	Notes
a	Built 1941 & renovated in 2019, contributing structure, LWB Leisure Services Office & Storage, 3 on-site parking spaces, 2100-sf
b	Built 1946, contributing structure, listed at 1 DU on property appraiser, 854-sf of gross building sf
c	Built 1933, contributing structure, listed at 4 DU on property appraiser, 3112-sf of gross building sf
d	Built 1930, contributing structure, listed at 2 DU on property appraiser, 1413-sf of gross building sf
e	Built 1935, listed at 4 DU on property appraiser, 1696-sf of gross building sf



L & M STREET CONCEPTS



The map below identifies the location of the five contributing structures on the ‘L’ and ‘M’ block. The various design scenarios recommend different approaches to retaining or removing the structures.



CONTRIBUTING STRUCTURES

L & M STREET CONCEPTS 1





**OPTION**  
**SITE 1**



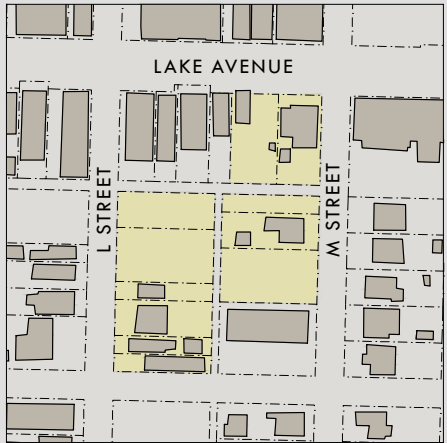
<b>SITE AREA</b>	1.6 acres
<b>NUMBER OF TOTAL UNITS</b>	59 DU (37 du/acre)
<b>CONTRIBUTING STRUCTURES TO REMAIN</b>	1 remains, 2 relocate & renovate, 5 DU
<b>TOTAL NET NEW UNITS</b>	54 DU
<b>GROSS COMMERCIAL SPACE</b>	+/- 5,000 sf
<b>PARKING SPACES</b>	92 parking spaces
<b>ON-STREET</b>	+/- 30 existing to remain
<b>SURFACE</b>	56 (26 under Lake Ave Bldg)
<b>STRUCTURE</b>	0
<b>SELF PARKED</b>	6 in private garage



**L & M STREET CONCEPTS**



Option A recommends removing or relocating all contributing structures facing 'L' Street and replacing them with townhouses, accessory dwelling units along the alley, and a bungalow court in front of a new two story apartment building.



**OPTION A**  
SITE 1

L & M STREET CONCEPTS **1**

**OPTION A SUMMARY**

- Three story building on Lake Ave with 24 units and 5,000-7,500-sf for commercial space
- Six townhouses with garages and accessory units above
- Four bungalow units
- 12 DU apartment
- All surface parking & self parking
- Two contributing structures relocated and renovated (3,970-sf)
- Renovated contributing structures on M Street remain
- TOTAL NEW UNITS = 54 dwelling units

<b>OVERALL BUILDING</b>	3 stories (26 DU)	sf 35,000
<b>GROUND FLOOR</b>	Commercial- 5,200 sf Ground Parking- 7,800 sf	sf 13,000
<b>FLOORS 2-3</b>	Units- 22,000 sf Amenity Deck- 3,250 sf	sf 16,250 +deck

<b>TWO BEDROOMS</b>	(4 DU) SFD Bungalow	sf 3,600
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<b>STUDIO UNITS</b>	(12 DU) 2-story apartment	sf 12,500
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<b>STUDIO UNITS</b>	(6) ADU over garage	sf 1,440
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<b>3+ BEDROOMS</b>	(6 DU) 3-story Townhouse	sf 17,280
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**OPTION**  
**SITE 1**



**L & M STREET**  
**CONCEPTS**



The image to the left is an aerial view of scenario A looking southwest from above Lake Avenue. The larger five story structure is in the foreground. Below is a ground level view of the same building facing Lake Avenue.



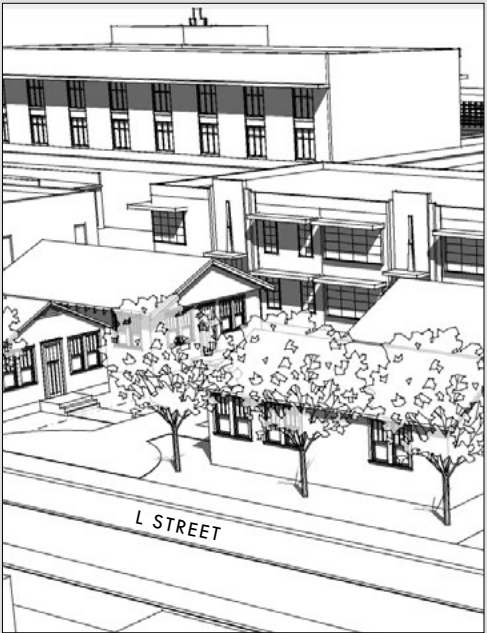
**OPTION**  
**SITE 1**



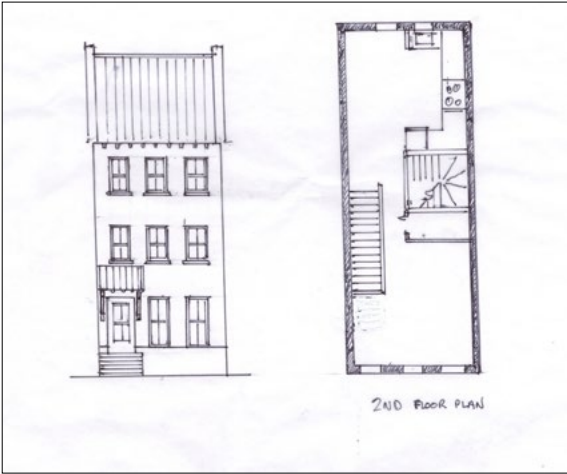
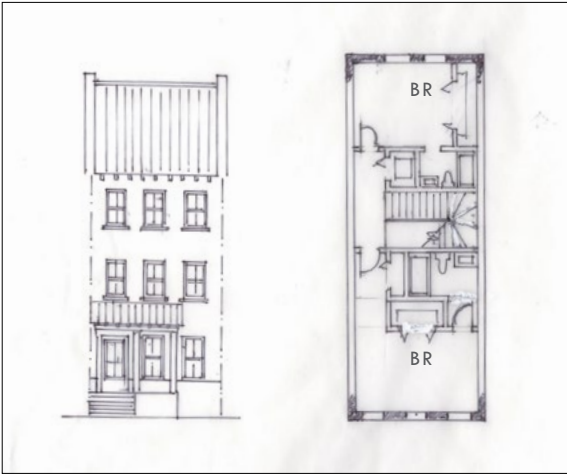
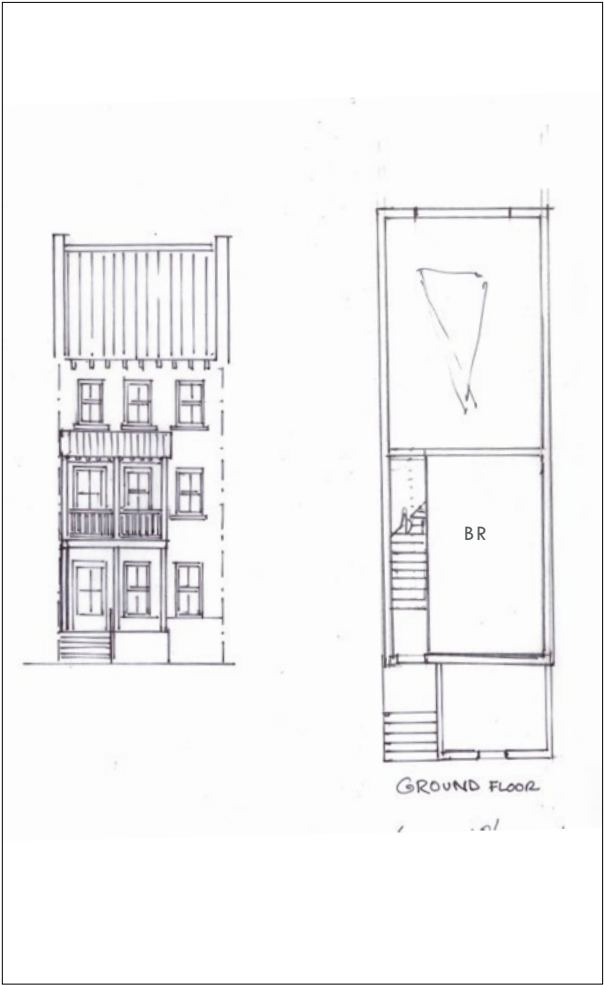
**L & M STREET  
CONCEPTS**



The images on this page are of the proposed bungalow court in front of the new two story apartment building.



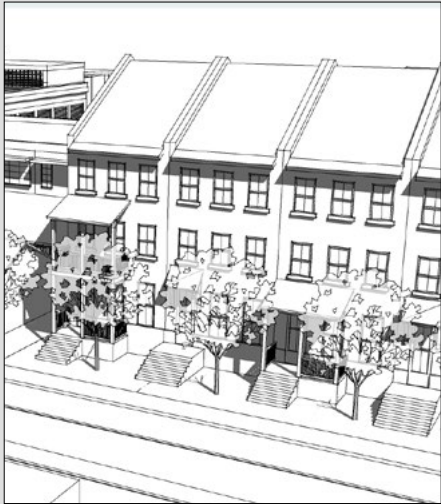
**OPTION**  
**SITE 1**



**L & M STREET**  
**CONCEPTS**



Option A includes a row of townhouses along 'L' Street. These townhouses are proposed to have accessory dwelling units and rear loaded parking accessed from the alleyway. The image to the left illustrates floor plans and elevations of the townhouses and below is a street view of the same.



**OPTION**  
**SITE 1**



**L & M STREET**  
**CONCEPTS**



The image to the left is an elevated street view of the townhouses and bungalow court proposed on 'L' Street. The townhouses have elevated covered stoops and are three stories. The four units comprising the bungalow court to the left (north) create an entry courtyard to the two story Art Deco apartment building beyond. This proposal incorporates a variety of scales and architectural styles consistent with the historical character of Lake Worth Beach.

On-street parking on 'L' Street would help accommodate the parking demands of the new units as well as parking located off of the rear alleyway. The proposed five story building facing Lake Avenue is seen beyond the Art Deco apartment building.



**OPTION B**  
SITE 1

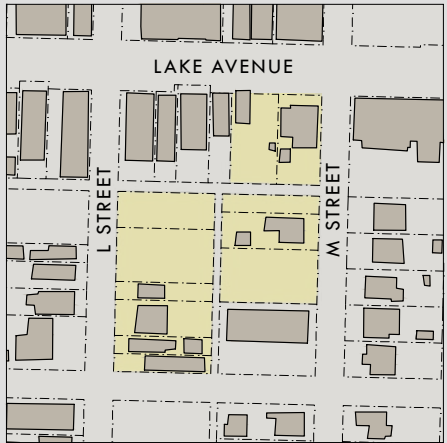
<b>SITE AREA</b>	1.6 acres
<b>NUMBER OF TOTAL UNITS</b>	65 DU (40 DUA)
<b>CONTRIBUTING STRUCTURES</b>	11 DU (1 remain, 3 to renovate) (6,220-sf)
<b>TOTAL NEW NET UNITS</b>	54 DU
<b>GROSS COMMERCIAL SPACE</b>	+/- 7,500-sf
<b>PARKING SPACES</b>	115 parking spaces
<b>ON-STREET</b>	+/- 30 existing to remain
<b>SURFACE</b>	85 (26 under Lake Ave Bldg)



**L & M STREET CONCEPTS**

L&M STREET CONCEPTS

Scenario B incorporates keeping the three southernmost contributing structures on 'L' Street. Two new four unit walk up apartment buildings are proposed immediately north of the contributing structures. A five story mixed-use building is proposed to face Lake Avenue.



**OPTION B**  
SITE 1



L & M STREET CONCEPTS **1**

**OPTION B SUMMARY**

- Five story building on Lake Ave with 38 DU and 5,000-sf for commercial space
- Two new apartment buildings with 4 DU each
- One new apartment building with 8 DU
- All surface parking & under-building parking
- \* Three historic structures renovated and remain with 11 DU
- Renovated contributing structure on M Street remains
- TOTAL NEW UNITS = 54
- **\*Since the charrette, the structures identified as “d” and “e” have been approved for demolition by the City.**

<b>OVERALL BUILDING</b>	5 stories (38 DU total)	47,000 sf
<b>GROUND FLOOR</b>	Commercial- 5,000 sf Ground Parking- 7,200 sf	13,500 sf
<b>FLOOR 2</b>	16 DU Amenity Deck- 3,250 sf	13,500 sf
<b>FLOOR 3</b>	10 DU	10,250 sf
<b>FLOOR 4</b>	7 DU	7,500 sf
<b>FLOOR 5</b>	5 DU	5,500 sf
<b>1 BEDROOM</b>	4 DU 2-story Apartment	4,000 sf
<b>1 BEDROOM</b>	4 DU 2-story Apartment	4,000 sf
<b>1 BEDROOM</b>	8 DU 2-story Apartment	7,600 sf





**OPTION**  
**SITE 1**



**L & M STREET**  
**CONCEPTS**

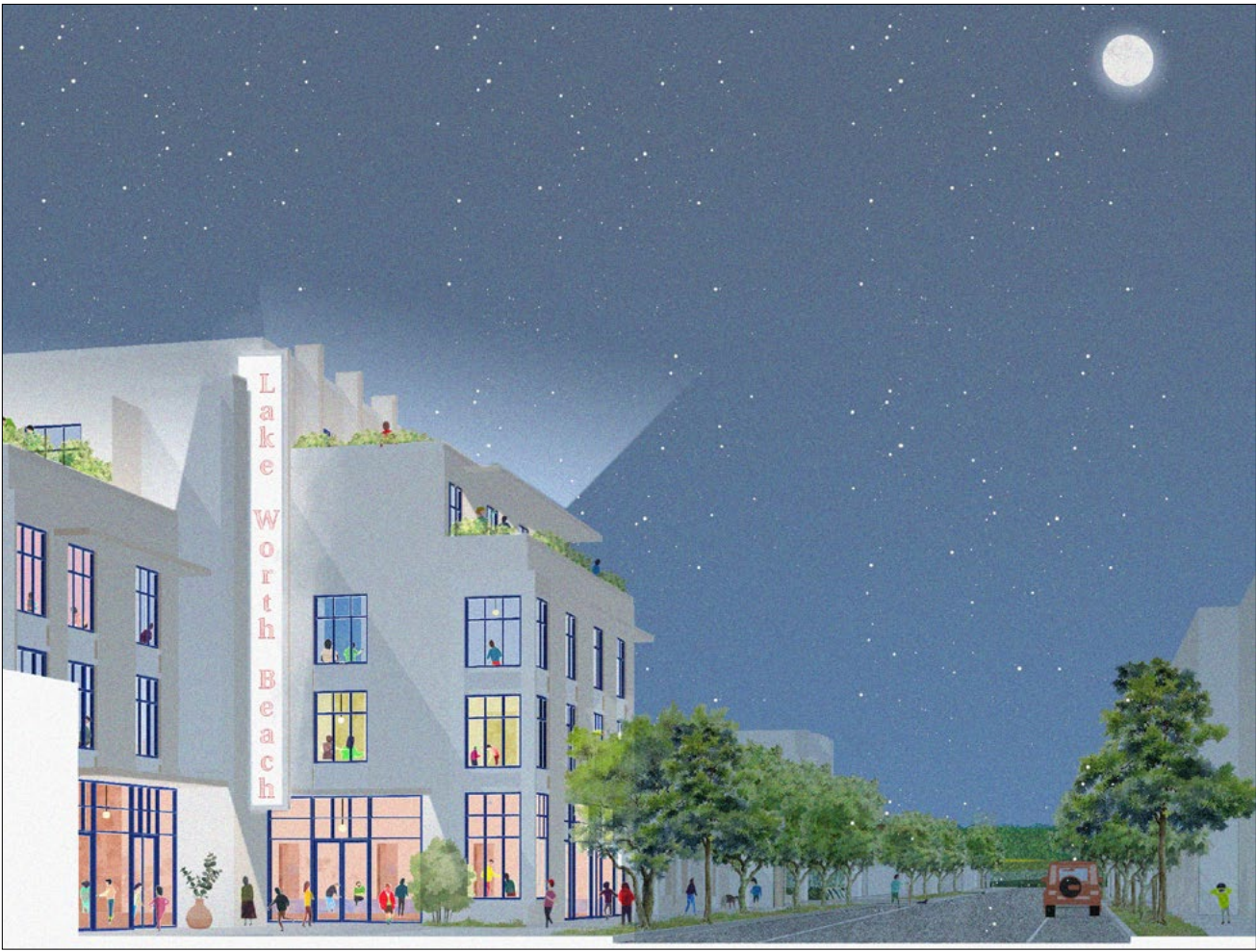


Each of the 'L' and 'M' Street scenarios incorporates a five story mixed-use building fronting Lake Avenue. The building only extends south to the alleyway. These proposals are consistent with the footprint area and scale of the new condominium building facing Lake Avenue at 1 South Palmway.

The rendering to the left illustrates the proposed building at 'M' Street and Lake Avenue. The design team felt that an Art Deco architecture for a building of this scale is appropriate in the Old Town Historic District.



OPTION  
SITE 1

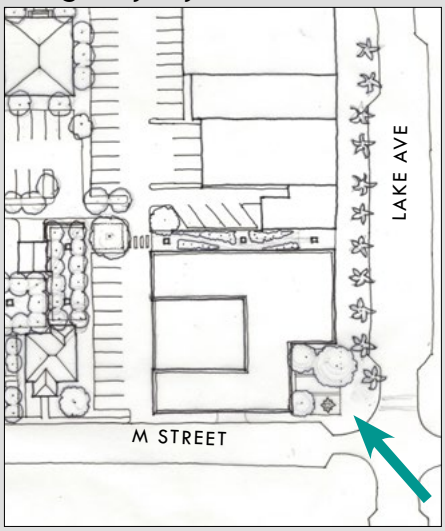


L & M STREET  
CONCEPTS



The rendering to the left is a nighttime view of the same building. There is a public plaza at the corner of 'M' Street and Lake Avenue to accommodate outdoor dining and activities.

The plan below shows the direction of the view to the left. Note that covered parking is accessed from the existing alleyway.



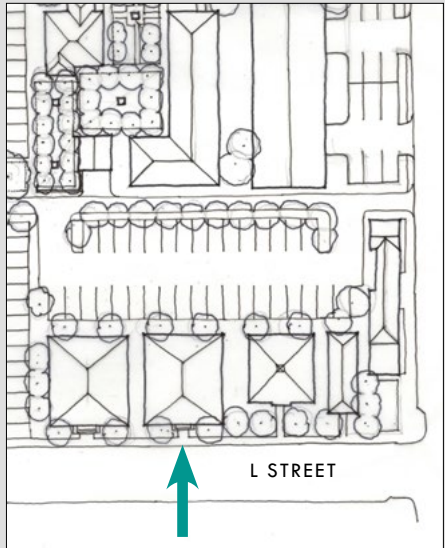
**OPTION**  
SITE 1



**L & M STREET  
CONCEPTS**



The rendering to the left is of the two proposed walk up apartment buildings on 'L' Street. Note the existing structures to the right (south). The plan view below shows the direction of the view for the rendering.



OPTION  
SITE 1



L & M STREET  
CONCEPTS



This aerial rendering gives an overall view of the 'L' and 'M' Street block for scenario B. The five story mixed-use building facing Lake Avenue is in the foreground and the two story walk up apartment buildings on 'L' Street are seen beyond.

The Leisure Services Department building facing 'M' Street is partially wrapped with a new two story apartment building. This building is proposed on the currently vacant lot on 'M' Street. This concept creates a series of intimate courtyard spaces around the restored historic structure.



**OPTION C**  
SITE 1



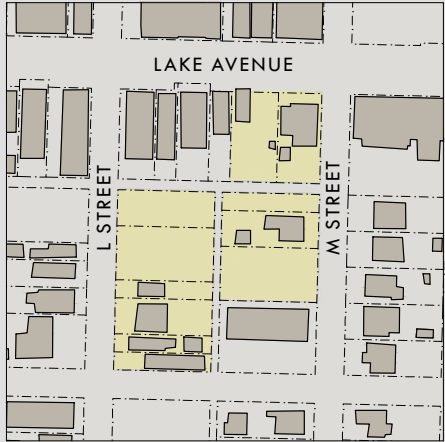
<b>SITE AREA</b>	1.6 acres
<b>NUMBER OF TOTAL UNITS</b>	90 DU (56 DUA)
<b>CONTRIBUTING STRUCTURES</b>	2 remain ( 5 DU)
<b>TOTAL NET NEW UNITS</b>	85 DU
<b>CONTRIBUTING STRUCTURES</b>	5 DU (to remain)
<b>GROSS COMMERCIAL SPACE</b>	+/- 5,000-sf
<b>PARKING SPACES</b>	108 parking spaces
<b>ON-STREET</b>	+/- 30 existing to remain
<b>SURFACE</b>	78 (19 under Lake Ave Bldg)



**L & M STREET CONCEPTS**



Option C keeps the existing walk up apartment building on 'L' Street and proposes a new three story apartment to the north and a two story courtyard building to the south. Like Option B, this scenario proposed a three story apartment south of the Leisure Services Department building on 'M' Street.



## OPTION C SITE 1

## L & M STREET CONCEPTS 1

### OPTION C SUMMARY

- Five story building on Lake Ave with 50 DU and 5,000-sf for commercial space
- Two new apartment buildings with 12 DU each
- One new ADU over garage
- One new live-work lofts with 10 DU
- All surface parking & under-building parking
- Existing structures on L Street (c) & M Street (a) remain
- TOTAL Net new Units = 85 dwelling units

<b>OVERALL BUILDING</b>	5 stories (50 DU total)	47,000 sf
<b>GROUND FLOOR</b>	Commercial- 5,000 sf Ground Parking- 7,200 sf	13,500 sf
<b>FLOOR 2</b>	18 DU Amenity Deck- 2,030 sf	13,500 sf
<b>FLOOR 3</b>	18 DU	11,470 sf
<b>FLOOR 4</b>	10 DU	7,500 sf
<b>FLOOR 5</b>	4 DU	5,500 sf
<b>1 BEDROOM</b>	12 DU 3-story Apartment	11,400 sf
<b>1 BEDROOM</b>	1 DU ADU	900-sf
<b>1 BEDROOM</b>	12 DU 3-story Apartment	11,600 sf
<b>STUDIO UNIT</b>	10 DU 2-Story Loft Units	8,250 sf



**OPTION**  
**SITE 1**



**L & M STREET**  
**CONCEPTS**



This view is from ‘M’ Street and shows the existing restored historic structure that houses the city’s Leisure Services Department. In the foreground is the proposed three story Art Deco apartment building that creates a courtyard to the rear of the Leisure Services building. Beyond is the five story mixed-use building facing Lake Avenue. That proposed structure is separated from the historic building by the existing alleyway which provides access to rear loaded parking.

In all scenarios on-street parking is retained and where possible, enhanced.



**OPTION C FINAL VERSION**  
**SITE 1**

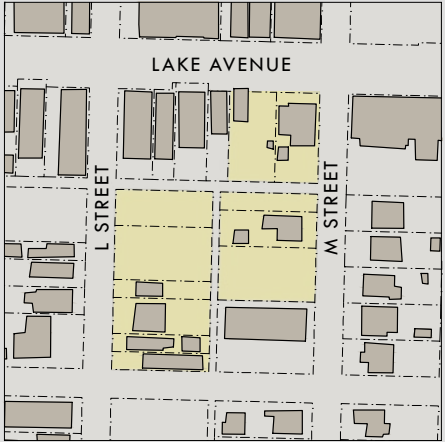
<b>SITE AREA</b>	1.6 acres
<b>NUMBER OF TOTAL UNITS</b>	87 DU (54 DUA)
<b>CONTRIBUTING STRUCTURES</b>	3 remain ( 5 DU)
<b>TOTAL NET NEW UNITS</b>	80 DU
<b>CONTRIBUTING STRUCTURES</b>	7 DU (to remain)
<b>GROSS COMMERCIAL SPACE</b>	+/- 5,000-sf
<b>PARKING SPACES</b>	108 parking spaces
<b>ON-STREET</b>	+/- 30 existing to remain
<b>SURFACE</b>	78 (19 under Lake Ave Bldg)



**L & M STREET CONCEPTS**

1

Option C Final Version keeps the existing walk up apartment building on 'L' Street and proposes a new three story apartment to the north and a two story courtyard building to the south. The relocation of the contributing structure 'b' (see page 11) from 'L' Street to 'M' Street is aligned with the Leisure services building to the north and a three story apartment to the south.





**OPTION C FINAL VERSION**  
**SITE 1**

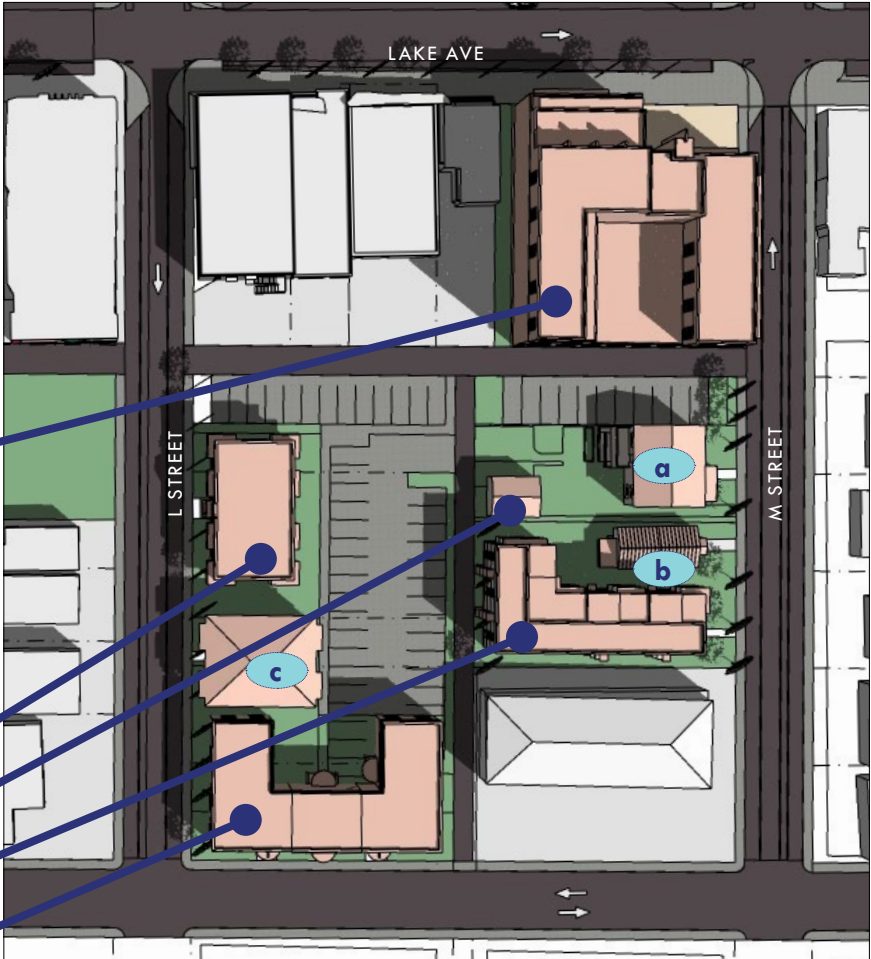
**L & M STREET CONCEPTS**



**OPTION C FINAL VERSION SUMMARY**

- Five story building on Lake Ave with 45 DU and 5,000-sf for commercial space
- Two new apartment buildings with 12 DU each
- One new ADU over garage
- One new live-work lofts with 10 DU
- All surface parking & under-building parking
- Existing structures on L Street (c) & M Street (a) remain L street (b) relocated
- TOTAL Net new Units = 80 dwelling units

<b>OVERALL BUILDING</b>	5 stories (45 DU total)	47,000 sf
<b>GROUND FLOOR</b>	Commercial- 5,000 sf Ground Parking- 7,200 sf	13,500 sf
<b>FLOOR 2</b>	20 DU Amenity Deck- 2,030 sf	13,500 sf
<b>FLOOR 3</b>	15 DU	11,470 sf
<b>FLOOR 4</b>	6 DU	7,500 sf
<b>FLOOR 5</b>	4 DU	5,500 sf
<b>1 BEDROOM</b>	12 DU 3-story Apartment	11,400 sf
<b>1 BEDROOM</b>	1 DU ADU	900-sf
<b>1 BEDROOM</b>	12 DU 3-story Apartment	11,600 sf
<b>STUDIO UNIT</b>	10 DU 2-Story Loft Units	8,250 sf



OPTION C FINAL VERSION  
SITE 1



L & M STREET  
CONCEPTS

1

This view is from ‘M’ Street and shows the existing restored historic structure that houses the city’s Leisure Services Department, and the relocated historic structure from ‘L’ Street aligned just to the south. In the foreground is the proposed three story Art Deco apartment building that creates a courtyard to the rear of the Leisure Services building. Beyond is the five story mixed-use building facing Lake Avenue. That proposed structure is separated from the historic building by the existing alleyway which provides access to rear loaded parking.

In all scenarios on-street parking is retained and where possible, enhanced.



### K STREET CONCEPTS

Site 2 is the half block at the northwest corner of 'K' Street and 1st Avenue South. This site contains three parcels to the south with four contributing structures (one of which is an accessory structure to the unit facing 'K' Street). Immediately north of these parcels is a municipal parking lot which contains approximately 65 parking spaces south of the alleyway. The three southern parcels and the parking lot were part of the 2020 RFP (RFP sites 2 and 3 respectively) however there were no proposals submitted for these properties.

The municipal lot has been considered for a future parking structure and the engineering firm WGI has developed a number of different proposals testing the physical feasibility of that idea. Option G depicts one of the concepts that WGI produced. The images to the right illustrate the 'K' Street locations. Different concepts were developed for the 'K' Street sites and character sketches of those concepts are provided below. The design team took care to reflect the historic architectural character of Lake Worth Beach in the design proposals.

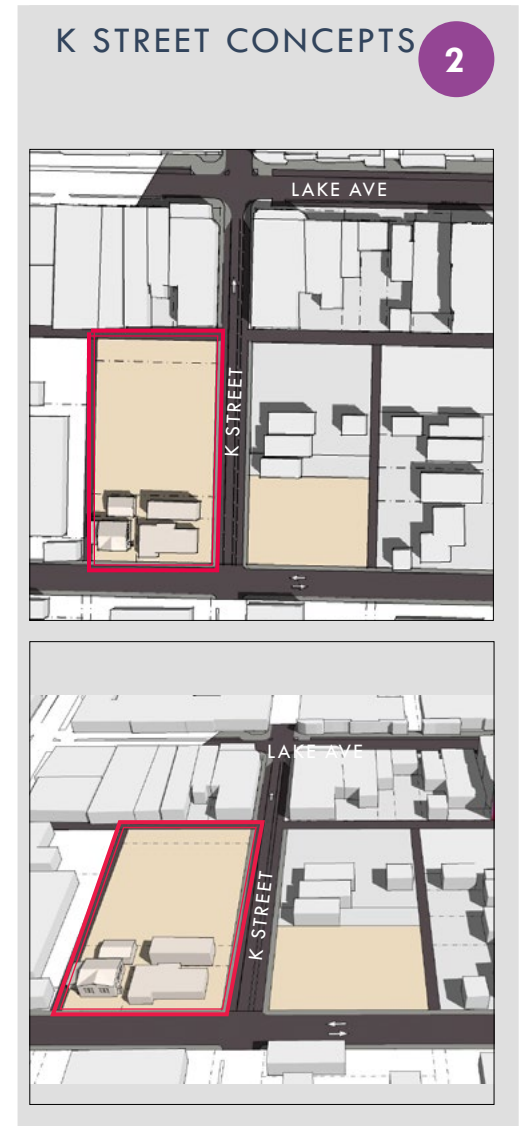


Figure 6 K Street Redevelopment Concept



# II. TOUR OF THE SCENARIOS

CONTRIBUTING STRUCTURES SUMMARY	
	Notes
f	Built 1925, listed at 1 DU on property appraiser, 878-sf of gross building sf
g	Built 1928, listed at 2 DU on property appraiser, 1710-sf of gross building sf
h	Built 1927, listed at 1 DU on property appraiser, 959-sf of gross building sf



## K STREET CONCEPTS 2

This page identifies the existing contributing structures on Site 2 - 'K' Street. The structures "g" and "h" are on separate parcels and structure "f" has an existing accessory dwelling unit to the rear. At the time of the charrette these properties were in a significant state of disrepair. Since the charrette, the structures identified as "f" "g" and "h" have been approved for demolition by the City.

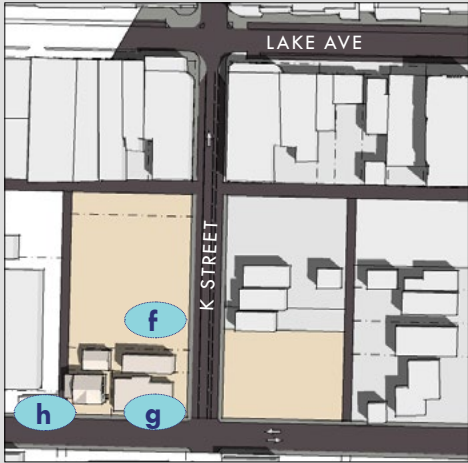


Figure 7 Images of the contributing structures along K Street.

**OPTIONS**  
**SITE 2**

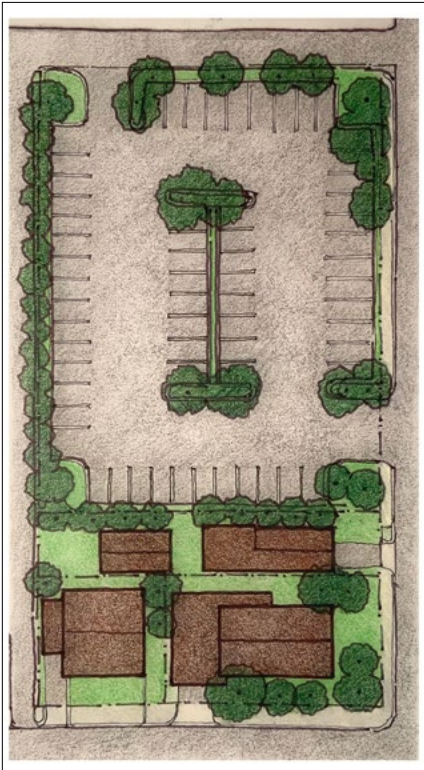


Figure 8  
Existing Conditions

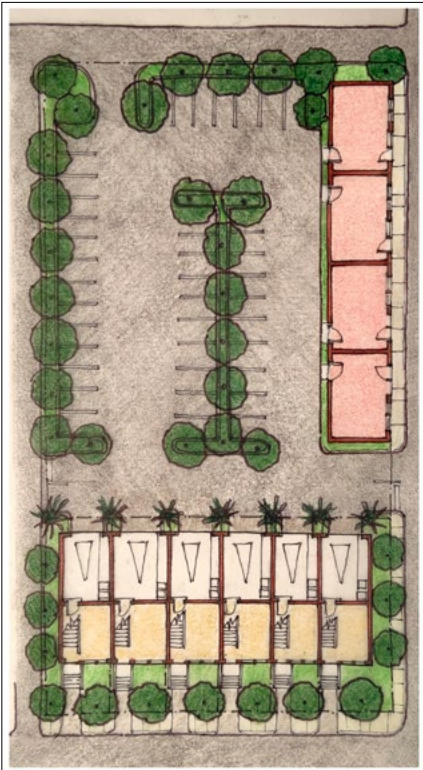


Figure 9  
First Avenue S townhouse option with liner building facing K Street

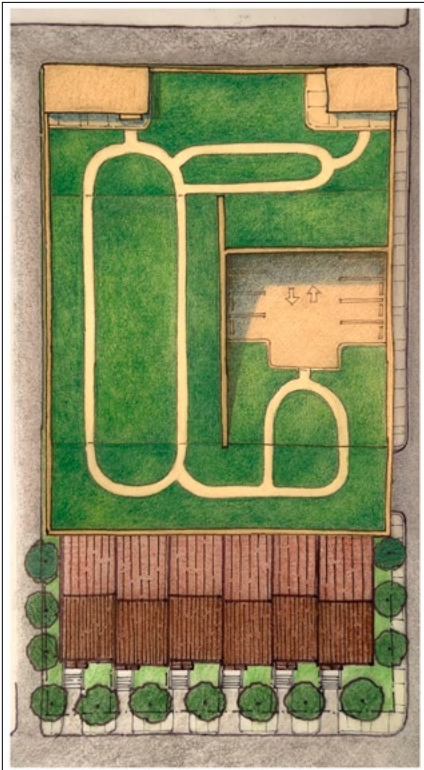
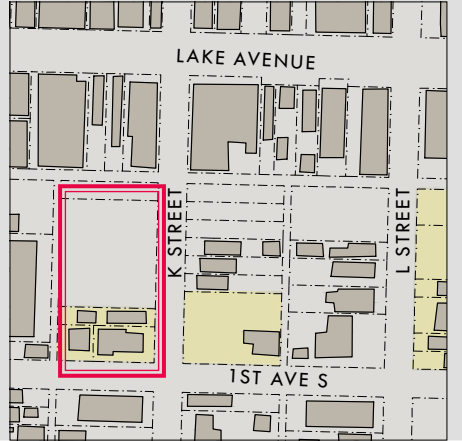


Figure 10  
First Avenue S townhouse with parking deck in the municipal parking lot

**K STREET CONCEPTS** **2**

Because of the condition of the existing buildings at Site 2, the design team proposed replacing them with a few different options for redevelopment.

The drawing to the far left is the existing conditions. The center drawing illustrates a townhouse proposal with a commercial liner building along 'K' Street. The image to the right shows townhouses on 1st Avenue South and a green-roofed parking deck.



**OPTION D**

**SITE 2**

<b>GROSS SITE AREA</b>	1.085 acres
<b>NUMBER OF TOTAL UNITS</b>	10 DU (9 du/acre)
<b>1 BEDROOM, STUDIO UNITS</b>	10 DU (loft live-work studio)
<b>TWO BEDROOMS</b>	0
<b>3+ BEDROOMS</b>	0
<b>GROSS COMMERCIAL SPACE</b>	1,840-sf
<b>PARKING SPACES</b>	88 parking spaces
<b>ON-STREET</b>	20 existing to remain
<b>SURFACE</b>	57 existing to remain
<b>STRUCTURE</b>	0
<b>SELF PARKED</b>	11 parking
<b>CONTRIBUTING STRUCTURES</b>	2 relocate & renovate (1,840-sf)

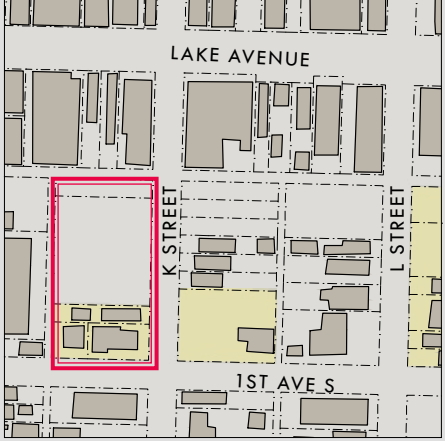
<b>ARTIST STUDIO UNIT</b>	(10 DU) 2-Story Loft Units	sf 8,250
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<b>BIERGARTEN SITE</b>	Potential historic structure relocation site
------------------------	----------------------------------------------



**K STREET CONCEPTS 2**

Option D for Site 2 proposes keeping the existing parking lot and building artist lofts facing 1st Avenue South. This concept includes a rear yard for welding and smelting if desired. There was interest during the charrette to provide more working artist space.



OPTION D  
SITE 2

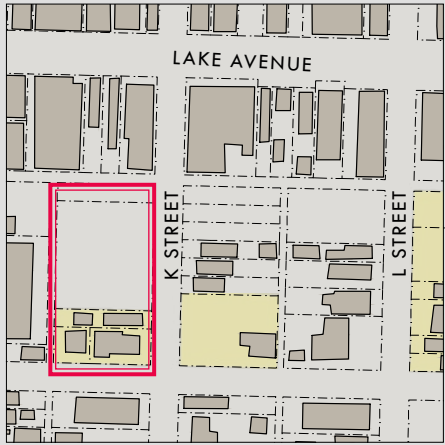


K STREET CONCEPTS 2

OPTION D SUMMARY

- Surface parking lot to remain
- Exiting on-street parking to remain, but improved with landscaped curb extensions
- Beer garden with historic structures & existing trees to remain (1,840-sf)

**\*Since the charrette, the structures identified as "f" and "h" have been approved for demolition by the City.**

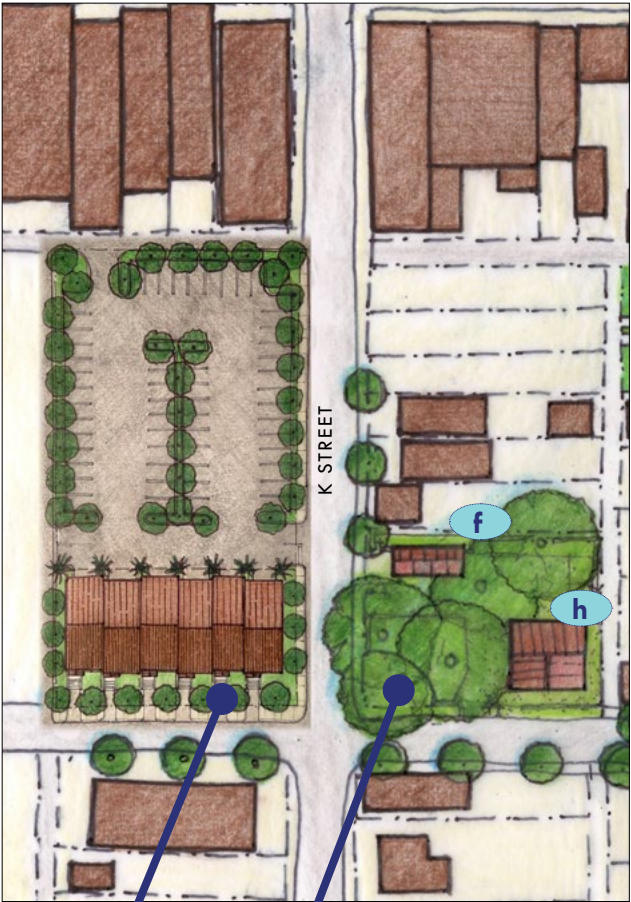


**OPTION E**  
SITE 2

<b>GROSS SITE AREA</b>	1.085 acres
<b>NUMBER OF TOTAL UNITS</b>	6 DU (6 du/acre)
<b>1 BEDROOM, STUDIO UNITS</b>	0
<b>TWO BEDROOMS</b>	0
<b>3+ BEDROOMS</b>	6 DU (townhouse)
<b>GROSS COMMERCIAL SPACE</b>	1,840-sf
<b>PARKING SPACES</b>	83 parking spaces
<b>ON-STREET</b>	20 existing to remain
<b>SURFACE</b>	57 existing to remain
<b>STRUCTURE</b>	0
<b>SELF PARKED</b>	6 in private garage
<b>CONTRIBUTING STRUCTURES</b>	2 relocate & renovate (1,840-sf)

<b>3+ BEDROOMS</b>	(6 DU) 3- Story Townhouse	sf 17,280
--------------------	---------------------------	-----------

<b>BIERGARTEN SITE</b>	Potential historic structure relocation site	
------------------------	----------------------------------------------	--

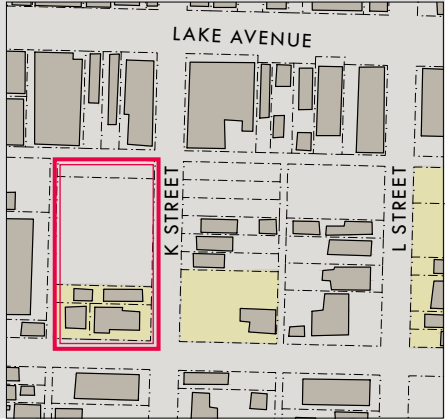


**K STREET CONCEPTS 2**

**OPTION E SUMMARY**

- 6 self parked townhouse units
- Surface parking lot to remain
- Existing on-street parking to remain, but improved with landscaped curb extensions
- Beer garden with historic structures & existing trees to remain (1,840-sf)

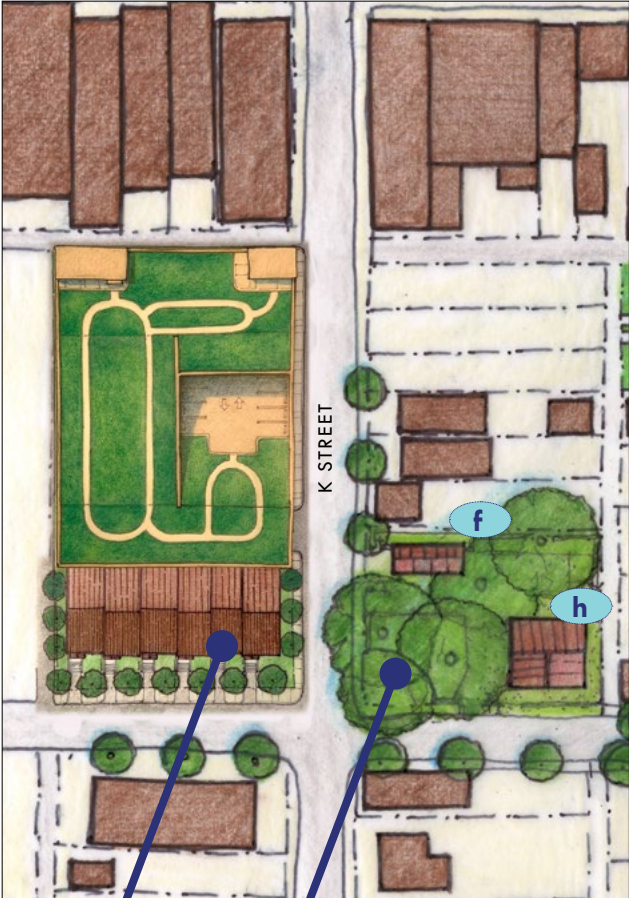
**\*Since the charrette, the structures identified as "f" and "h" have been approved for demolition by the City.**





**OPTION F**  
SITE 2

<b>GROSS SITE AREA</b>	1.085 acres
<b>NUMBER OF TOTAL UNITS</b>	6 DU (6 du/acre)
<b>1 BEDROOM, STUDIO UNITS</b>	0
<b>TWO BEDROOMS</b>	0
<b>3+ BEDROOMS</b>	6 DU (townhouse)
<b>GROSS COMMERCIAL SPACE</b>	4,400-sf
<b>PARKING SPACES</b>	166 parking spaces
<b>ON-STREET SURFACE</b>	+/- 20 existing to remain
<b>STRUCTURE</b>	+/- 140
<b>SELF PARKED</b>	6 in private garage
<b>CONTRIBUTING STRUCTURES</b>	2 relocate & renovate (1,840-sf)



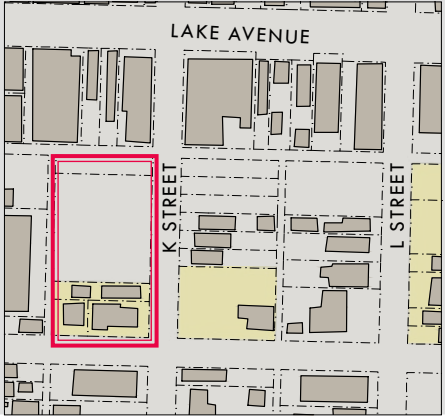
<b>3+ BEDROOMS</b>	(6 DU) 3- Story Townhouse	sf 17,280
<b>BIERGARTEN SITE</b>	Potential historic structure relocation site	

**K STREET CONCEPTS 2**

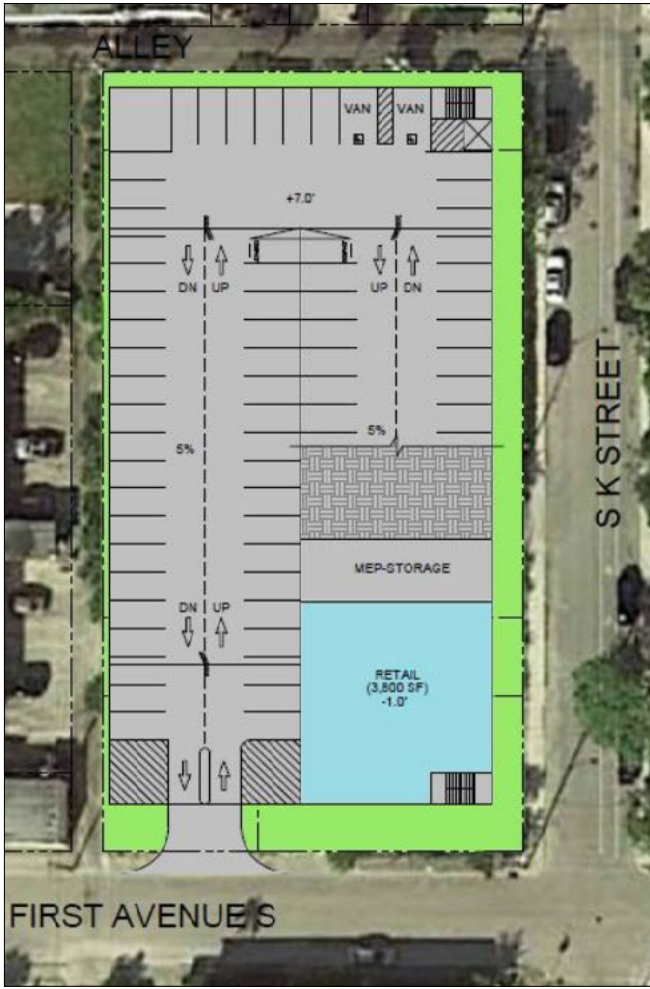
**OPTION F SUMMARY**

- 6 self parked townhouse units
- New Structured parking with green active use rooftop
- Exiting on-street parking to remain, but improved with landscaped curb extensions
- Small commercial linear (5,400-sf)
- Beer garden with historic structures & existing trees to remain (1,840-sf)

**\*Since the charrette, the structures identified as "f" and "h" have been approved for demolition by the City.**

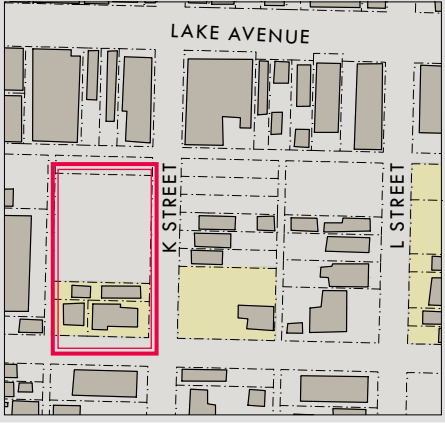


**OPTION G**  
SITE 2



**K STREET CONCEPTS** 2

- OPTION G SUMMARY**
- Hired by the CRA, WGI produced concepts for a public parking garage on Site 2.
  - WGI Option 3 develops the entire site from the alleyway to 1st Ave. South to create a public parking garage with a retail space on the ground level.
  - 4 levels of public parking
  - 256 parking spaces
  - 3,800sf of ground level retail space



### 1ST AVENUE CONCEPTS

The CRA owns the vacant parcel at the northeast corner of 1st Avenue South and 'K' Street. While not part of the 2020 Request for Proposals, the fact that the parcel is in public ownership, is vacant, and sits between sites 1 and 2 of this study led the design team to include it in the public discussion.

The community provided many ideas for this site: a public pool, a park and play ground, and even more municipal buildings. One idea that seemed interesting and plausible was for this parcel to become a receiving site for any of the existing contributing structures that might need to be relocated in order to accommodate more efficient redevelopment at Sites 1 and 2. Since the charrette process these buildings have been approved for demolition by the CRA with support from the City.

Along with that theme developed the idea of a Biergarten - a German concept of an indoor/outdoor restaurant and ale house. It was thought that was concept fit nicely with the bohemian artistic culture of Lake Worth Beach.

Currently the CRA is studying the site for an affordable housing concept. Drawings for the redevelopment of this site are currently underway.

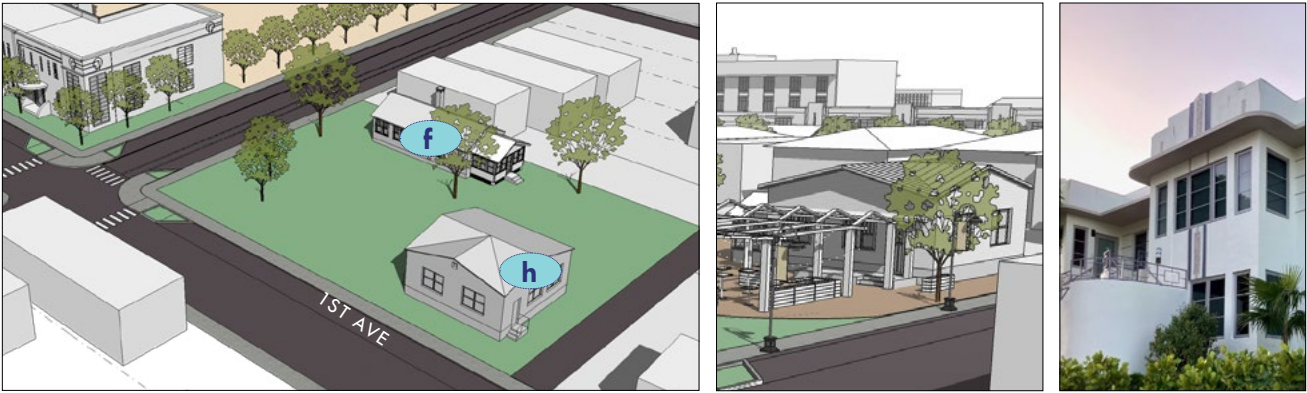
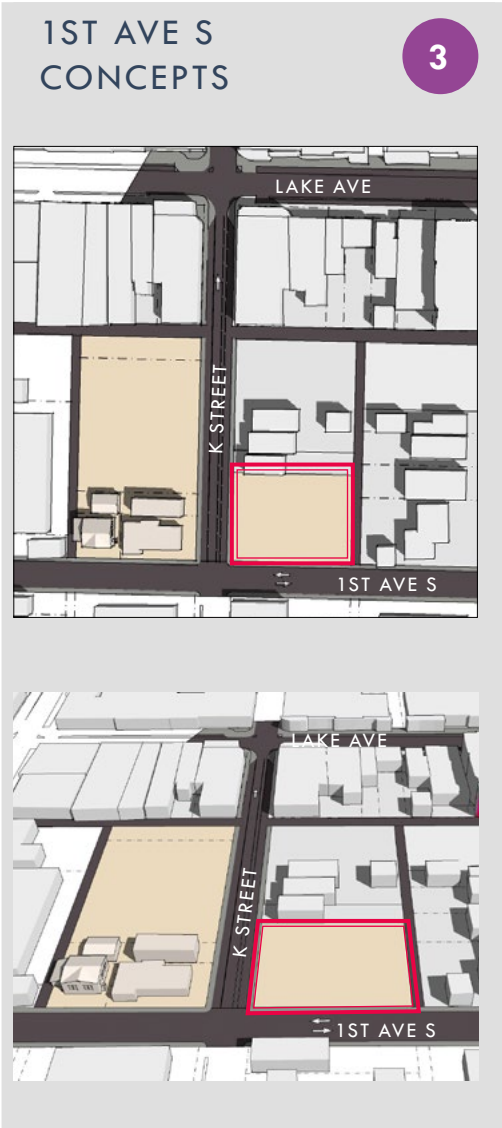


Figure 11 Biergarten Concept with relocation and rehabilitation of contributing structures. For photographs of the existing structures see "Figure 7 Images of the contributing structures along K Street." on page 31

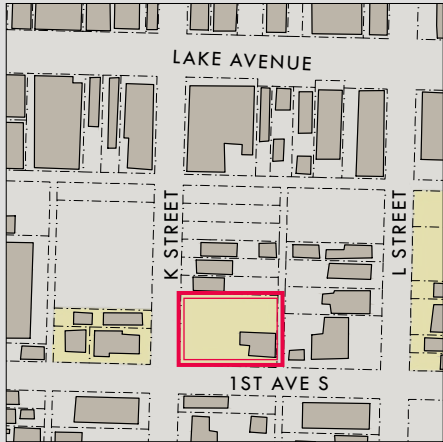
OPTION  
SITE 3



1ST AVE S  
CONCEPTS



The image to the left illustrates the Biergarten concept looking to the northeast from the corner of 'K' Street and 1st Avenue South. Below is a location map for the site highlighted in red.



OPTION  
SITE 3



FIGURE 14 AFFORDABLE HOUSING MICRO UNITS  
LOCATED IN WEST PALM BEACH, FL



FIGURE 13 RAILROAD AVE. APARTMENTS  
LOCATED IN WINTER PARK, FL

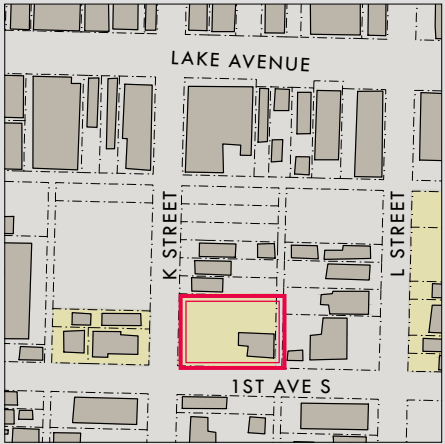


FIGURE 12 HERITAGE TRUST RENOVATION  
LOCATED IN MIAMI BEACH, FL

1ST AVE S  
CONCEPTS



Images to the left represent local affordable housing options in South Florida. The discussion of developing affordable housing on the site is ongoing, and drawings for this concept are currently being developed by a not for profit agency.

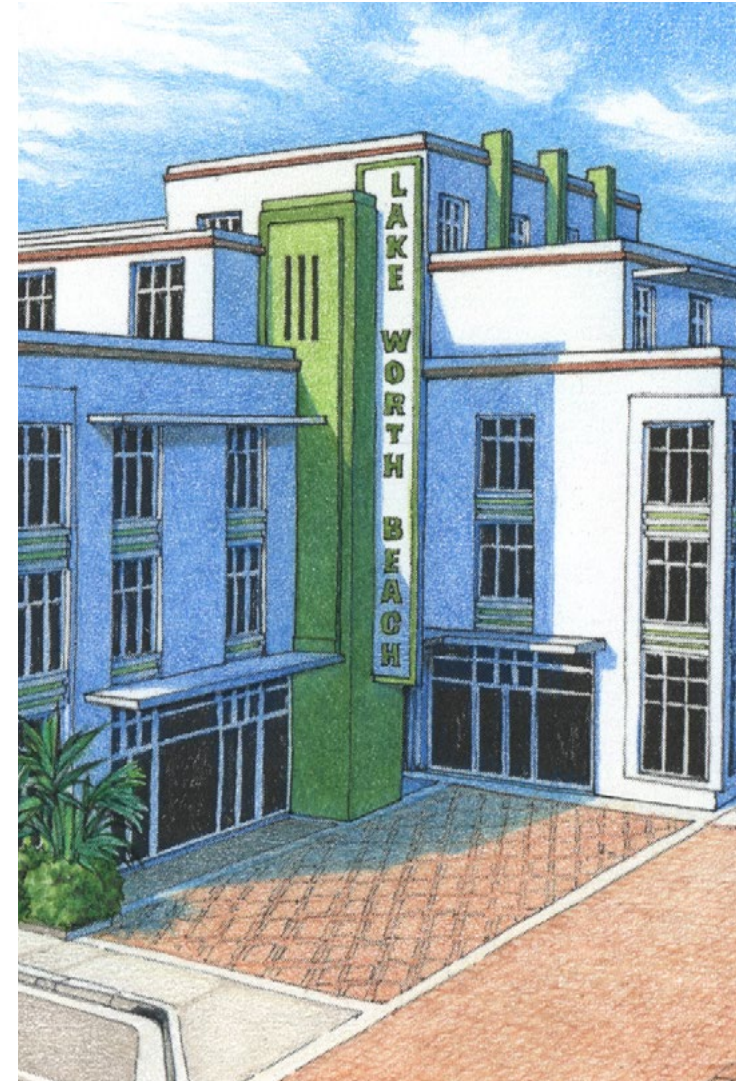


## SCENARIO ANALYSES

A critical component of this planning study is to test the financial feasibility of the recommended proposals. Considering the innumerable internal and external factors (no precise design proposal, restoration and/or relocation of existing contributing structures, material and labor costs, inflation, and increasing interest rates) it is impossible to provide precise project costs at this conceptual stage. That said, providing a planning-level financial analysis of each of the design scenarios is important to determine if the desired approaches are at all possible. Is it feasible to redevelop these sites in a small-scaled incremental fashion? And if so, what subsidies (of various types) might be required to achieve these objectives?

After the completion of the design charrette the TCRPC team re-evaluated all of design scenarios presented in Chapter II of this report. For the sake of efficiency, the decision was made to focus on Site 1 - 'L' and 'M' Street for the financial analysis. Further, scenarios B and C were determined to be the most practical from a development perspective and also the most palatable to the community. The incorporation of some, if not all, of the existing contributing structures was an important factor in making those decisions.

This section includes a summary of the financial pro-formas that were run for three design concepts (B and C and an updated scenario C) as well as the Fairfax & Sammons proposal. The Fairfax & Sammons analysis was developed because there has been so much community interest in their designs. Also included are four pro-formas (Cv3 - Cv6) incorporating various adjustments to the assumptions to make the project more economically viable.



## SCENARIO PRO-FORMAS

Illustrated here are the three scenarios for which financial analyses were developed. An early financial analysis of Scenario C resulted in slight revisions to the plan resulting in an increase in the number of residential units. The Scenario C Final Option presented in Chapter II of this report is the most current and is identified as TCRPC Option Cv6 in the following summary of financial analyses. To date this is the recommended option because it provides the greatest mix of units while maintaining the scale and character of the historic district.



Figure 15 The plate above is of Scenario B from the design charrette



Figure 16 The rendering above is of the Fairfax & Sammons counter proposal

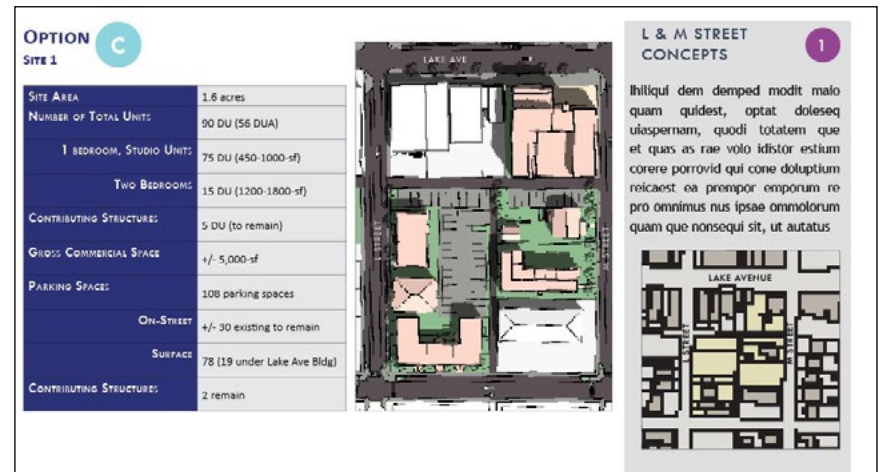


Figure 17 The plate above is of Scenario C from the design charrette

### III. DESIGN SCENARIO ANALYSES

Below is a summary of the results of the financial analyses for the four different options. As discussed earlier, TCRPC Option Cv2 is the most current version of that scenario and is the concept presented earlier in this report. TCRPC Option C was an earlier version of the plan and that analysis resulted in revisions to generate more residential units hence the generation of TCRPC Cv2. A discussion of these findings, and options for improving development conditions and potential City and CRA participation are discussed on the following page.

	TCRPC Option C v2	TCRPC Option C	TCRPC Option B	Fairfax Plan
Units	91	79	64	65
New Units	84	79	54	54
Units in Existing Buildings	7	0	10	11
Average Unit Size (sf)	601	638	664	908
Commercial Sf	5000	7100	7100	5805
Parking Spaces	108	108	115	
<b>Total Costs</b>	<b>\$ 22,147,959</b>	<b>\$ 21,414,284</b>	<b>\$ 19,218,355</b>	<b>\$ 23,163,399</b>
Vertical	\$ 12,289,000	\$ 11,637,367	\$ 9,957,153	\$ 11,623,343
Land	\$ 4,650,000	\$ 4,650,000	\$ 4,650,000	\$ 4,650,000
Hard Land Dev	\$ 1,089,850	\$ 1,073,850	\$ 998,750	\$ 1,475,845
Soft Land Dev	\$ 1,667,976	\$ 1,641,271	\$ 1,499,058	\$ 2,197,984
TI Allowance and Leasing	\$ 176,728	\$ 250,889	\$ 250,889	\$ 174,150
Construction Mgmt, GC OH, Supervision	\$ 1,605,462	\$ 1,525,346	\$ 1,314,708	\$ 1,594,717
Construction Contingency	\$ 668,943	\$ 635,561	\$ 547,795	\$ 797,359
<b>Total Revenue Year 4 (Stabilization)</b>	<b>\$ 1,856,336</b>	<b>\$ 1,749,108</b>	<b>\$ 1,339,374</b>	<b>\$ 1,705,975</b>
<b>Net Operating Income Year 5</b>	<b>\$ 1,081,414</b>	<b>\$ 967,310</b>	<b>\$ 781,254</b>	<b>\$ 991,200</b>
Debt Service Coverage Year 3	0.65	0.60	0.63	0.84
Return on Equity	-18.02%	-25.20%	-22.43%	-29.66%
<b>Pre-tax Profit with Year 5 Exit</b>	<b>(\$4,941,140)</b>	<b>(\$5,951,949)</b>	<b>(\$4,940,296)</b>	<b>(\$5,362,958)</b>
<b>Equity Multiple (Yx)</b>	<b>-0.74</b>	<b>-0.93</b>	<b>-0.86</b>	<b>-0.77</b>





## PRO-FORMA SUMMARY

The summary of the design scenario financial analyses on the previous page includes:

- The proposed development program for each option
- Total project costs (total hard and soft development costs, cost of the land, leasing, management, etc.)
- Year 4 stabilization revenue (assumes two years of construction and two years of leasing - ideally 94% occupancy at year 4)
- Debt service coverage (ratio of net operating income to debt ratio - lenders look for a revenue to debt ratio of at least 1.2)
- Return on equity (assumes developer sells project after 5 years as a percentage)
- Pre-tax profit at year 5 exit (return on equity at year 5 sale in dollars versus percentage)

Focusing on TCRPC Cv2 in the financial summary, the total project cost is \$22,147,859 which includes \$4,650,000 (full recovery of the City and CRA purchase expenditures) for the 'L' and 'M' properties. The debt service coverage in year 3 is only 0.65 (versus the lender goal of 1.2). The return equity in the year 5 exit (sale) is -18.02% or a net loss of \$4,941,140. This is clearly not a desirable project as outlined. There are, however, variables to consider and some assumptions made in developing the analysis that could be adjusted.

The rental rates incorporated in the analysis range from \$2.22/sf to \$2.73/sf. This equates to a monthly rent of \$1,445 per month for a 530 sf unit and \$2,195 per month for a 900 sf unit. These rental rates were established during the charrette in April 2022 using CoStar data sources looking at local comparable project rental rates. These are considered market rate and could be adjusted upwards to improve the financial feasibility of the project. The provision of affordable housing (or units at a reduced rate) however would require some degree of subsidy.

A major factor in the results of the financial analyses is the cost of the land. One option is for the City or the CRA to consider a long-term ground lease for the land for 75-99 years instead of selling the land outright. This requires less developer investment up front. The developer may not sell the project in 5 years for as much as if they owned the land but it might make the project doable.

Additional analyses (TCRPC Options Cv3-Cv6) were conducted to understand what modifications to the project costs are necessary (land cost reduction, long-term lease, increased rental rates, etc.) to make the project work. Version TCRPC Cv6 is the "Option C Final Version" concept plan found in Chapter 2 of this report. The results of that additional analysis is provided on the next page.

### III. DESIGN SCENARIO ANALYSES

This table is a revised summary of the scenario pro-formas including a new model run for TCRPC Option Cv3 - Option Cv6. Both of the new model runs maintain the same design and development program as the earlier versions. This most recent analysis adjusts the model inputs until the project is attractive for investors. A more detailed discussion on TCRPC Options Cv3 - Cv6 is provided on the following page.

	New Option C v6	TCRPC Option C v5	TCRPC Option C v4	TCRPC Option C v3	TCRPC Option C v2	TCRPC Option C	TCRPC Option B	Fairfax Plan
Units	87	96	91	91	91	79	64	65
New Units	80	89	84	84	84	79	54	54
Units in Existing Buildings	7	7	7	7	7	0	10	11
Average Unit Size (sf)	683	621	601	601	601	638	664	908
Average Residential Rent/Unit	\$ 1,935	\$ 1,820	\$ 1,785	\$ 1,785	\$ 1,587	\$ 1,668	\$ 1,705	\$ 1,966
Average Residential Rent/sf	\$ 2.80	\$ 2.90	\$ 2.94	\$ 2.94	\$ 2.61	\$ 2.62	\$ 2.57	\$ 2.30
Commercial Sf	5000	5000	5000	5000	5000	7100	7100	5805
Parking Spaces	108	108	108	108	108	108	115	
Total Costs	\$ 20,670,705	\$ 20,721,687	\$ 17,405,248	\$ 19,445,124	\$ 22,147,959	\$ 21,414,284	\$ 19,218,355	\$ 23,163,399
Vertical	\$ 13,305,960	\$ 13,333,693	\$ 12,289,000	\$ 12,289,000	\$ 12,289,000	\$ 11,637,367	\$ 9,957,153	\$ 11,623,343
Land	\$ 2,000,000	\$ 2,000,000	\$ -	\$ 2,000,000	\$ 4,650,000	\$ 4,650,000	\$ 4,650,000	\$ 4,650,000
Hard Land Dev	\$ 1,083,450	\$ 1,097,850	\$ 1,089,850	\$ 1,089,850	\$ 1,089,850	\$ 1,073,850	\$ 998,750	\$ 1,475,845
Soft Land Dev	\$ 1,655,564	\$ 1,657,249	\$ 1,575,266	\$ 1,615,141	\$ 1,667,976	\$ 1,641,271	\$ 1,499,058	\$ 2,197,984
TI Allowance and Leasing	\$ 179,532	\$ 179,532	\$ 176,728	\$ 176,728	\$ 176,728	\$ 250,889	\$ 250,889	\$ 174,150
Construction Mgmt, GC OH, Supervision	\$ 1,726,729	\$ 1,731,785	\$ 1,605,462	\$ 1,605,462	\$ 1,605,462	\$ 1,525,346	\$ 1,314,708	\$ 1,594,717
Construction Contingency	\$ 719,471	\$ 721,577	\$ 668,943	\$ 668,943	\$ 668,943	\$ 635,561	\$ 547,795	\$ 797,359
Total Revenue Year 4 (Stabilization)	\$ 2,211,587	\$ 2,288,709	\$ 2,188,530	\$ 2,124,786	\$ 1,856,336	\$ 1,749,108	\$ 1,474,972	\$ 1,672,524
Annual Ground Lease Payments (Initial)	\$ -	\$ -	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ -
Net Operating Income Year 5	\$ 1,459,431	\$ 1,522,360	\$ 1,414,744	\$ 1,385,545	\$ 1,081,414	\$ 999,888	\$ 781,254	\$ 971,765
Debt Service Coverage Year 4	1.29	1.35	1.54	1.31	0.89	0.85	0.74	0.84
Return on Equity with Year 5 Exit	19.50%	21.74%	22.73%	20.00%	-4.48%	-8.18%	-22.43%	-29.66%
Pre-tax Profit with Year 5 Exit (Sale)	\$8,903,178	\$10,282,750	\$9,205,664	\$8,661,744	(\$1,518,413)	(\$2,529,222)	(\$4,940,296)	(\$5,362,958)
Equity Multiple (Yx)	1.44	1.65	1.76	1.48	-0.23	-0.39	-0.86	-0.77
Annual TIF Payments Years 2-11	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	0	0	0	0

## PRO-FORMA SUMMARY FINAL

The summary on the previous page illustrates all of the design scenario financial analyses conducted for the project including the latest and preferred Option Cv6. Highlights of those revised options are listed below:

- TCRPC Option Cv6, the preferred option, provides greater diversity in the proposed unit mix and therefore has a total reduction in units
- The TCRPC pro-forma options were developed to understand what project assumptions and model inputs must be changed to make the project financially feasible. Option Cv6, like other options, considers a land acquisition cost of \$2,000,000
- Option Cv6 adjusts the rental rates upwards by \$200/month across all of the units - this is an increase of \$0.33/sf per unit from \$2.61/sf to \$2.94/sf
- A \$50,000/year Tax Increment Financing (TIF) reimbursement from the CRA to the developer is maintained as part of the financial equation for Option Cv6
- The CRA is scheduled to sunset in 8 years in 2030 so an extension to the CRA lifespan would need to be considered if Cv6 is preferred
- Debt service coverage for Option Cv6 is 1.29 which exceeds the lender minimum of 1.2
- Option Cv6 return on equity at year 5 exit is 19.50% which is at the lower range for investor interest

TCRPC Option Cv6 which has been adjusted from previous options to include larger units is potentially feasible considering the adjustments listed above. It is very important to note the following considerations as well:

- The financial modeling for all of the scenarios was begun during the design charrette in April 2022 and do not reflect recent increases in lending interest rates and the impacts of inflation
- These financial models also do not reflect the most recent City of Lake Worth Beach affordable housing and sustainable building practices ordinances which were adopted on Thursday, October 6, 2022. It is very likely that the requirements of these policies will make projects more expensive to build in downtown and negatively impact these financial analyses

#### CRA Owned Properties to be demolished – Fiscal Year 2022/2023

- 704 1<sup>st</sup> Avenue South
- 710 1<sup>st</sup> Avenue South
- 25 South 'K' Street
- 509 Lake Avenue
- 30 South 'L' Street
- 32 South 'L' Street



As already mentioned, it is important to consider the external factors affecting development costs as well. Since the charrette in April 2022 interest rates have increased significantly, inflation has increased, and the effect on material and labor costs due to the impact of Hurricane Ian are yet to be known.

It is also important to recognize that simply making bigger buildings may not be the solution either. Clearly there was opposition to the larger building proposed through the prior RFP process. In addition, the ability to surface park smaller projects removes the exorbitant costs of structured parking that would come with a larger building.

Since the charrette, the City conducted cost estimates for the renovation of the contributing structures on sites 1 and 2. The determination was made to demolish six structures identified in the map to the left. These demolitions are compatible with the Option C proposal for Site 1 (i.e. Option C assumes that structures “d” and “e” are removed). Structures “f”, “g”, and “h” are to be removed on Site 2.

### KEY RECOMMENDATIONS & IMPLEMENTATION

This chapter focuses on key recommendations and implementation strategies to help ensure that the community input and vision provided throughout the charrette process can be achieved. Providing recommendations and guidance for the creation of a new Request for Proposals (RFP) for all or some of the L, M, and K Street sites has been a core objective of this effort since its inception. This chapter is organized into separate sections to assist with developing the future RFP:

#### DESIGN OBJECTIVES

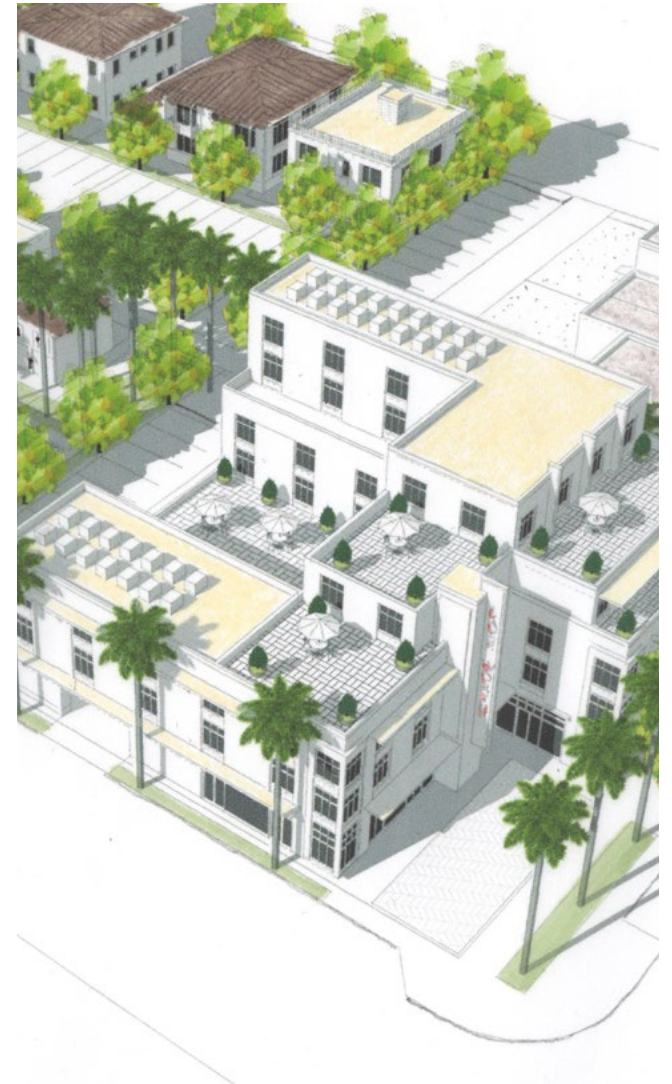
What are the key design and development priorities for these sites as expressed by the community through the public planning process?

#### POLICY RECOMMENDATIONS

What policy and code modifications are recommended through this effort to inform the RFP process? A series of diagrams and Land Development Regulation modifications are provided to clarify expectations. Particular elements include building height, densities, provision of open spaces, and maximum building footprints. These recommendations are proposed to be limited to the Old Town Historic District.

#### RECOMMENDED DEVELOPMENT STRATEGIES

A series of specific development strategies are provided in a prioritized checklist for the City and CRA to consider when developing the criteria for a future RFP. These include some of the TCRPC Option Cv3 - TCRPC Option Cv6 financial findings outlined in [Chapter III](#).



### DESIGN OBJECTIVES

#### INCREMENTAL DEVELOPMENT

There was public consensus during the charrette process that a smaller, more incremental development pattern is preferred on the subject properties. The tendency for new developments to have larger, sometimes block-sized footprints was deemed inappropriate for the Old Town Historic District. The development scenarios provided in this report and their accompanying financial analysis illustrate those objectives. The image to the right shows a proposed street facade of smaller walk up apartment buildings. If density restrictions are relieved within the study area, a greater number of smaller units in smaller buildings might be achievable.



Figure 18 View looking east

DESIGN OBJECTIVES

MISSING MIDDLE

There is a popular planning concept that has emerged in the last decade that promotes smaller incremental development referred to as the “Missing Middle”. The illustration to the right, developed by Opticos Design, Inc. in Berkley, California clearly illustrates the range of building types and development patterns within the missing middle. As defined by the Opticos group, “Missing Middle Housing is a transformative concept that highlights the need for diverse, affordable housing choices in sustainable, walkable places.”



Figure 20 Missing Middle Housing graphic credit: Opticos Design, Inc.

Similarly, small scale retail and opportunities to grow from start-up to a permanent long-term business were desired. The image below illustrates incremental retail options and how they can grow from temporary to permanent.



Figure 19 Incremental Retail credit: Thomspson Placemekng

DESIGN OBJECTIVES

CONCEALED AND EXPOSED PARKING

The provision of adequate vehicle parking is an essential component of maintaining healthy and vibrant business environments. The quantity and location of on-site parking requirements can also become a detriment to pedestrian movements and the quality of a place. Conventional standards of front-loaded parking lots, and the requirement of an over-abundance of parking spaces, has resulted in the degradation of the public realm and made the pedestrian and non-motorized environments challenging. Buildings located closer to the street are easier to access by transit users and other pedestrians and bicyclists.

The existing Lake Worth Beach code regulates a good urban approach to the provision of parking. The future RFP should include parking location diagrams, similar to the ones to the right, that clearly identify appropriate parking locations.

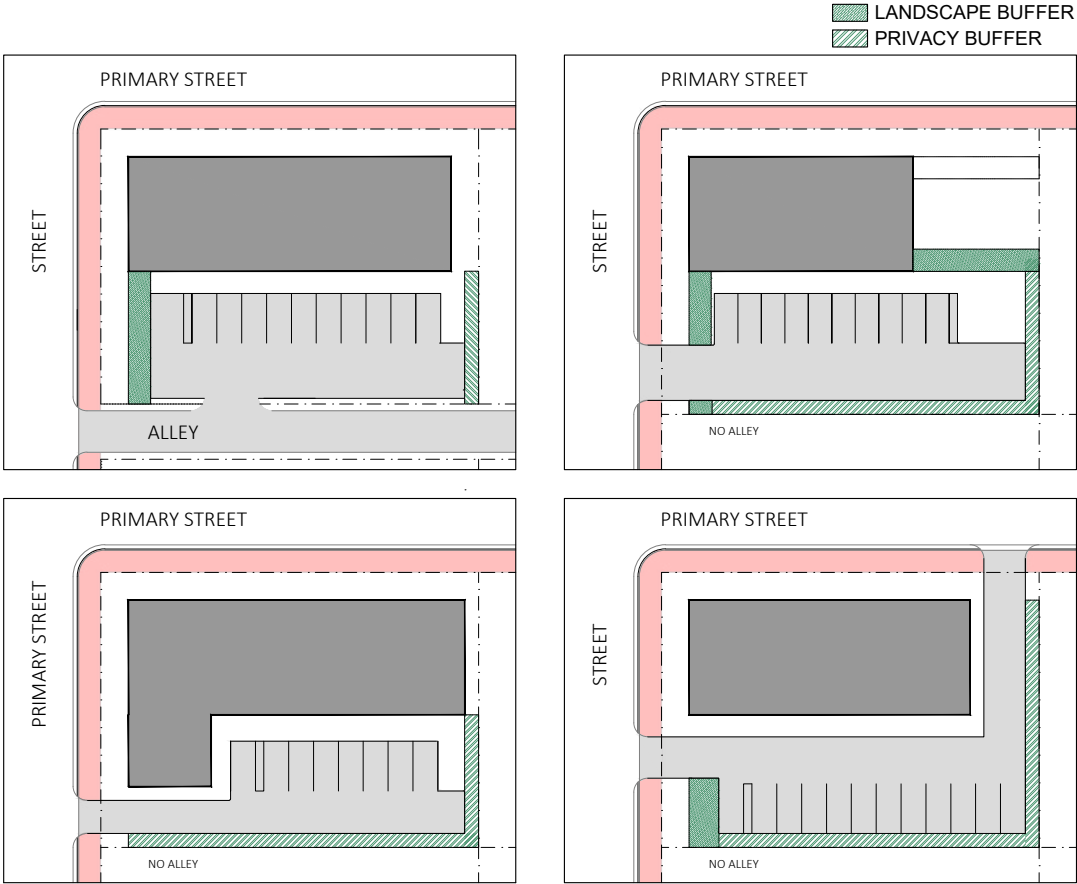


FIGURE 21 PARKING LOCATIONS



DESIGN OBJECTIVES

SMALLER AND MORE AFFORDABLE UNITS

The provision of affordable housing, in Palm Beach County and the region, is increasingly challenging. The dramatic increase in real estate values and the reluctance of many communities to accept higher densities or more residential development at all has exacerbated the issue. The City of Lake Worth Beach is confronting the same affordability issues and, as of the writing of this report, approved a new affordable housing ordinance in October 2022.

There are great debates about whether all areas of a city should be required to provide affordable housing. Is it necessary to require affordable units on the most valuable properties (i.e. Main Street) if those units can be more feasibly provided a block away and still provide easy access to shopping and transit?

This report recommends exempting the small Old Town Historic District from affordable housing requirements and also exempting the district from maximum density requirements. This strategy is proposed to accommodate a greater number of smaller units in buildings that are more contextual with the district.



Figure 22 Missing middle housing types credit: Opticos Design, Inc., TCRPC



## POLICY RECOMMENDATIONS

The City of Lake Worth Beach has a very sophisticated urban code that prioritizes the creation of memorable places and emphasizes sustainability at all levels. This particular project is limited to the previously discussed parcels on South “K” Street and the block between South “L” Street and South “M” Street. All of the parcels examined in this report have a DMU (Downtown Mixed-Use East) Future Land Use designation. The parcels at the southwest corner of South “M” Street and Lake Avenue have a zoning designation of DT (Downtown) which permits a base building height of two-stories and a maximum density of 40 du/acre. Additional density and a building height of up to five-stories is achievable by utilizing the city’s sustainability bonuses.

The remaining parcels have a zoning designation of MU-E (Mixed-use East) which permits a base building height of two-stories and a maximum density of 30 du/acre. Additional densities and height of up to four stories is achievable through the sustainability incentives.

The existing parking rate requirements for the downtown zoning districts are fairly progressive and have shared-use reductions built into the regulations today.



POLICY RECOMMENDATIONS

OLD TOWN HISTORIC DISTRICT

All of the parcels examined in this report are located within the Old Town Historic District (see image to the right). The Old Town Historic District is one of six historic districts within the city and was established by city ordinance in 1996. As part of the district, modifications, additions, and new construction on the subject parcels are reviewed by the city’s Historic Resources Preservation Board and are to be consistent with the City of Lake Worth Beach Historic Preservation Design Guidelines. In addition, improvements and new construction must comply with the U.S. Secretary of the Interior standards for historic preservation.

As the only historic district in downtown, it is not an exaggeration to suggest that the parcels within the Old Town Historic District are some of the most sensitive to redevelopment within the city. As new development is proposed in this district a heightened degree of predictability and compatibility with the existing context is warranted. The public opposition to the previous “Element” RFP submittal for the subject properties, which engendered this planning effort, is evidence of the community’s desire to maintain the historic character of the area.

As is outlined earlier in this chapter, the community input gained during the charrette process overwhelmingly supported a smaller, more incremental infill development at the South “K” Street and South “L” and “M” Street parcels. The financial analyses of the different redevelopment scenarios provided in Chapter III of this report illustrate the difficulties in achieving the desired development pattern while providing a project that is financially feasible. A series of policy and code recommendations are provided on the following page for consideration by the City Commission and staff. These are in no way a critique of existing policies and regulations but rather suggest ways to tailor those requirements to this unique and defined downtown historic district.



Figure 23 Image: Map of the Old Town Historic District



Figure 24 This image is of the beautifully restored 14 South “M” Street structure which currently houses the city’s Leisure Services Dept.



## POLICY RECOMMENDATIONS

### OLD TOWN HISTORIC DISTRICT

Throughout this planning effort the design team considered, and debated, many modifications to existing regulations and policies to achieve the desired redevelopment objectives. While it may seem counter-intuitive, achieving greater predictability may require loosening some of the current restrictions. Below is a list of potential strategies for consideration in the Old Town Historic District.

1. Remove all maximum density requirements within the district. This would allow for a greater number of smaller units and potentially increase affordability.
2. Exempt the district from all existing sustainability incentive requirements.
3. For those properties facing Lake and Lucerne Avenues allow three-story building height as of right. Allow for up-to five stories with the provision of 15% civic open space as defined in this document. Maximum building footprint not to exceed 15,000 sf.
4. For those properties facing the N-S side streets south of Lake Avenue allow up-to three stories as of right with a maximum building footprint of 5,000 sf.
5. Reduce parking requirements to 1 space per unit and 2 spaces per 1,000 sf. of non-residential uses. Allow for off-site and on-street parking accommodations.
6. Exempt the Old Town Historic District from the recently approved affordable housing and sustainable building ordinances. While these are excellent policies for the city to pursue, there is concern that within the limited area of the district where land values are very high and the expectations are for smaller buildings with high quality architectural design aesthetics, those policies will make it very difficult to achieve the redevelopment goals outlined in this document.



Figure 25 Lake Worth Beach Historic Preservation Design Guidelines



Figure 26 Historic Art Deco in Downtown Lake Worth Beach

POLICY RECOMMENDATIONS

BUILDING HEIGHT

The height of buildings shall be measured in and regulated by the number of stories. Stories are measured from the floor to the bottom of the lowest structural member that supports the story above, see Figure 27.

- The ground story of commercial or mixed-use buildings shall be 10 feet to 18 feet tall.
- The ground story of residential buildings shall be from 9 feet to 14 feet tall.
- Each story above the ground story in all buildings must be from 8 feet to 12 feet tall; any upper story taller than 12 feet will count as two stories for the purpose of measuring building height.
- Mezzanines that exceed 15% of the floor area are counted as stories for the purpose of measuring height.

FIGURE 28 BUILDING HEIGHT		
A	Maximum Number of Stories	5 Stories
B	Ground Floor Finish Level	18" min.
C	Ground Story Height	10' min. / 18' max.
D	Upper Story Height	8' min. / 12' max.
E	Parapet Height <sup>1</sup>	Existing zoning applies

<sup>1</sup> Structures for the housing of elevators, stairways, skylights, or similar facilities are permitted if necessary to conceal rooftop utilities. May be erected no more than forty (40) percent above the measured building height of the building on which such structures are located.

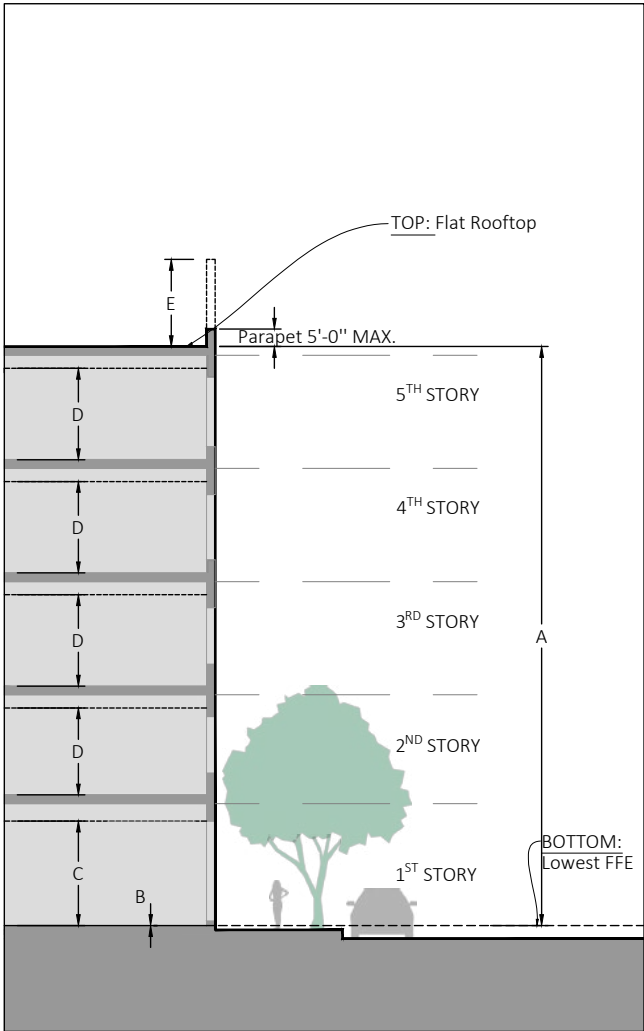


FIGURE 27 MEASURING BUILDING HEIGHT

POLICY RECOMMENDATIONS

BUILDING HEIGHT

Regulating building height by the number of stories, rather than the number of feet, results in a built scale that is predictable to both lay-people and potential developers. Limiting overall building height solely by it's height in feet can inadvertently encourage developers to maximize building height, and then subdivide into as many stories as possible. Conversely, limiting building height by the number of stories results in authentic architectural variation among buildings and higher, more desirable ceiling heights.

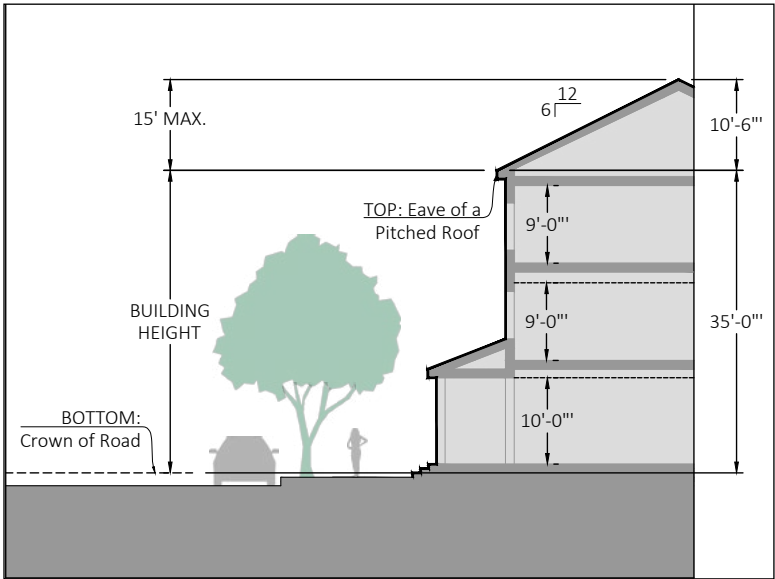


FIGURE 29 BUILDING HEIGHT

POLICY RECOMMENDATIONS

CIVIC OPEN SPACE

Civic open space requirements, particularly when provided as an incentive for greater development, must be clearly defined as usable public open space in the form of parks, greens, and public squares. The included alternative civic open space configurations, diagram is a potential tool to more clearly define how future development civic open space requirements should be delivered.

Even smaller civic open spaces in urban environments can provide surprisingly desirable places for respite, dog walking, or outdoor dining.

The diagrams to the right define a variety of civic open space types and provide dimensional criteria. Every effort should be made, especially where building height incentives are considered to provide civic open spaces of the highest quality.

The parameters described in this table should be considered a practical guide and not limit creativity or application.

	SIZE	DESCRIPTION	ILLUSTRATION
<b>SQUARE</b>	≥ 10,000 sf	A square adjoins streets on at least three sides. Squares may be up to 50% hardscaped, with formal landscaping and shade trees. Squares accommodate both passive uses and community gatherings.	
<b>ATTACHED GREEN</b>	2,000 to 6,000 sf	An attached green spans the entire length of a block. Attached greens shall be at least 30 feet wide and are appropriate on the short end of a block. Attached greens are primarily lawns with formally arranged landscaping and shade trees.	
<b>COURTYARD</b>	Courtyard space ratio of height to width: Min. = 1:1 Max. = 1.5:1	An uncovered area for pedestrians partly or wholly enclosed by buildings or walls and used primarily for supplying access, light, and air to abutting buildings.	
<b>GREEN</b>	1,000 to 5,000 sf	A continuous area for pedestrians which is open from the ground level to the sky for its entire width and length, the primary feature of which is a landscaping scheme that incorporates garden elements including trees, palms, shrubs, or ground cover, as well as water elements including a fountain or pond.	
<b>PLAZA</b>	1,000 to 43,000 sf	Fronts on the street and is directly accessible to the public at all times for use by the public for passive recreational purposes. The ground level of the plaza shall be constructed principally of hard-surfaced materials. An existing unimproved area between or next to a building or buildings shall not qualify. Should not be near another plaza.	
<b>PLAYGROUND</b>	There is no minimum or maximum size	An open space designed and equipped for the recreation of children, and should be fenced and may include an open shelter. Playgrounds may be included in parks and greens.	

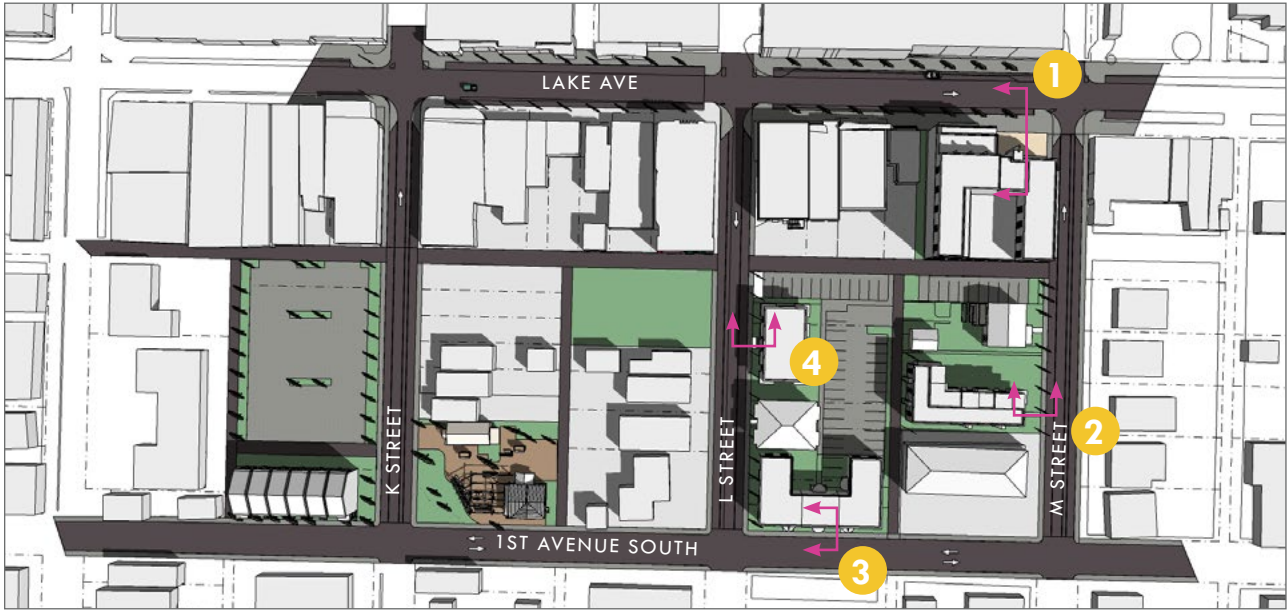
FIGURE 30 OPEN SPACE CONFIGURATIONS DIAGRAM

POLICY RECOMMENDATIONS

STREETScape

There are many different types of streets. Even within the limited study area of this report there are particular physical nuances to the existing streets that need to be appropriately addressed with new development. The following series of diagrams and street sections illustrate desired streetscape conditions surrounding the “L” and “M” block.

The plan below is a key to the detailed sections provided on the following pages. Each of the locations identified (1-4) highlight specific conditions recommended in the TCRPC Option C scenario. These, or similar, diagrams and sections should be provided as part of a future RFP so applicants have a clear understanding of how their proposal is expected to address the street.



LAKE AVE SECTION 1

Frontage includes civic open space and a maximum building height fronting a primary street

M STREET SECTION 2

3 story apartments, new landscape bulb-outs with shade trees

1ST AVE SECTION 3

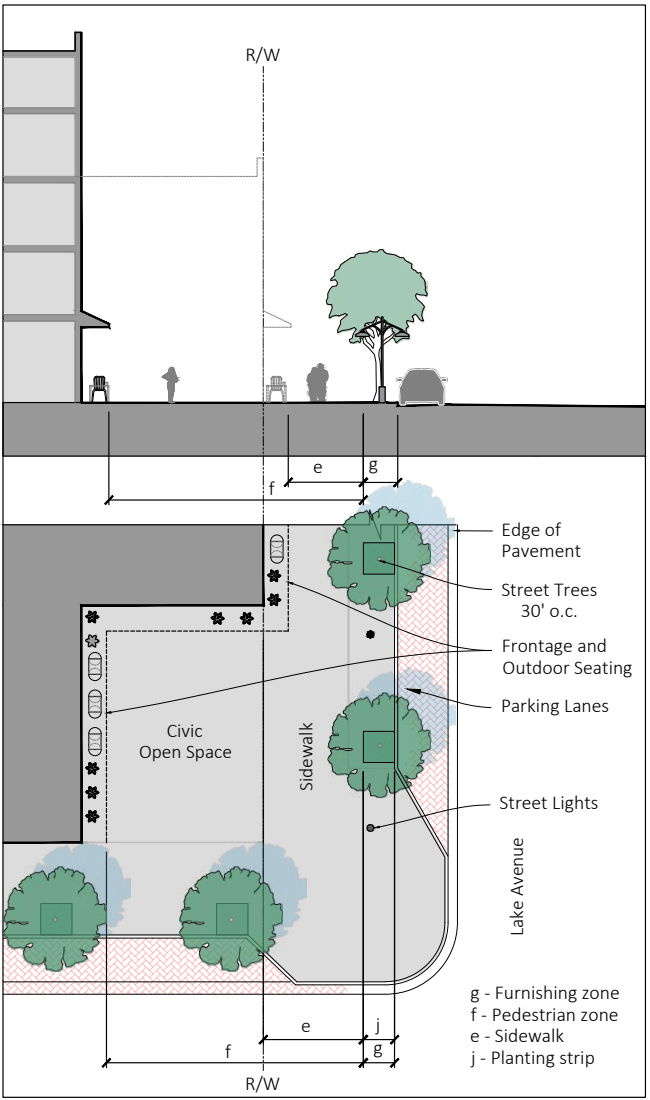
2 story loft units, new landscape bulb-outs with shade trees

L STREET SECTION 4

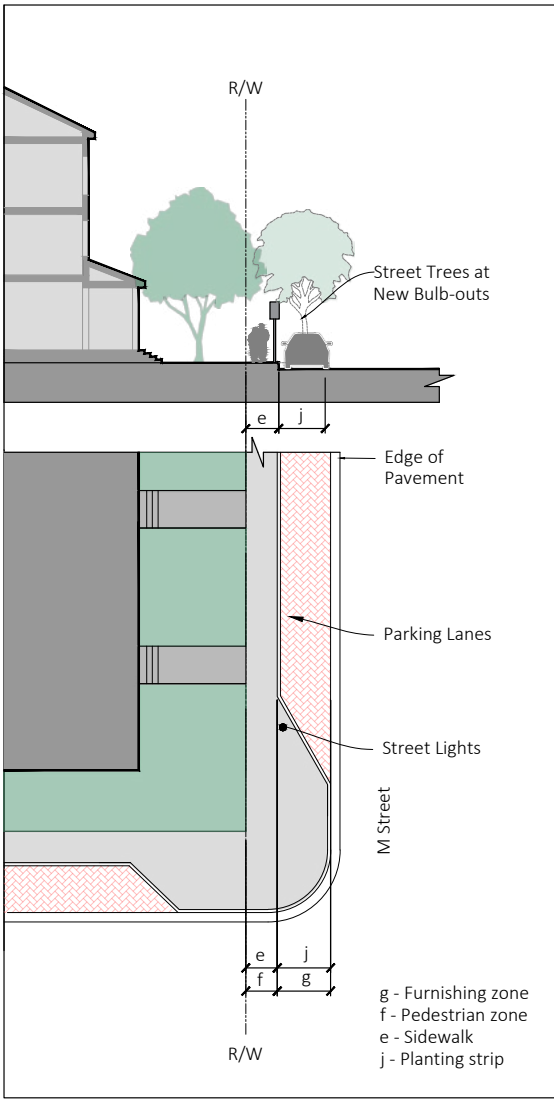
3 Story apartment, new landscape bulb-outs with shade trees



# IV. KEY RECOMMENDATIONS & IMPLEMENTATION



**FIGURE 31** LAKE AVENUE STREETSCAPE



**FIGURE 32** "M" STREET STREETSCAPE

## LAKE AVE SECTION 1

The Lake Avenue street section is the location where incentives are recommended to provide civic open space. As one of the primary main streets in Lake Worth Beach, a high quality Lake Avenue frontage is essential. The section (far left) is cut through the civic open space illustrating a plaza treatment at the corner of Lake and South "M" Street.

## "M" STREET SECTION 2

South "M" Street is more residential in character and has slightly deeper front setbacks to match the existing buildings and a residentially scaled sidewalk. This section (left) is cut through the proposed three-story residential building in TCRPC Option Cv3 scenario. On-street parking is to be maintained and enhanced if possible.



# IV. KEY RECOMMENDATIONS & IMPLEMENTATION

## 1ST AVE SECTION

3

The First Avenue South section (far left) is more urban than “L” and “M” Streets, reflecting the existing conditions. This includes smaller front setbacks and in this case the section is cut through the proposed two-story residential lofts building. On-street parking is to remain and be added on to.

## “L” STREET SECTION

4

The South “L” Street section is very similar to that of South “M” Street. There are slightly deeper front setbacks and those should be consistent with the existing historic walk up apartment building. Like the other sections, corner bulb outs should be considered at the intersections to capture the on-street parking and reduce pedestrian crossing distances.

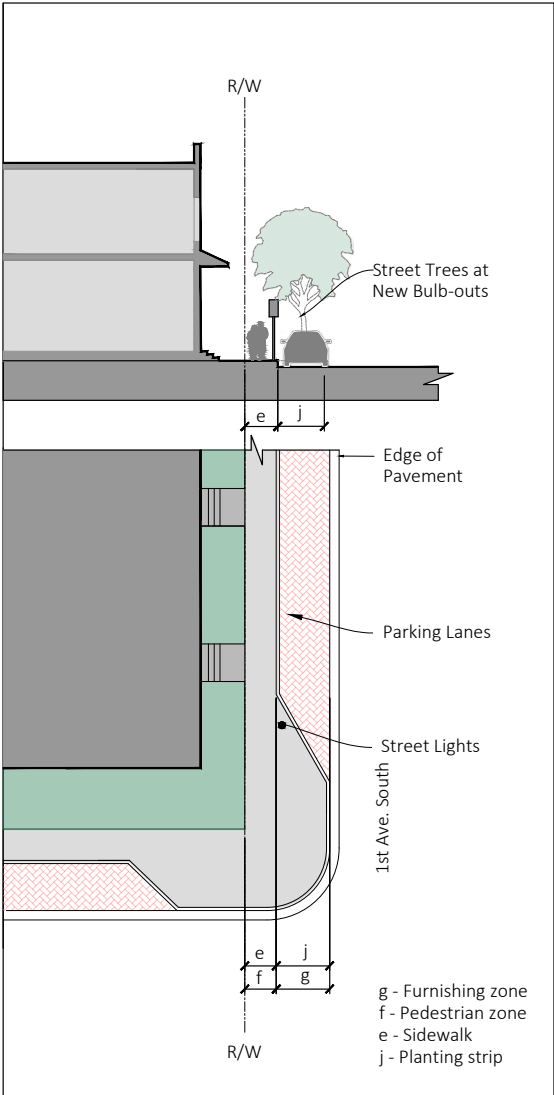


FIGURE 33 1ST AVE. SOUTH STREETSCAPE

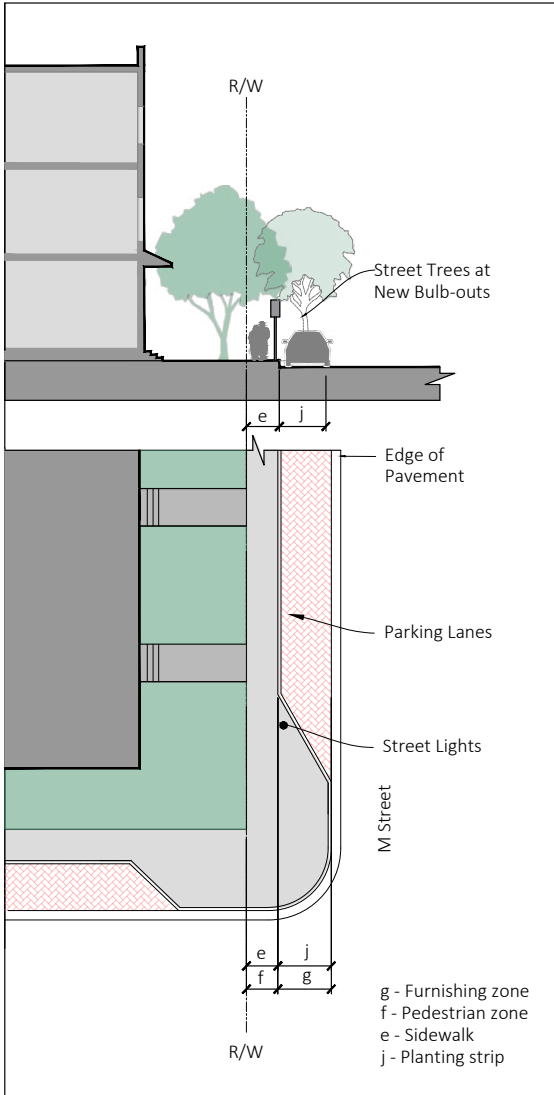


FIGURE 34 “L” STREET STREETSCAPE

POLICY RECOMMENDATIONS

STREETScape

The sections below illustrate the subtle changes in streetscapes as they transition from strictly residential conditions to commercial and mixed-use conditions. The specific dimensions for the Furnishing Zone, Pedestrian Zone, outdoor seating or planting areas may vary based upon existing conditions and the limits of a project’s scope of work. For the purposes of a future RFP, the City and CRA may want to provide precise dimensions, a range of dimensions, or a minimum dimension for each zone depending upon the conditions on the ground.

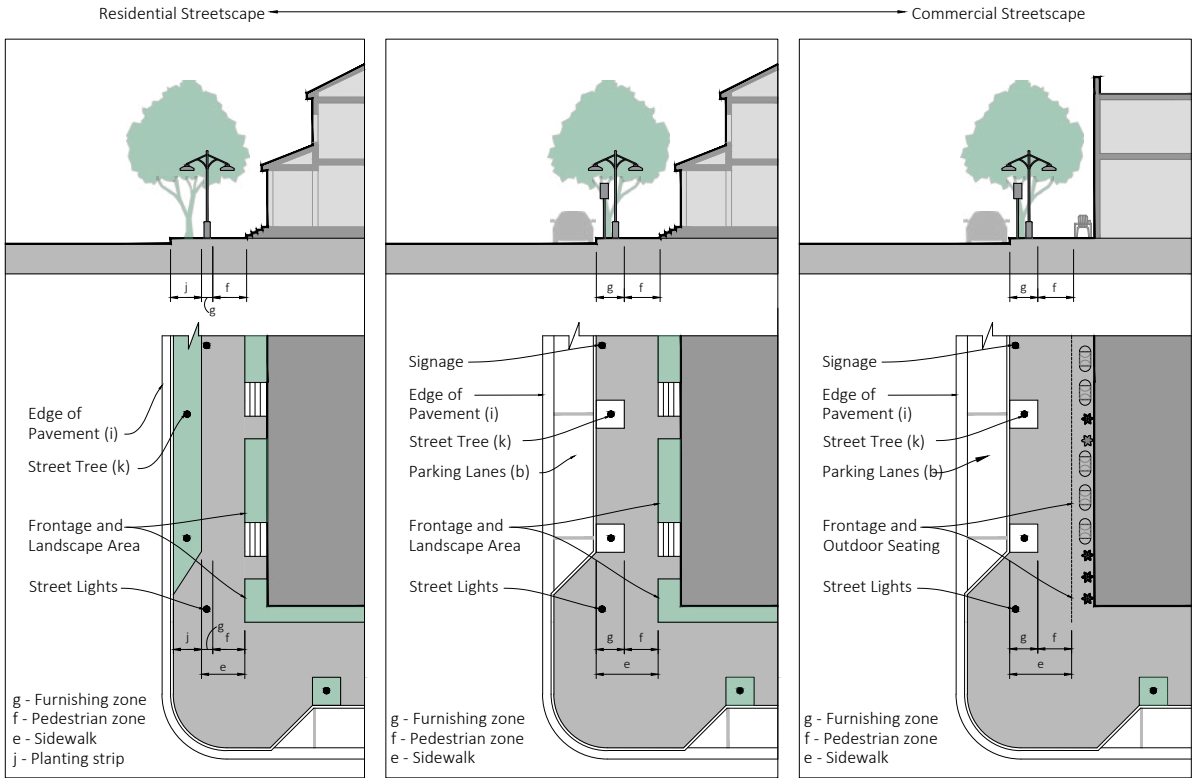


Figure 35 Residential streetscape conditions for townhouses in Delray Beach

FRONTAGE STANDARDS

Frontage types describe the way that different buildings address the street through their entry features and other defining elements. Not all frontage types are appropriate for all streets. As an example, a single-family bungalow porch (top right) is probably not appropriate for new development on Lake Avenue. Similarly, a storefront type (bottom right) is probably not appropriate for 1st Avenue South. This section of the recommendations identifies a variety of frontage types that would be applicable within the study area. The South “L” and “M” Street block is a transition block from Lake Avenue to the neighborhoods so it is important to be sensitive to the appropriate building frontages.

The figure below identifies which frontage types are appropriate for which streets. The following pages provide detailed drawings and descriptions of each frontage type.

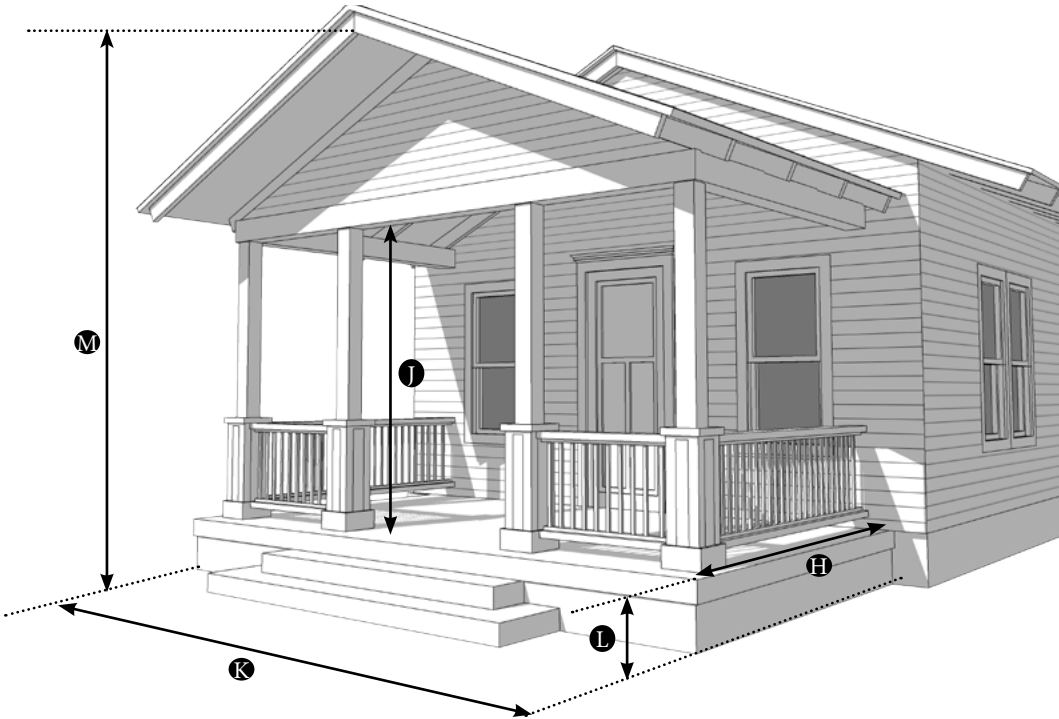


FIGURE 36 PERMITTED FRONTAGE TYPES MATRIX

SITE 1				
PERMITTED FRONTAGE TYPES	LAKE AVENUE	1ST STREET SOUTH	M STREET	L STREET
Porch	✗	✓	✓	✓
Stoop	✗	✓	✓	✓
Bracketed Balcony	✓	✓	✓	✓
Forecourt	✓	✓	✓	✓
Arcade	✓	✗	✗	✗
Shopfront	✓	✗	✗	✗

FRONTAGE STANDARDS

FIGURE 37 PORCH FRONTAGE



DESCRIPTION		
A porch is an open-air structure attached to a building forming a covered entrance large enough for comfortable use as an outdoor room. Front porches may be screened.		
DIMENSIONS		
Depth	6 feet min. 8 feet preferred	H
Height, clear	8 feet min.	J
Width, length of facade	40% min.	K
Finish level above finished grade	21 inches min.	L
Height, stories	2 stories max.	M
Set back from curb	Not applicable	-



FRONTAGE STANDARDS

FIGURE 38 STOOP FRONTAGE



**DESCRIPTION**

A stoop is a small staircase leading to the entrance of a building that may be covered. The elevation of the stoop is necessary to ensure privacy for residential uses in the ground story of buildings. Stoops should provide sufficient space for a person to comfortably pause before entering or after exiting the building.

**DIMENSIONS**

Depth	5 feet min.	H
Height, clear	8 feet min.	J
Width, clear	4 feet min.	K
Finish level above finished grade	21 inches min.	L
Height, stories	1 story max.	M
Set back from curb	Not applicable	-



FRONTAGE STANDARDS

FIGURE 39 BRACKETED BALCONY FRONTAGE



**DESCRIPTION**

A bracketed balcony is a second-story balcony, that creates a semi-public space overlooking the street above a main entry or unit. Bracketed balconies are typically associated with buildings with commercial uses in the ground story; however, bracketed balconies may be used with residential uses and in combination with a storefront or a stoop.

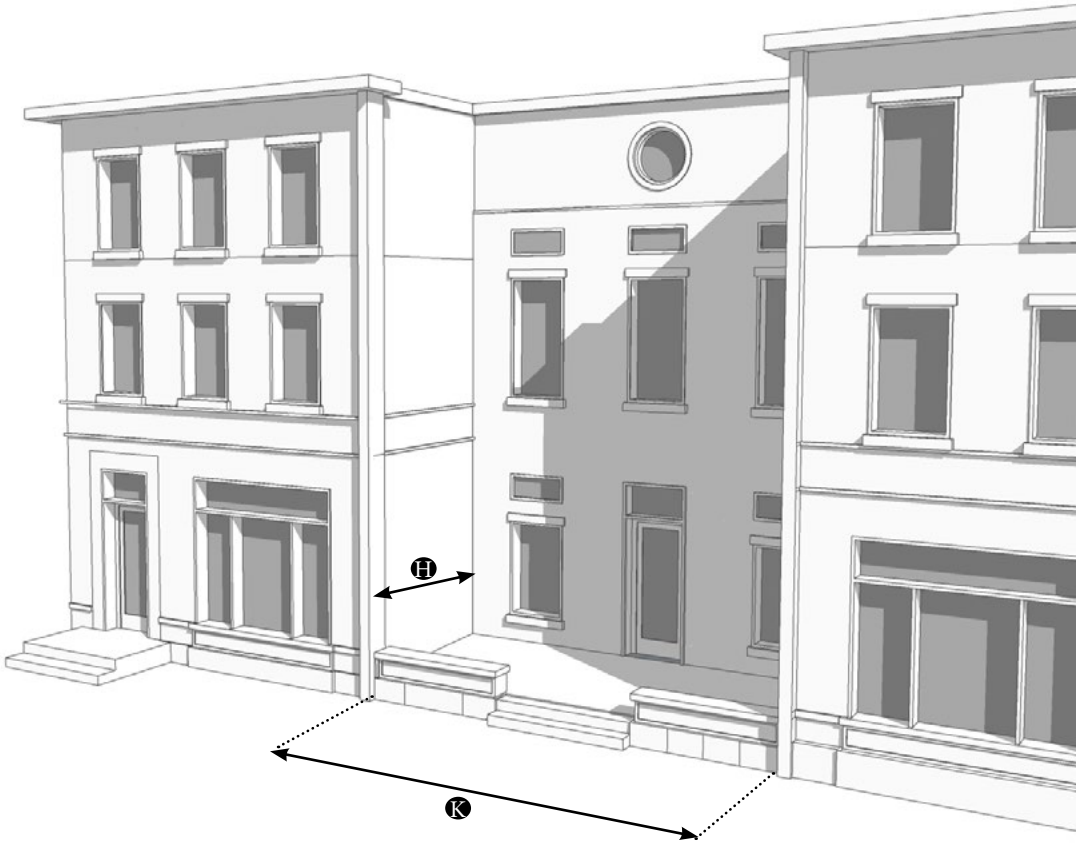
**DIMENSIONS**

Depth	5 feet max.	H
Height, ground level clear	10 feet min.	J
Width	4 feet min.	K
Finish level above finished grade	Not applicable	-
Height, stories	Not applicable	-
Set back from curb	Not applicable	-



FRONTAGE STANDARDS

FIGURE 40 FORECOURT FRONTAGE



DESCRIPTION

A forecourt is an open area in front of the main building entrance(s) designed as a small garden or plaza. Low walls or balustrades no higher than three feet six inches in height when solid may enclose the forecourt. Forecourt walls are constructed of similar material as the principal building or are composed of a continuous, maintained hedge. A forecourt may afford access to one or more first floor residential dwelling units or incorporate storefronts for commercial uses. Forecourts are typically associated with multifamily, mixed-use, and commercial buildings.

DIMENSIONS

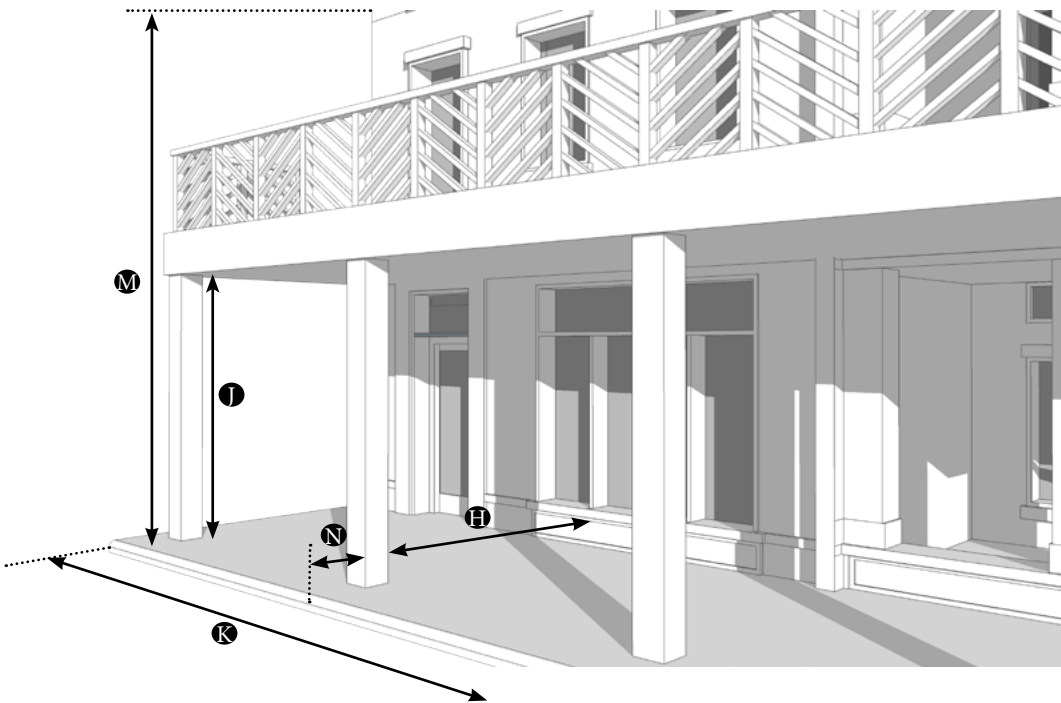
Depth, clear	20 feet max.	H
Height, clear	Not required	-
Width, length of facade	12 feet min. / 50% of facade max.	K
Finish level above finished grade	Not required	-





FRONTAGE STANDARDS

FIGURE 41 ARCADE FRONTAGE



**DESCRIPTION**

An arcade is a covered, unglazed, linear hallway attached to the front of a building, supported by columns or pillars. The arcade extends into the public right-of-way, over the streetscape area, creating a shaded environment ideal for pedestrians. This frontage type is typically associated with commercial uses. Arcades shall remain open to the public at all times. In the case where an arcade encroaches into the public right-of-way, a right-of-way maintenance agreement may be required.

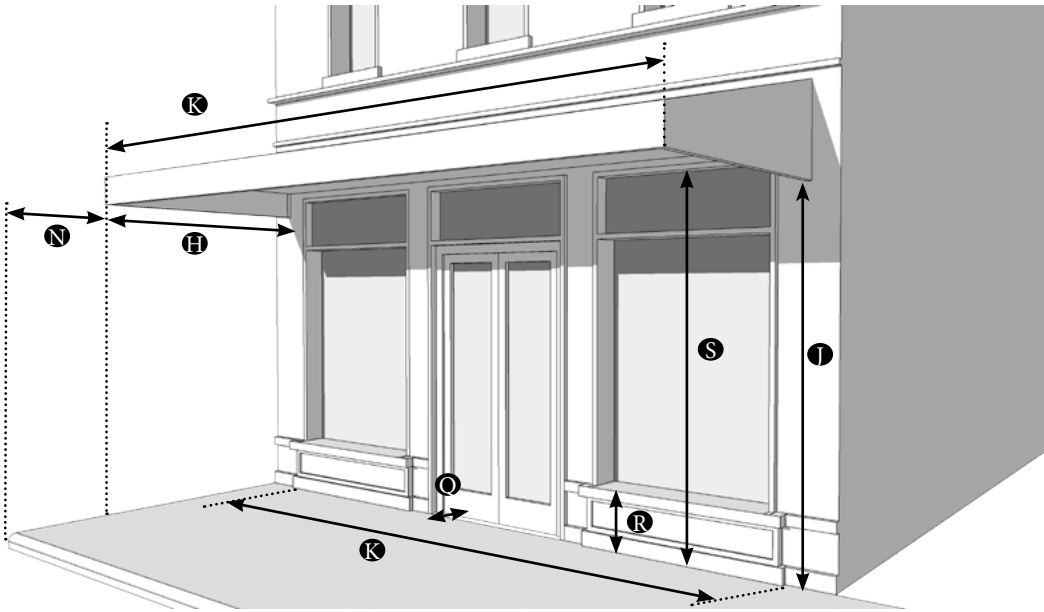
**DIMENSIONS**

Depth, clear	8 feet min.	H
Height, ground level clear	10 feet min.	J
Width, length of facade	70% min.	K
Finish level above finished grade	at sidewalk level	-
Height, stories	2 stories max.	M
Set back from curb	2 feet min. / 4 feet max.	N



FRONTAGE STANDARDS

FIGURE 42 SHOPFRONT FRONTAGE



DESCRIPTION		
The shopfront is a frontage type along the sidewalk level of the ground story, typically associated with commercial uses. Shopfront are frequently shaded by awnings or arcades.		
DIMENSIONS		
Width, length of facade	70% min.	K
Door recess	10 feet max.	C
Storefront base	1 foot min. / 3 feet max.	R
Glazing height	8 feet min.	S
OPTIONAL AWNING		
Depth	3 feet min.	H
Height, ground level clear	8 feet min.	J
Width, length of facade	70% min.	K
Set back from curb	2 feet min.	N



# IV. KEY RECOMMENDATIONS & IMPLEMENTATION

As discussed earlier, a key element of this planning effort is to assist the City and CRA with design concepts, graphics, and financial data and analysis that might become part of a future Request for Proposals for the South “L” and “M” sites. The preferred design scenario identified in Chapter II is the “TCRPC Option C Final Version” with version Cv3 - Cv6 of the financial analyses as a development direction.

The table below is a synopsis of all of the considerations and recommendations from this report consolidated in a single format for easy reference. Any RFP issued for the subject sites in the future should include a checklist of requirements incorporating the recommendations of this report to facilitate implementation and predictability.

Each of the items listed below will require discussion and acceptance/modification by the City Commission and staff prior going into effect.

DEVELOPMENT STRATEGIES
Adopt or Accept this planning document and TCRPC Option Cv6 as the preferred direction for future redevelopment
Identify financial feasibility analyses TCRPC Option Cv3, Cv4, Cv5, and/or TCRPC Options Cv6 as the preferred development direction, going into effect reduced sale price or long-term lease, TIF reimbursement, and market rate rentals
Consider zoning and policy direction changes specific to the Old Town Historic District (OTHD) to include: <ul style="list-style-type: none"><li>• In order to assure clarity and transparency for future development proposals, limit development incentives to only those properties facing Lake and Lucerne Avenues for the provision of civic open space</li><li>• Remove residential density maximums for development in the OTHD</li><li>• Adjust allowable building heights, as of right, to three stories for those properties facing Lake and Lucerne Avenues and the properties facing the N-S side streets south of Lake Avenue. Only those properties facing Lake and Lucerne Avenues are eligible for increased building height up to five stories with the provision of civic open space</li><li>• Maximum building footprint for those properties facing Lake and Lucerne Avenues is 15,000 sf. Maximum building footprint for those properties facing the N-S side streets south of Lake Avenue is 5,000 sf.</li><li>• Reduce required on-site parking standards to 1 space per residential unit and 2 spaces/1,000 sf. of non-residential uses</li><li>• Exempt the OTHD from the recently adopted affordable housing and sustainable building ordinances</li></ul>



# IV. KEY RECOMMENDATIONS & IMPLEMENTATION

DEVELOPMENT STRATEGIES (CONT'D)
Consider the “K” Street sites for redevelopment - possibly affordable housing
Include the Historic Preservation Design Guidelines in the future RFP and emphasize its importance
Consider using the Streetscape Standards for the “L” and “M” sites as provided in this report
Consider using the Frontage Type Standards for the “L” and “M” sites as provided in this report
Identify locations for off-site parking and provisions for payment-in-lieu of parking specific to the OTHD area
Establish a methodology for developing any future RFP and/or regulatory revisions that includes the City, the CRA, and staff from key departments
Establish a methodology and collaborative public information campaign that describes and clarifies the roles the City, the CRA, staff, and the private sector development community have in implementing redevelopment within the OTHD
To the extent possible, foster a collaborative and supportive environment between the community, the public and private sectors recognizing that any redevelopment, regardless of its scale or character, cannot occur in a timely or positive fashion in acrimonious circumstances

While some of these recommendations are specific and measurable action items, some are more aspirational and procedural. The ultimate success of this effort will likely require all facets discussed. Establishing a positive and predictable project development, review, and approval process, which has a level of community support, will benefit the entire effort.



# APPENDIX A

CREATION OF THE PLAN



## OUTREACH

Public outreach and participation was an essential ingredient in the creation of this plan and recommendations. Many forms of outreach and opportunities were provided so that all who were interested in the process could participate.

### INDIVIDUAL INTERVIEWS

As part of the initial outreach and information reconnaissance for the project, TCRPC conducted over 30 individual interviews with the elected officials, City and CRA staff, CRA board members, and property and business owners. The interviews provided valuable information for the TCRPC team and helped those in the community understand the issues to be addressed and the process that was utilized.

### PUBLIC DESIGN CHARRETTE

A five-day public design charrette has held at the HATCH 1121 Event Space from Saturday, April 30, 2022 to Wednesday, May 4, 2022. The public workshop was that Saturday. The design team worked in the HATCH “studio” which was open to the public from 9:00 am until 10:00 pm Sunday through Tuesday and 9:00 am to 5:00 pm on Wednesday.



Figure 43 Citizen table at Charrette workshop.



Figure 44 Citizen table at Charrette workshop.



Figure 45 Work-in-progress presentation as part of Charrette.



The Saturday public workshop and the open-to-the-public studio environment were immensely helpful in creating continuous and meaningful dialogue and connection between the design team and the community.

## WORK-IN-PROGRESS

A Work-in-Progress presentation was given the evening of Wednesday, May 18, 2022 at City Hall and was the first opportunity for the public to see the design work and recommendations and provide their feedback and input.

Since that time the TCRPC team has been refining the recommendations and developing multiple financial analyses for the various design scenarios created with the community.

The public outreach will continue after the submittal of this report as there will be additional public presentations and meetings to review and discuss these recommendations.

The following pages include images from the charrette as well as each of the plans developed by the community.



TABLE 1



TABLE 2



TABLE 3



Figure 46 Citizen's presenting their workshop ideas



TABLE 4



TABLE 5



TABLE 6

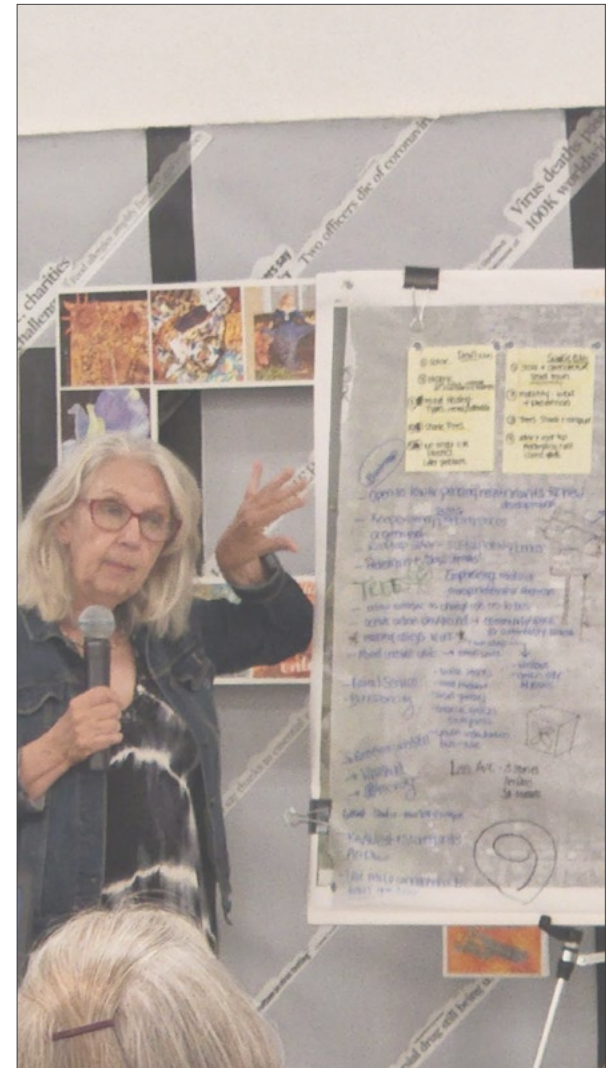


Figure 47 Citizens presenting their workshop ideas

TABLE 7



TABLE 7



Figure 48 Citizens presenting their workshop ideas



TABLE 3

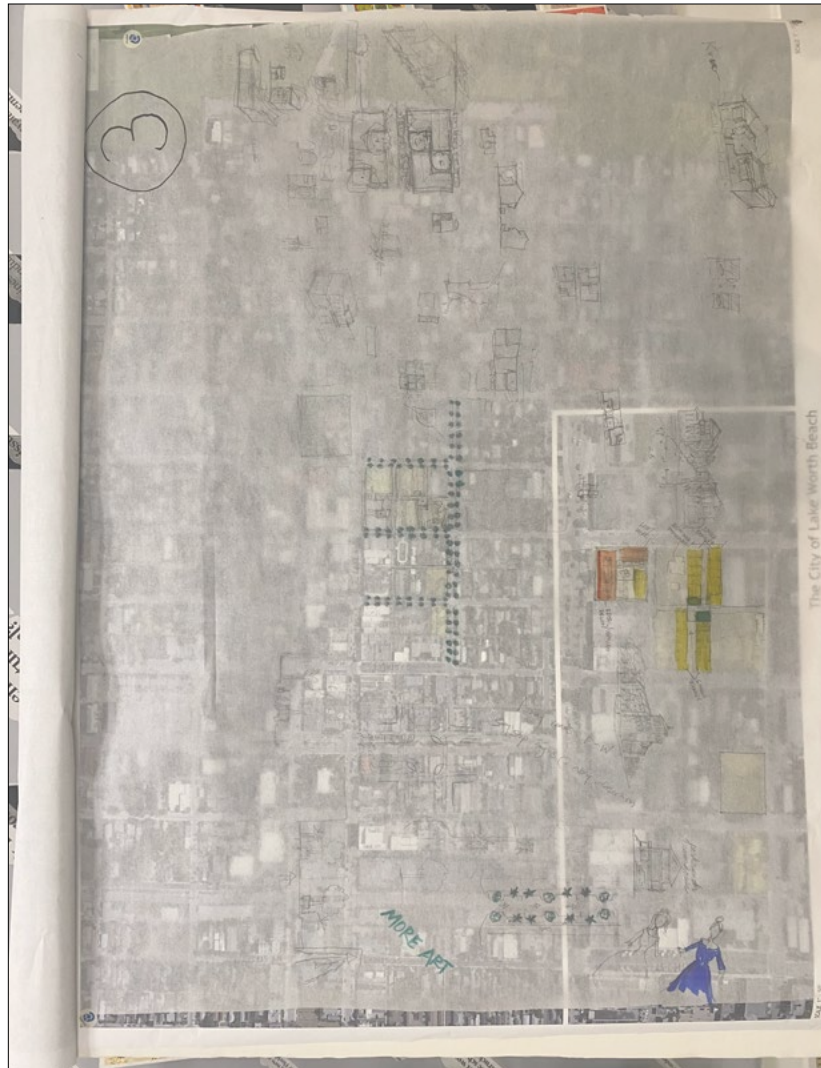


TABLE 4

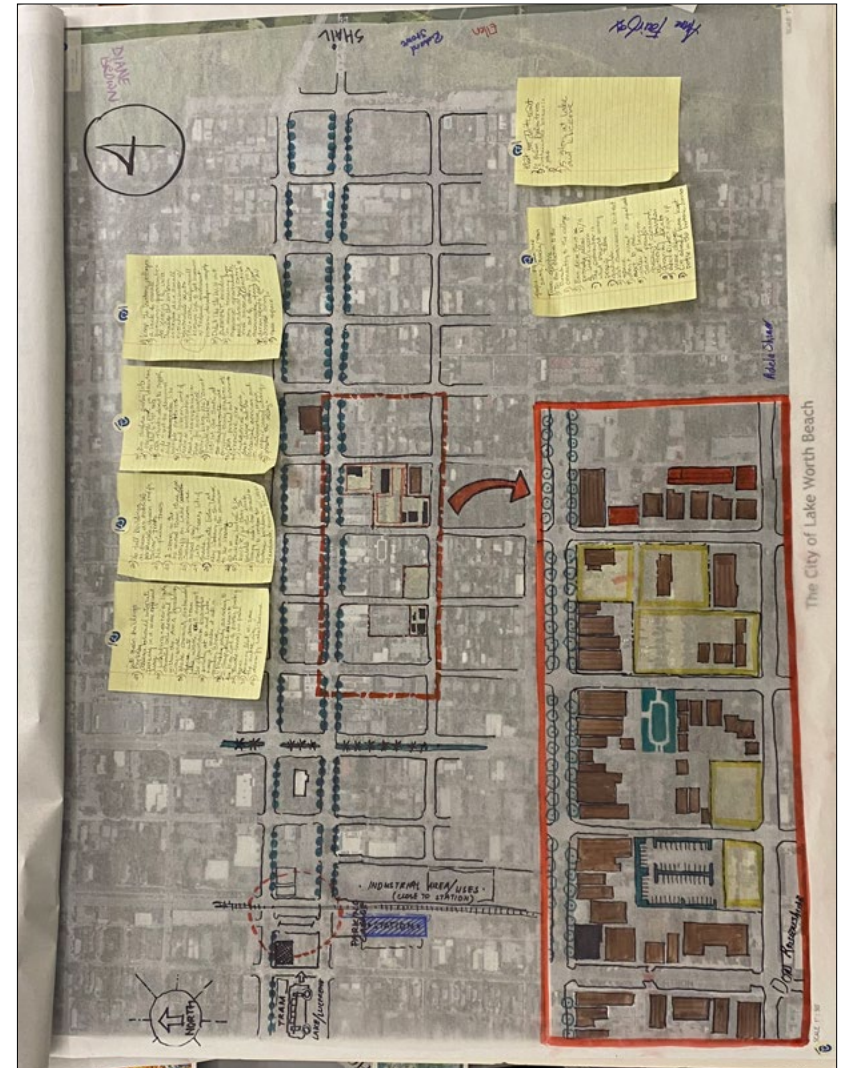


Figure 50 Citizen Charrette Plans



# LAKE WORTH BEACH CHARRETTE



## PUBLIC WORKSHOP SATURDAY APRIL 30<sup>TH</sup>

Join the City, the CRA and the Treasure Coast Regional Planning Council in a public discussion on the future of publicly owned properties in Downtown Lake Worth Beach. Lunch & refreshments will be provided.

- **OPENING PRESENTATION: 10:00 AM**
- **PUBLIC DESIGN SESSION: 11:00 AM - 1:00 PM  
LUNCH PROVIDED**
- **CITIZENS PRESENTATIONS: 1:00 PM - 2:30 PM**
- **WRAP UP: 3:00 PM**

**LOCATION** HATCH 1121 Event Space  
1121 Lucerne Avenue  
Lake Worth Beach, Florida 33460  
P: 561.493.2550



For more information, please visit:  
<https://lakeworthbeachfl.gov/>

# PLEASE PROVIDE YOUR INPUT

The Treasure Coast Regional Planning Council, in collaboration with the City of Lake Worth Beach and the Lake Worth Beach Community Redevelopment Agency (CRA) will conduct a public workshop and design charrette to develop alternate solutions for the City/CRA owned parcels along S K Street to 1st Avenue S and between South L and M streets along 1st Avenue S in downtown Lake Worth Beach (see images to the right). The ultimate result of this effort is to create designs, data, and analyses to inform a future Request for Proposals (RFP) for the redevelopment of these sites.



This is Site 1 from the original 2020 RFP – parcels located between L and M Streets at 1st Avenue S

- **Saturday Public Workshop**  
Saturday, April 30, 2022: 10:00 am – 3:00 pm
- **Charrette Studio Day #1**  
Sunday, May 1, 2022 9:00 am – 10:00 pm
- **Charrette Studio Day #2**  
Monday, May 2, 2022 9:00 am – 10:00 pm
- **Charrette Studio Day #3**  
Tuesday, May 3, 2022 9:00 am – 10:00 pm
- **Charrette Studio Day #4**  
Wednesday, May 4, 2022 9:00 am – 6:00 pm
- **Work-In-Progress Presentation**  
Wednesday, May 18, 2022 6:00 pm – 8:00 pm  
Location: City of Lake Worth Beach, City Commission Chambers, City Hall



This is Site 2 from the original 2020 RFP – parcels located along K Street at 1st Avenue S

The Saturday Public Workshop and Charrette Design Studio (open to the public) will occur at HATCH 1121 Event Space

For more information please contact  
William Waters, AIA, NCARB, LEED AP BD+C, ID, SEED  
Community Sustainability Director, City of Lake Worth Beach, 561.586.1634  
[wwaters@lakeworthbeachfl.gov](mailto:wwaters@lakeworthbeachfl.gov)  
or  
Dana P. Little  
Urban Design Director, Treasure Coast Regional Planning Council 772.221.4060, [dlittle@tcrpc.org](mailto:dlittle@tcrpc.org)



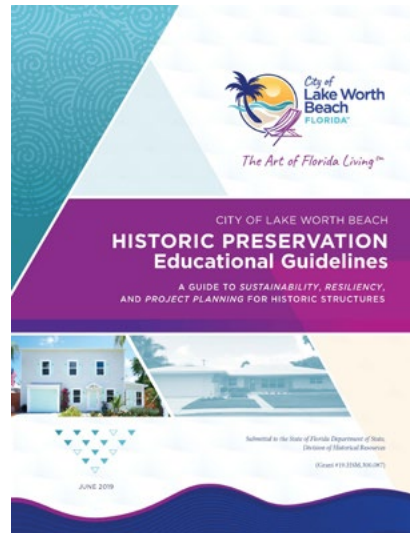
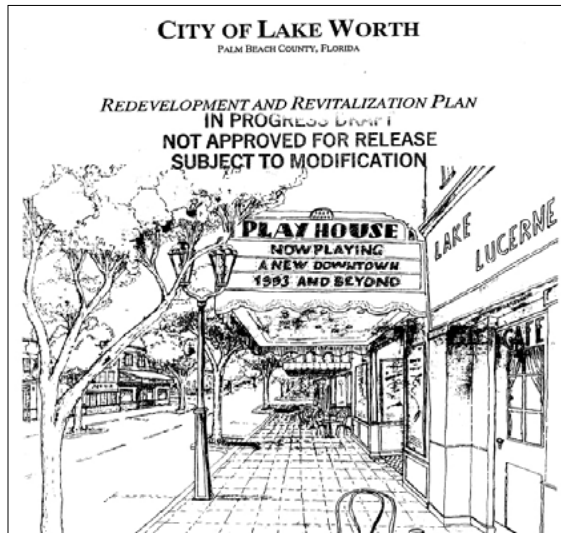
# APPENDIX B

## BACKGROUND & EXISTING CONDITIONS



## BACKGROUND

This Master Plan report reflects the efforts and collaboration of the City of Lake Worth Beach (City), the Lake Worth Beach Community Redevelopment Agency (CRA), the Treasure Coast Regional Planning Council (TCRPC), and the residents and business owners of Lake Worth Beach. This multi-agency public planning process began in the fall of 2021 when TCRPC was requested to assist in developing a vision for multiple publicly owned parcels in downtown Lake Worth Beach. The subject of a previous Request for Proposals that was ultimately withdrawn due to public opposition, these publicly owned properties are in the Old Town Historic District and their future has generated great public interest.





PREVIOUS PLANS

Lake Worth Beach has a long tradition of community-based master plans. The original downtown plan (previous page) was developed by TCRPC in 1992 and initiated many of the positive changes still visible today. Between 2015-2017 the Cultural Arts Council developed an Arts and Culture Master Plan (see right). This plan prioritized mixed-use and residential density increases downtown. The Fairfax & Sammons plan (below) was a counter proposal to the “Element” RFP submittal (far right).

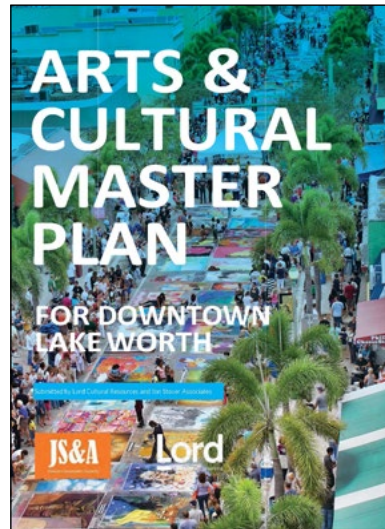


Figure 55 Arts and Cultural Master Plan

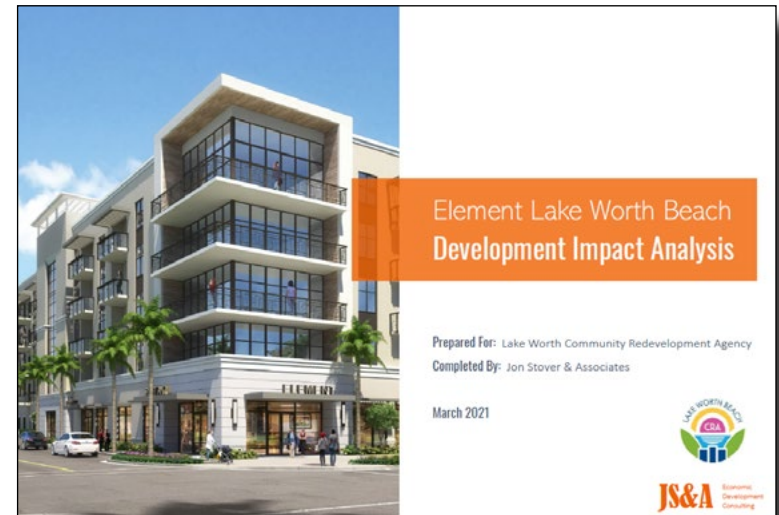


Figure 54 Element Proposal 2021





Figure 53 Fairfax and Sammons Concept (Site 1)



Figure 52 WGI concept for 1st Ave South between L St. and M St. 2019

ACQUISITION FUNDING SOURCE



City of Lake Worth Beach:   
CRA: 



## TIMELINE OF PURCHASE ACQUISITION ACTIVITIES

The following is a detailed timeline of City and CRA property acquisitions within the study area. This timeline is provided in its original format on the Lake Worth Beach CRA website.

### PROPERTIES ALONG SOUTH 'K' STREET; SOUTH 'L' STREET & SOUTH 'M' STREET

#### I. DOWNTOWN LAKE WORTH ARTS & CULTURE MASTER PLAN

- **2015-2017:** Under the guidance of local residents and business owners, the City of Lake Worth Beach, CRA and Cultural Council of Palm Beach County produce and approve the Downtown Lake Worth Arts & Culture Master Plan. The Plan recommends development between 1st Avenue South and 1st Avenue North, adding height and density to allow for mixed use, live-work developments that support artist's needs. For this, assemblages of land need to be encouraged by incentivizing through making the process easier and faster. This could also mean helping to assemble by acquiring key pieces of property. Public parking improvements are also a recommendation of the Plan. [CLICK HERE](#) for a copy of the Plan.

#### II. PARKING STUDY

- **October 2017:** City of Lake Worth Beach Commission approves a contract with WGI to provide a comprehensive downtown parking program and parking structure feasibility study. ([EXHIBIT A](#))
- **October 2018:** City of Lake Worth Beach produced the completed parking study by WGI. ([EXHIBIT B](#))
- This study included drawings for a possible municipal parking garage on the sites along 'L' & 'M' Streets. [CLICK HERE](#) for additional information regarding downtown parking.

#### III. INTERLOCAL AGREEMENTS BETWEEN THE CRA AND THE CITY OF LAKE WORTH BEACH ([EXHIBIT C](#))

- **June 19, 2018:** City of Lake Worth Beach Authorizes \$1,050,000 to acquire 26 South 'L' St.; 30 South 'L' St. and 32 South 'L' St. and \$180,000 for resurfacing for public parking. ([EXHIBIT C - June 19, 2018](#))

## TIMELINE OF PURCHASE ACQUISITION ACTIVITIES

- **October 16, 2018:** City of Lake Worth Beach Authorizes \$627,482.50 to acquire 17 South ‘M’ St. (EXHIBIT C - October 16, 2018)
- **February 5, 2019:** City of Lake Worth Beach Authorizes \$547,240.00 to acquire 25 South ‘K’ St. and 704 1 st Ave. South. (EXHIBIT C - February 5, 2019)
- (The City’s original focus of providing a public parking garage at ‘L’ & ‘M’ Streets switches to using the existing City owned surface lot along South ‘K’ Street and includes the homes purchased at the corner of 1 st Ave. South and South ‘K’ Street in March 2020.)
- **November 5, 2019:** City of Lake Worth Beach Commission approves the Sale and Transfer of 501 Lake Avenue to the CRA. (EXHIBIT D - November 5, 2019)

## IV. TIMELINE FOR HISTORIC RESOURCE PRESERVATION BOARD (HRPB) ACTIONS

- **January 2019:** First public hearing before the HRPB postponed at the City’s request.
- **June 2019:** City of Lake Worth Beach authorizes private consultant to conduct a massing study of the site.
- **September 18, 2019:** HRPB public meeting to consider the CRA’s application for the relocation or demolition of seven (7) contributing and three (3) non-contributing structures located within the ‘L’ & ‘M’ Street properties. (EXHIBIT E)

*The HRPB Order required the CRA to publicly advertise the structures for relocation and take all steps to have the structures relocated to another site. Any demolition permit for any of the contributing structures that are not relocated must first receive a Certificate of Appropriateness at the time of the issuance of the building permit for new construction.*

- **January 7, 2020:** City of Lake Worth Beach Commission denies the administrative appeals filed by Clifford Kohlmeyer and Thomas Conboy filed with respect to the HRPB’s order granting the CRA the right to relocate or demolish structures, subject to conditions. Mr. Christopher McVoy also submitted a letter to appeal the decision but was found, by the City, to not have legal standing. (EXHIBIT F)
- **February 12, 2020:** Thomas Conboy files a Petition for Writ of Certiorari with Palm Beach County Circuit Court. (EXHIBIT G)

## TIMELINE OF PURCHASE ACQUISITION ACTIVITIES

- **June 8, 2020:** The Court grants the CRA’s Motion to Intervene and directs the CRA and City of Lake Worth Beach to file a joint response to the Petition for Writ of Certiorari. (EXHIBIT H)
- **February 17, 2021:** Opinion issued by the Court denying the Petition for Writ of Certiorari. (EXHIBIT I)

## V. LAKE WORTH BEACH CRA’S DEVELOPMENT PROCESS

- **October 2019:** Lake Worth Beach CRA issues the Request for Proposals for the moving of the historic, contributing houses. No proposals were received by February 2020. (EXHIBIT J)
- **March 2020:** Lake Worth Beach CRA issues the Request for Proposals for the development of the ‘L’ & ‘M’ Street and ‘K’ Street/ 1 st Ave. South sites in downtown. Due to the pandemic, the submission deadline was extended from early June to August 4, 2020. (EXHIBIT K). This RFP was advertised on the CRA website, on social media sites, in both the Palm Beach Post and Sun Sentinel, on loopnet.com, on The RealDeal website (real estate website for south Florida), on the Florida Redevelopment Association website (redevelopment.net), on the American Planning Association website (planning.org) and through the Urban Land Institute (ULI).
- **September 18, 2020:** CRA and City Review Committee meet to review and score proposals.
- **October 13, 2020:** CRA Board of Commissioners vote on the Review Committee recommendations (EXHIBIT L)
- **March 2021:** Economic Development Impact Analysis CLICK HERE for a copy of the Plan
- **April 22, 2022:** Florida International University architectural student presentations CLICK HERE to view

## REQUEST FOR PROPOSALS

DEVELOPMENT OF SITES  
IN DOWNTOWN LAKE WORTH BEACH  
RFP #02-1920



RELEASE DATE:  
MARCH 2, 2020

SUBMISSION DEADLINE:  
3:00PM//JUNE 2, 2020

THE LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY  
1121 LUCERNE AVE.  
LAKE WORTH BEACH, FL 33460  
[WWW.LAKEWORTHCRA.ORG](http://WWW.LAKEWORTHCRA.ORG)



## TIMELINE OF PURCHASE ACQUISITION ACTIVITIES

Once the RFP proposals were received and ranked by the selection committee, the “Element” development proposal was selected as the preferred submittal. Public opposition to the process, the size and scale of the proposal, and a desire to start again led to the developer withdrawing from the process. The newly elected Mayor and City Commission decided to embark on a public planning process and entered into an agreement with Treasure Coast Regional Planning Council to conduct the charrette and develop these recommendations.



# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** City Clerk & Public Works

**TITLE:**

Resolution No. 07-2023 – Approving the Amendment to the Fees & Charges for Mobile Home Park Solid Waste & Recycling

**SUMMARY:**

The change in rates charged to the City's Mobile Home Parks for solid waste and recycling services was approved at the February 7, 2023 Regular City Commission Meeting.

**BACKGROUND AND JUSTIFICATION:**

At the February 7, 2023 Regular City Commission Meeting, the Commission approved changing the fees & charges for Mobile Home Parks for solid waste and recycling services to \$20.43 per unit for each of the four mobile home parks. The fee modification was to be part of a future FY2023 budget amendment. A budget amendment is not needed at this time; therefore the City Attorney recommended a resolution to approve the changes to the fees.

**MOTION:**

Move to approve/disapprove Resolution 07-2023 – approving the amendment to the Fees & Charges for Mobile Home Park Solid Waste & Recycling.

**ATTACHMENT(S):**

Resolution 07-2023  
Exhibit A - Amended Fees & Charges

RESOLUTION NO. 07-2023 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING THE FEES AND CHARGES SCHEDULE FOR MOBILE HOME PARK SOLID WASTE AND RECYCLING FOR FISCAL YEAR 2023; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida provides a variety of services to its residents and the public for the overall general health, safety and welfare of the City; and

WHEREAS, the City Commission desires to establish fees and charges for such City services in an amount that is based upon the reasonable associated administrative expenses to the City; and

WHEREAS, the City Commission adopted a comprehensive schedule of fees and charges for Fiscal Year 2022-2023 to become effective on October 1, 2022, and

WHEREAS, the City Commission approved the change in rates for the Mobile Home Parks at its February 7, 2023 Regular City Commission Meeting; and

WHEREAS, the City Commission finds the approval of the amended fees and charges for mobile home park solid waste and recycling set forth herein serves a valid public purpose.

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

SECTION 1: The foregoing recitals are incorporated into this resolution as true and correct statements.

SECTION 2: The amended 2022-2023 fiscal year schedule of fees and charges for mobile home park solid waste and recycling is attached hereto as Exhibit A and incorporated herein as hereby amended.

SECTION 3: Except as revised by this resolution, all other fees and charges adopted by the City remain unchanged.

SECTION 4. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 5. If any provision of this resolution or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this 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 6: This resolution shall become effective upon adoption with the fees and charges set forth herein to go into effect on March 22, 2023.

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

Mayor Betty Resch  
Vice Mayor Christopher McVoy  
Commissioner Sarah Malega  
Commissioner Kimberly Stokes  
Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

LAKE WORTH BEACH CITY COMMISSION

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, City Clerk



## SCHEDULE OF FEES AND CHARGES FOR SERVICES

**EXHIBIT A**

Originating Department	Description of Services Provided	Fees (\$)		
<b>PUBLIC WORKS</b>	<b>Solid Waste Collection &amp; Disposal</b>	<b>Resident (per month)</b>	<b>Commercial (per month)</b>	<b>Contractor (per month)</b>
<b>Waste Removal Fees</b>	<p><b>Downtown Commercial Properties</b> <u><b>(Other Than Garbage Dumpsters)</b></u></p> <p>95 gal. each container, 3 times / week</p> <p><b>Other Commercial Properties</b> 95 gal. cart - 2 times / week</p> <p><b>Primary Property Account Assessment</b> A minimum administrative ready to serve charge shall be made against all commercial, industrial, and governmental property of \$39.80 per month. This fee shall be billed to the main property account. No removal services are included in this fee.</p> <p><b>Mobile Home Park Properties (per unit)</b> Holtz Mobile Home Park Holiday II Mobile Home Park Palm Beach Mobile Home Park Orange Grove Mobile Home Park</p>		<p>\$ 75.77</p> <p>\$46.13</p> <p>39.80</p>	
<b>Footnote / Explanation</b>				
	<p>1 For monthly fees, the conversion factor developed by Solid Waste Authority of 4.33 weeks per month will be used.</p> <p>2 Commercial, Industrial and Governmental properties including motels and hotels, and multi-unit buildings with nine (9) units of more, waste removal fees shall be determined by the Public Works Director according to the volume of refuse collected per each collection event (pull). Restaurants and other commercial properties generating putrescible refuse must be emptied a minimum of 2 times per week.</p> <p>3 Commercial, Industrial and Governmental use property not paying disposal (tipping) fee charges direct to Solid Waste Authority</p> <p>4 Cases where trucks can not enter property, a \$5.67 per 95 gal. container per collection event fee is established.</p>			

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** City Wide

**TITLE:**

Continuing Contracts for Professional Services for Civil Engineering - Water category

**SUMMARY:**

Continuing Contracts for Professional Services for Civil Engineering – Water with Mock, Roos & Associates, Inc, Kimley-Horn and Associates, Inc., Holtz Consulting Engineers, Inc. and Chen Moore and Associates, Inc. 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 Civil Engineering – Water category, the City received 16 qualification submittals. The Evaluation Committee shortlisted six firms for presentations and in the final evaluation meeting recommended award to four firms: Mock, Roos & Associates, Inc., Kimley-Horn and Associates, Inc., Holtz Consulting Engineers, Inc. and Chen Moore and Associates, Inc. City staff negotiated rates with each of the recommended firms.

**MOTION:**

Move to approve/disapprove the Agreements for Continuing Contracts for professional services for Civil Engineering – Water with Mock, Roos & Associates, Inc, Kimley-Horn and Associates, Inc., Holtz Consulting Engineers, Inc. and Chen Moore and Associates, Inc.

**ATTACHMENT(S):**

Fiscal Impact Analysis – N/A  
Shortlist Results Civil Engineering Water  
Final Results Civil Engineering Water  
Mock, Roos & Associates, Inc Agreement  
Kimley-Horn and Associates, Inc. Agreement  
Holtz Consulting Engineers, Inc. Agreement  
Chen Moore and Associates, Inc. Agreement



**RFQ#23-300 Continuing Contracts for Professional Services**

**Evaluation Committee Meeting – Shortlisting Results  
Civil Engineering – Water**

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

COMPANY	TOTAL	RANK
Mock Roos	478	1
Kimley - Horn & Associates	448	2
WGI	436	3
Chen Moore Associates	434	4
Holtz Consulting Engineers	432	5
Craven Thompson	415	6

Attachments:

Evaluation Sheet for RFQ # 23-300 Continuing Contracts for Professional Services  
(CCNA) Civil Engineering – Water



**City of Lake Worth Beach**  
Final Evaluation Matrix - Oral Presentations

**RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Civil - Water**

		RANKED:	1	1	5	4	3	6
Oral Presentation Evaluation Criteria Score Sheet:		Weight	Mock Roos	Kimley Horn	WGI	Chen Moore Associates	Holtz Consulting	Craven Thompson
1	Ability of professional personnel	35	136	139	129	133	135	124
2	Evidence of successful past performance for similar projects	35	140	138	133	134	139	129
3	Recent, current workload	15	58	56	57	58	57	55
4	Location/Convenience to City staff	15	58	59	58	59	58	59
<b>Total Points Received:</b>			<b>392</b>	<b>392</b>	<b>377</b>	<b>384</b>	<b>389</b>	<b>367</b>

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**  
**RFQ#23-300**  
**(Civil Engineering – Water)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and, **Mock Roos & Associates, Inc.**, a 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 civil engineering related to water 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 civil engineering related to water 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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

Mock Roos & Associates, Inc.  
Attn: Garry Gruber, Senior Vice President  
5720 Corporate Way  
West Palm Beach, Fl 33407

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](mailto: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 Civil Engineering – Water 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:**

**MOCK ROOS & ASSOCIATES, INC.**

By: \_\_\_\_\_  
Garrytt G. Gruber, P.E., Senior Vice President

[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 23rd day of February, 2023, by **Mock Roos & 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.

*Tabbatha S. Marcus*

Notary Public Signature

Notary Seal:

 Tabbatha S. Marcus  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# GG950436  
Expires 1/23/2024

**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  
(Civil Engineering – Water)**

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 **Mock Roos & Associates, Inc.** a State of 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 civil engineering related to water 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 (Civil Engineering – water) 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: **MOCK ROOS & ASSOCIATES, 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 **Mock Roos & 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**



**Schedule A  
Fee Schedule  
Mock•Roos  
2023  
City of Lake Worth Beach  
Continuing Contracts for Professional Services  
RFQ 23-300**

<b>Position Title</b>	<b>Hourly Rate</b>
Principal/Corporate Officer	\$240
Sr. Project Manager	\$225
Project Manager	\$185
Sr. Project Engineer	\$205
Project Engineer	\$170
Engineer Intern	\$125
Designer	\$115
Sr. Field Representative	\$135
Project Coordinator	\$95
Administrative Assistant	\$70



## 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**

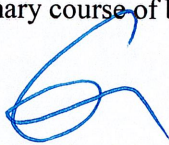
This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant 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

Garrytt G. Gruber, P.E., Senior Vice President

\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

February 23, 2023

\_\_\_\_\_  
Date

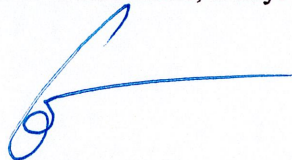
## Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 Mock, Roos & Associates, 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

Garrytt G. Gruber, P.E., Senior Vice President

\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

February 23, 2023

\_\_\_\_\_  
Date



**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Civil Engineering – Water)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Kimley-Horn and Associates, Inc.**, a North Carolina 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 civil engineering related to water 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 civil engineering related to water 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. 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 CONSUL TANT 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 an amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSUL TANT 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 CONSUL TANT'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. CONSULTANT neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents

(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:

Kimley-Horn and Associates, Inc.  
Attn: Marwan Mufleh, Principal  
1920 Wekiva Way Suite 200  
West Palm Beach, FL 33411-2410

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](mailto: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.

Pursuant to FS 558.0035, Employees of Kimley Horn and Associates, Inc. may not be held individually liable for damages resulting from negligence under this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Continuing Professional Services Agreement for Civil Engineering – Water 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:**

**KIMLEY-HORN AND ASSOCIATES, INC.**

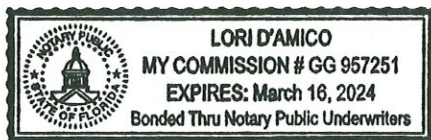
By: \_\_\_\_\_  
David Walthall, Senior Vice President

STATE OF Florida )  
COUNTY OF Palm Beach )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 6 day of March, 2023, by **Kimley-Horn and Associates, Inc.** a North Carolina 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.

Lori D'Amico  
Notary Public Signature Lori D'Amico

Notary Seal:



**EXHIBIT "A"**  
**(Sample Task Order)**

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

**TASK ORDER No. \_\_\_\_\_**

**CONTINUING PROFESSIONAL SERVICES  
(Civil Engineering – Water)**

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 **Kimley-Horn and Associates, Inc.**, a North Carolina 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 civil engineering related to water 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 (Civil Engineering – Water) 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: KIMLEY-HORN AND ASSOCIATES, 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 **Kimley-Horn and Associates, Inc.** a North Carolina 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



**Kimley-Horn and Associates, Inc.**

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**Billing Rates**

<b>Classification</b>	<b><i>Rate</i></b>
Senior Professional II	\$297.79
Senior Professional I	\$245.00
Professional II	\$210.00
Professional I	\$165.00
Analyst II	\$145.00
Analyst I	\$104.35
Senior Technical Support Staff	\$175.00
Technical Support Staff	\$125.00
Support Staff	\$90.94

## 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

\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

3/6/23  
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 **Kimley-Horn and Associates, 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

*DAVID WALTHALL, PRINCIPAL*

\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

*3/6/23*

\_\_\_\_\_  
Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Civil Engineering – Water)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Holtz Consulting Engineers, 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 civil engineering related to water 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 civil engineering related to water 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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

Holtz Consulting Engineers, Inc.  
Attn: Stephen Fowler, Vice President  
270 South Central Boulevard, Suite 207  
Jupiter, Fl 33458

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](mailto: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 Civil Engineering – Water 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: **HOLTZ CONSULTING ENGINEERS, INC.**

By: \_\_\_\_\_

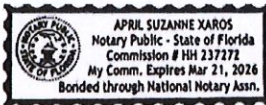


[Corporate Seal]

STATE OF Florida )  
COUNTY OF Palm Beach )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 21st day of February, 2023, by **Holtz Consulting Engineers, 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.

April Xaros  
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  
(Civil Engineering – Water)**

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 **Holtz Consulting Engineers, 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 civil engineering related to water 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 (Civil Engineering – Water) 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: HOLTZ CONSULTING ENGINEERS, 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 **Holtz Consulting Engineers, 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

#### FEE SCHEDULE

The rates and charges outlined below are used for billing of services on time-and-expenses projects and are used to develop compensation amounts for lump sum projects. These rates are effective for three years and may be adjusted if agreed upon in writing by the City of Lake Worth Beach.

**Holtz Consulting Engineers, Inc.  
Hourly Rates 2023**

Principal Engineer	\$220
Associate Engineer	\$210
Senior Project Manager	\$195
Project Manager	\$180
Project Engineer (PE)	\$160
Project Engineer (EI)	\$120
Construction Manager	\$160
Construction Inspector	\$120
Senior Designer	\$135
Drafter	\$115
Administrative Assistant	\$85

## 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.



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Signature of Consultant's Authorized Official

Stephen Fowler, Vice President

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Name and Title of Consultant's Authorized Official

2/21/2023

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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 Holtz Consulting Engineers, 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

**Stephen Fowler, Vice President**

\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

2/21/2023

\_\_\_\_\_  
Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Civil Engineering – Water)**

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 civil engineering related to water 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 civil engineering related to water 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 CONSUL TANT 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 an amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSUL TANT 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 CONSUL TANT'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:

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](mailto: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 Civil Engineering – Water 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  
(Civil Engineering – Water)**

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 civil engineering related to water 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 (Civil Engineering – Water) 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

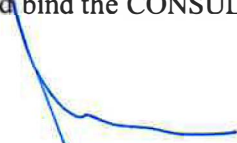
CONSULTANT: CHEN MOORE AND ASSOCIATES, INC.

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**

<b><u>Labor Category</u></b>	<b><u>Hourly Rate</u></b>
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**

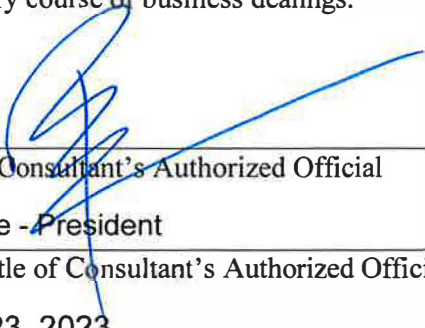
This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant 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.



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Signature of Consultant's Authorized Official

Peter Moore - President

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Name and Title of Consultant's Authorized Official

February 23, 2023

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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

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** City Wide

**TITLE:**

Continuing Contracts for Professional Services for Civil Engineering - Transportation Category

**SUMMARY:**

Continuing Contracts for Professional Services for Civil Engineering – Transportation with WGI, Inc, Mock, Roos & Associates, Inc, Kimley-Horn and Associates, Inc., Stantec, Inc. 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 Civil Engineering – Transportation Category, the City received ten qualification submittals. The Evaluation Committee shortlisted five firms for presentations and in the final evaluation meeting recommended award to four firms: WGI, Inc, Mock, Roos & Associates, Inc, Kimley-Horn and Associates, Inc., Stantec, Inc. City staff negotiated rates with each of the recommended firms.

**MOTION:**

Move to approve/disapprove the Agreements for Continuing Contracts for professional services for Civil Engineering – Transportation with WGI, Inc, Mock, Roos & Associates, Inc, Kimley-Horn and Associates, Inc., Stantec, Inc.

**ATTACHMENT(S):**

Fiscal Impact Analysis – N/A  
Shortlist Results Civil Engineering Transportation  
Final Results Civil Engineering Transportation  
Mock, Roos & Associates, Inc Agreement  
Kimley-Horn and Associates, Inc. Agreement  
WGI, Inc. Agreement  
Stantec, Inc. Agreement



**RFQ#23-300 Continuing Contracts for Professional Services**

**Evaluation Committee Meeting – Shortlisting Results  
Civil Engineering – Transportation**

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

COMPANY	TOTAL	RANK
Mock Roos	477	1
Kimley Horn	445	2
WGI	439	3
Craven Thompson	439	3
Stantec	435	4

Attachments:

Evaluation Sheet for RFQ # 23-300 Continuing Contracts for Professional Services  
(CCNA) Civil Engineering – Transportation

**City of Lake Worth Beach**  
Evaluation Matrix - Shortlisting

**RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Civil - Transportation**

		RANKED:	10	6	8	3	7	9	2	1	5	3
Shortlist Evaluation Criteria Score Sheet:		Weight	A & E	Baxter Woodman	CPH	CTA	EXP	Keith	Kimley Horn	Mock Roos	Stantec	WGI
1	Evidence of personnel availability, capability, experience and skill	35	134	165	146	162	159	146	166	165	161	160
2	Successful past performance for similar projects & accountability	35	129	161	151	159	150	151	170	167	163	165
3	Client Management and Project Staffing Plan	20	78	91	87	93	92	80	95	95	92	97
4	Terminations and/or litigation(if statement not provided – 0 points)	5	16	15	20	25	15	22	14	25	19	17
5	Evidence of veteran business enterprise, small business or local business preference (documents must be provided to claim preference) Completed & verified by Purchasing Division	5	0	0	0	0	0	0	0	25	0	0
<b>Total Points Received:</b>			<b>357</b>	<b>432</b>	<b>404</b>	<b>439</b>	<b>416</b>	<b>399</b>	<b>445</b>	<b>477</b>	<b>435</b>	<b>439</b>
Exhibit "B" - Respondent Information Form			submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "C" - Drug Free Workplace Form			submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "D" - References			submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "E" - Campaign Contribution Statement			submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "F" - Scrutinized Companies Certification			submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "G" - Veteran Bus. Enterprise, Small Bus. Local Bus. Preference default, termination, litigation statement			No. Does not meet LWB requirement*	n/a	n/a	No. Does not meet LWB requirement*	n/a	No. Does not meet LWB requirement*	n/a	yes/small business	n/a	n/a
			submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
			*MBE/DBE does not comply with LWB policy			* Delray Beach business		*M/WBE does not comply with LWB policy				

**City of Lake Worth Beach**  
Final Evaluation Matrix - Oral Presentations

**RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Civil - Transportation**

		RANKED:	4	2	1	5	3
Oral Presentation Evaluation Criteria Score Sheet:		Weight	Mock Roos	Kimley Horn	WGI	Craven Thompson	Stantec
1	Ability of professional personnel	35	135	138	139	134	136
2	Evidence of successful past performance for similar projects	35	137	139	139	135	138
3	Recent, current workload	15	58	57	58	57	57
4	Location/Convenience to City staff	15	58	58	58	59	59
<b>Total Points Received:</b>			<b>388</b>	<b>392</b>	<b>394</b>	<b>385</b>	<b>390</b>



**CONTINUING PROFESSIONAL SERVICES AGREEMENT**  
**RFQ#23-300**  
**(Civil Engineering – Transportation)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Mock Roos & 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 civil engineering related to transportation 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 civil engineering related to transportation 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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

Mock Roos Associates, Inc.  
Attn: Garry Gruber, Senior Vice President  
5720 Corporate Way  
West Palm Beach, Fl 33407

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](mailto: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 Civil Engineering – Transportation 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:**

**MOCK ROOS & ASSOCIATES, INC.**

By: \_\_\_\_\_  
Garrytt G. Gruber, P.E., Senior Vice President

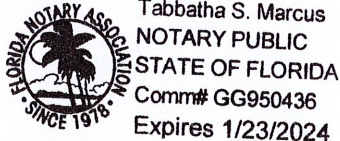
[Corporate Seal]

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 27th day of February, 2023, by **Mock Roos & 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.

Tabbatha S. Marcus  
Notary Public Signature

Notary Seal:



**EXHIBIT "A"**  
**(Sample Task Order)**

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

**TASK ORDER No. \_\_\_\_\_**

**CONTINUING PROFESSIONAL SERVICES  
(Civil Engineering – Transportation)**

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 **Mock Roos & 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 civil engineering related to transportation 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 (Civil Engineering – Transportation) 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: MOCK ROOS & ASSOCIATES, 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 **Mock Roos & 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**



Schedule A  
Fee Schedule  
Mock•Roos  
2023  
City of Lake Worth Beach  
Continuing Contracts for Professional Services  
RFQ 23-300

Position Title	Hourly Rate
Principal/Corporate Officer	\$240
Sr. Project Manager	\$225
Project Manager	\$185
Sr. Project Engineer	\$215
Project Engineer	\$175
Engineer Intern	\$135
Designer	\$115
Sr. Field Representative	\$135
Project Coordinator	\$95
Administrative Assistant	\$70

## 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

Garrytt G. Gruber, P.E., Senior Vice President

\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

February 24, 2023

\_\_\_\_\_  
Date



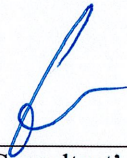
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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 Mock, Roos & Associates, 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

Garrytt G. Gruber, P.E., Senior Vice President  
\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

February 24, 2023  
\_\_\_\_\_  
Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Civil Engineering – Transportation)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Kimley-Horn and Associates, Inc.**, a North Carolina 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 civil engineering related to transportation 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 civil engineering related to transportation 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. 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 CONSUL TANT 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 an amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSUL TANT 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 CONSUL TANT'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. CONSULTANT neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents

(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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

Kimley-Horn and Associates, Inc.  
Attn: Marwan Mufleh, Principal  
1920 Wekiva Way Suite 200  
West Palm Beach, FL 33411-2410

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](mailto: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.

Pursuant to FS 558.0035, Employees of Kimley Horn and Associates, Inc. may not be held individually liable for damages resulting from negligence under this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Continuing Professional Services Agreement for Civil Engineering – Transportation 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:**

**KIMLEY-HORN AND ASSOCIATES, INC.**

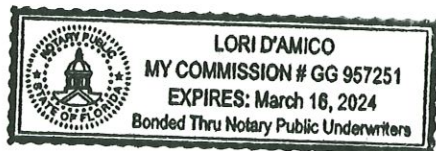
By: \_\_\_\_\_  
David Walthall, Senior Vice President

STATE OF Florida )  
COUNTY OF Palm Beach )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 6 day of March, 2023, by **Kimley-Horn and Associates, Inc.** a North Carolina 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.

Lori D'Amico  
Notary Public Signature Lori D'Amico

Notary Seal:



**EXHIBIT "A"**  
**(Sample Task Order)**

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

**TASK ORDER No. \_\_\_\_\_**

**CONTINUING PROFESSIONAL SERVICES  
(Civil Engineering – Transportation)**

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 **Kimley-Horn and Associates, Inc.**, a North Carolina 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 civil engineering related to transportation 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 (Civil Engineering – Transportation) 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: KIMLEY-HORN AND ASSOCIATES, 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 **Kimley-Horn and Associates, Inc.** a North Carolina 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



**Kimley-Horn and Associates, Inc.**

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**Billing Rates**

<b>Classification</b>	<b><i>Rate</i></b>
Senior Professional II	\$297.79
Senior Professional I	\$245.00
Professional II	\$210.00
Professional I	\$165.00
Analyst II	\$145.00
Analyst I	\$104.35
Senior Technical Support Staff	\$175.00
Technical Support Staff	\$125.00
Support Staff	\$90.94

## 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

DAVID WALTHAM, PRINCIPAL  
Name and Title of Consultant's Authorized Official

3/6/23  
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 **Kimley-Horn and Associates, 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

DAVID WALTHALL, PRINCIPAL  
\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

3/6/23  
\_\_\_\_\_  
Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**  
**RFQ#23-300**  
**(Civil Engineering – Transportation)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **WGI, 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 civil engineering related to transportation 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 civil engineering related to transportation 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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

WGI, Inc.  
Attn: Brett Oldford, Vice President  
2035 Vista Parkway  
West Palm Beach, Fl 33411

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](mailto: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 Civil Engineering – Transportation 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

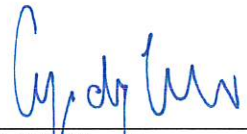
By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

**CONSULTANT:**  
  
[Corporate Seal]  
STATE OF Florida  
COUNTY OF Palm Beach

**WGI, INC.**  
By:   
BRETT OLDFORD

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 1st day of March, 2023, by **WGI, 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:  **CYNDY LITTLE**  
Notary Public  
State of Florida  
Comm# HH224313  
Expires 3/31/2026

**EXHIBIT "A"**  
**(Sample Task Order)**

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



**TASK ORDER No. \_\_\_\_\_**

**CONTINUING PROFESSIONAL SERVICES  
(Civil Engineering – Transportation)**

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 **WGI, 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 civil engineering related to transportation 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 (Civil Engineering – Transportation) 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: WGI, 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 **WGI, 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

City of Lake Worth Beach – RFQ #23-300 CCNA – Civil-Transportation  
 February 26, 2023  
 Page 1 of 1

#### WGI Rates – RFQ #23-300 CCNA

<b>ENGINEERING SERVICES</b>	Hourly Rate
Executive Engineer	\$345.00
Chief Engineer	\$335.00
Principal Engineer	\$300.00
Senior Project Manager	\$280.00
Project Manager	\$215.00
Senior Engineer 2	\$255.00
Senior Engineer 1	\$225.00
Engineer 2	\$205.00
Engineer 1	\$175.00
Senior Engineer Intern	\$150.00
Engineer Intern	\$135.00
Chief Utility Coordinator	\$260.00
Senior Utility Coordinator	\$200.00
Utility Coordinator	\$160.00
Chief Designer	\$190.00
Senior Designer	\$160.00
Designer	\$125.00
Field Engineer	\$195.00
Field Inspector	\$145.00
<b>SURVEYING SERVICES</b>	
Chief Surveyor	\$300.00
Principal Surveyor	\$250.00
Senior Project Manager	\$210.00
Project Manager	\$185.00
Senior professional Surveyor	\$170.00
Professional Surveyor	\$160.00
Certified Photogrammetrist	\$190.00
Senior Survey Technician	\$140.00
Survey Technician	\$120.00
SUE Technician	\$120.00
Field Technician	\$90.00
1 Person Field Survey Crew	\$120.00
2 Person Field Survey Crew	\$150.00
3 Person Field Survey Crew	\$190.00
4 Person Field Survey Crew	\$250.00
2 Person SUE Crew	\$160.00
3 Person SUE Crew	\$220.00
4 Person SUE Crew	\$260.00
5 Person SUE Crew	\$300.00
Laser Scan Crew	\$250.00
Hydrographic/Bathymetric Crew	\$325.00

<b>PLANNING SERVICES</b>	Hourly Rate
Executive Planner	\$300.00
Chief Planner	\$240.00
Principal Planner	\$210.00
Senior Project Manager	\$200.00
Project Manager	\$175.00
Senior Planner	\$150.00
Planner	\$115.00
<b>LANDSCAPE ARCHITECTURE SERVICES</b>	
Principal Landscape Architect	\$250.00
Senior Project Manager	\$200.00
Project Manager	\$175.00
Senior Landscape Architect	\$210.00
Landscape Architect	\$175.00
Senior Designer	\$150.00
Designer	\$115.00
Entry Level Designer	\$100.00
<b>ENVIRONMENTAL SERVICES</b>	
Executive Environmental Scientist	\$250.00
Principal Environmental Scientist	\$225.00
Senior Project Manager	\$200.00
Project Manager	\$170.00
Senior Environmental Scientist	\$200.00
Environmental Scientist	\$135.00
Environmental Technician	\$100.00
<b>ARCHITECTURAL SERVICES</b>	
Principal Architect	\$255.00
Senior Project Manager	\$225.00
Project Manager	\$185.00
Senior Architect	\$220.00
Project Architect	\$175.00
Architect	\$150.00
Senior Graduate Architect	\$130.00
Graduate Architect	\$115.00
<b>OTHER PROFESSIONAL SERVICES</b>	
Expert Witness	\$425.00
GIS Technician	\$115.00
Administrative Assistant	\$100.00
Intern	\$80.00
<b>REIMBURSABLE EXPENSES</b>	
Copies, Black & White (each)	\$0.30
Copies, Color (each)	\$1.00
Plots, Black & White (each)	\$2.00
Plots, Color (each)	\$15.00
Mylars (each)	\$70.00
Foam Core Presentation Boards (each)	\$7.50

## 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.



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Signature of Consultant's Authorized Official

**Brett Oldford, VP - Civil Engineering**

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Name and Title of Consultant's Authorized Official

**3-1-23**

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Date

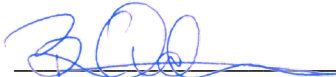
## **Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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 WGI, 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

Brett Oldford, VP - Civil Engineering  
\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

3-1-23  
\_\_\_\_\_  
Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**  
**RFQ#23-300**  
**(Civil Engineering – Transportation)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Stantec Consulting Services, Inc.**, a 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 civil engineering related to transportation 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 civil engineering related to transportation 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.** . The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible in accordance with the applicable professional standard of care 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. 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.

(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 receipt of payment by the CONSULTANT 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. ~~The City agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any reuse or modification of the Work Product by the City or any person or entity that obtains the Work Product from or through the City.~~

(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. Notwithstanding the foregoing, the City's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

(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. Such changes shall become effective upon execution by both the parties.

(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. ~~Notwithstanding the foregoing,~~ CONSULTANT shall not be responsible for the construction contractor's failure to carry out the work in accordance with the applicable construction contract documents or for the acts or omissions of any construction contractor, subcontractor, any of their agents or employees. CONSULTANT is not responsible for providing legal advice to the City in connection with the tendering, drafting or interpretation of construction contracts or any other matter whatsoever.

(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 reasonable 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 provided that CONSULTANT shall be entitled to mention the project and the Services provided in future proposals as proof of CONSULTANT's experience with this type of work.

## **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. The CONSULTANT shall be entitled to reasonably rely upon the information and data provided by the City or obtained from generally acceptable sources within the industry without independent verification except to the extent such verification is expressly included in the Services or consistent with the standard of care in the industry.

(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: a) 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.

~~b) TERMINATION BY CONSULTANT. The CONSULTANT may terminate this Agreement upon seven (7) days' notice in writing in the event the City has committed material breach of this Agreement. Non-payment of the CONSULTANT's invoices will be considered a material breach of this Agreement.~~

**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.

~~PURSUANT TO FLORIDA STATUTES CHAPTER 558.0035 AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE.~~

**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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

Stantec Consulting Services, Inc.  
Attn: Terrance Glunt, Senior Principal  
2056 Vista Parkway, Suite 100  
West Palm Beach, FL 33411

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](mailto: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.

**SECTION 39: LIMITATION OF LIABILITY.** ~~To the fullest extent permitted by law, the Parties agree to limit the aggregate liability of the CONSULTANT to the amount of fees paid to the CONSULTANT under the applicable Task Order issued under this Agreement.~~ In no event shall either party be liable for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business).

**SECTION 40: CONSULTANT LIMITATION OF LIABILITY.**

**PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.**

IN WITNESS WHEREOF, the parties hereto have made and executed this Continuing Professional Services Agreement for Civil Engineering – Transportation 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

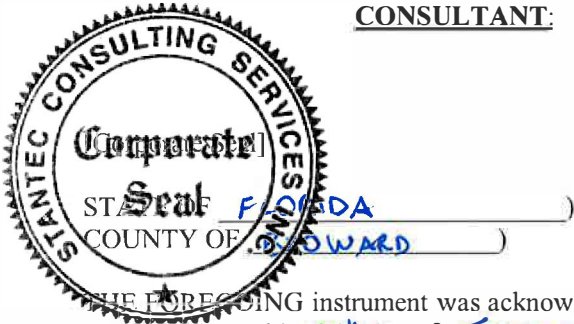
By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

CONSULTANT:

Stantec Consulting Services, Inc.

By: \_\_\_\_\_  
*Terrance N. Glunt*  
TERRANCE N. GLUNT



THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24<sup>th</sup> day of FEBRUARY, 2023, by **Stantec Consulting 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.

Natalie M Pini  
Notary Public Signature

Notary Seal:





**EXHIBIT "A"**  
**(Sample Task Order)**

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

**TASK ORDER No. \_\_\_\_\_**

**CONTINUING PROFESSIONAL SERVICES  
(Civil Engineering – Transportation)**

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 **Stantec Consulting Services, Inc.** a State of Florida, CORPORATION/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 civil engineering related to transportation 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 (Civil Engineering – Transportation) 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: \_\_\_\_\_  
\_\_\_\_\_ Financial Services Director

**CONSULTANT: Stantec Consulting 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 **Stantec Consulting 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**

	<b>TITLE</b>	<b>HOURLY RATE</b>
1	Company Officer / Technical Expert	\$ 275
2	Principal	\$ 250
3	Senior Project Manager	\$ 225
4	Senior Transportation Planner	\$ 225
5	Technical Lead	\$ 225
6	Project Manager	\$ 205
7	Senior Engineer	\$ 205
8	Sr. Scientist	\$ 205
9	Senior Landscape Architect	\$ 195
10	Project Engineer	\$ 185
11	Sr. Field Representative	\$ 175
12	Environmental Scientist	\$ 185
13	Landscape Architect	\$ 185
14	Project Designer (BIM / Civil 3D)	\$ 185
15	Engineering Intern (E.I)	\$ 155
16	LA Intern	\$ 155
17	Field Representative	\$ 145
18	Sr. Construction Inspector	\$ 155
19	Sr. CADD Designer	\$ 155
20	Construction Inspector	\$ 145
21	CADD Drafter	\$ 125
22	Clerical / Administrative	\$ 105

## 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

TERRANCE GLUNT / SR. PRINCIPAL  
Name and Title of Consultant's Authorized Official

2/24/2023  
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  
TERRANCE CLUNT / SR. PRINCIPAL  
\_\_\_\_\_  
Name and Title of Consultant's Authorized Official  
2/24/2023  
\_\_\_\_\_  
Date

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** City Wide

**TITLE:**

Continuing Contracts for Professional Services for Hydrogeological Category

**SUMMARY:**

Continuing Contracts for Professional Services for Hydrogeological engineering with JLA Geosciences, Inc. and Stantec, Inc. 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 Hydrogeological Engineering category, the City received 2 qualification submittals. The Evaluation Committee shortlisted both firms for presentations and in the final evaluation meeting recommended award to both firms: JLA Geosciences, Inc. and Stantec, Inc. City staff negotiated rates with each of the recommended firms.

**MOTION:**

Move to approve/disapprove the Agreements for Continuing Contracts for professional services for Hydrogeological Engineering with JLA Geosciences, Inc. and Stantec, Inc.

**ATTACHMENT(S):**

Fiscal Impact Analysis – N/A  
Shortlist Results Hydrogeological  
Final Results Hydrogeological  
JLA Geosciences, Inc. Agreement  
Stantec, Inc. Agreement



**RFQ#23-300 Continuing Contracts for Professional Services**

**Evaluation Committee Meeting – Shortlisting Results  
Hydrogeological**

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

COMPANY	TOTAL	RANK
JLA Geosciences	488	1
Stantec	460	2

Attachments:

Evaluation Sheet for RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) Civil Engineering – Hydrogeological

**City of Lake Worth Beach**  
Evaluation Matrix - Shortlisting

**RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Hydrogeological**

		RANKED:	1	2
Shortlist Evaluation Criteria Score Sheet:		Weight	JLA	Stantec
1	Evidence of personnel availability, capability, experience and skill	35	170	173
2	Successful past performance for similar projects & accountability	35	171	171
3	Client Management and Project Staffing Plan	20	97	95
4	Terminations and/or litigation(if statement not provided – 0 points)	5	25	21
5	Evidence of veteran business enterprise, small business or local business preference (documents must be provided to claim preference) Completed & verified by Purchasing Division	5	25	0
<b>Total Points Received:</b>			<b>488</b>	<b>460</b>
Exhibit "B" - Respondent Information Form			submitted	submitted
Exhibit "C" - Drug Free Workplace Form			submitted	submitted
Exhibit "D" - References			submitted	submitted
Exhibit "E" - Campaign Contribution Statement			submitted	submitted
Exhibit "F" - Scrutinized Companies Certification			submitted	submitted
Exhibit "G" - Veteran Bus. Enterprise, Small Bus. Local Bus. Preference			yes/small business	n/a
default, termination, litigation statement			submitted	submitted



**City of Lake Worth Beach**  
Final Evaluation Matrix - Oral Presentations

**RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Hydrogeological**

		RANKED:	1	2
Oral Presentation Evaluation Criteria Score Sheet:		Weight	JLA Geosciences	Stantec
1	Ability of professional personnel	35	140	140
2	Evidence of successful past performance for similar projects	35	140	140
3	Recent, current workload	15	59	58
4	Location/Convenience to City staff	15	60	60
<b>Total Points Received:</b>			<b>399</b>	<b>398</b>

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**  
**RFQ#23-300**  
**(Hydrogeological)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **JLA Geosciences, Inc.**, a 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 hydrogeological 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 hydrogeological 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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

JLA Geosciences, Inc.  
Attn: James L. Andersen, President  
1907 Commerce Lane  
Jupiter, Fl 33458

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](mailto: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 Hydrogeological 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:**

**JLA GEOSCIENCES, INC.**

By: \_\_\_\_\_  
James L. Andersen, President

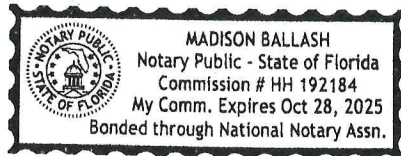
[Corporate Seal]

STATE OF FLORIDA  
COUNTY OF PALM BEACH

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 24<sup>th</sup> day of February, 2023, by **JLA Geosciences, 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.

Madison Ballash  
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  
(Hydrogeological)**

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 **JLA Geosciences, Inc.** a State of 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 hydrogeological 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 (Hydrogeological) 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: JLA GEOSCIENCES, 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 **JLA Geosciences, 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**

**JLA Geosciences, Inc.**

HYDROGEOLOGIC CONSULTANTS

1907 Commerce Lane, Suite 104  
Jupiter, Florida 33458  
(561) 746-0228

**JLA Geosciences, Inc.  
Schedule of Hourly Billing Rates**

<b>Personnel/Title</b>	<b>Rate/hour</b>
Project Manager - President	\$249.00
Principal Hydrogeologist/Corporate Officer	\$238.00
Senior Hydrogeologist III	\$214.00
Senior Hydrogeologist II	\$188.00
Senior Hydrogeologist I	\$162.00
Hydrogeologist III	\$151.00
Hydrogeologist II	\$139.00
Hydrogeologist I	\$128.00
Project Administration	\$100.00
Hydrologic Technician	\$92.00
Principal Modeling	\$238.00

## 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

JAMES L. ANDERSEN, PRESIDENT

\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

2-24-2023

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 JLA GEOSCIENCES 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  
JAMES L. ANDERSEN, PRESIDENT  
\_\_\_\_\_  
Name and Title of Consultant's Authorized Official  
2-24-2023  
\_\_\_\_\_  
Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Hydrogeological)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Stantec Consulting Services, Inc.**, a 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 hydrogeological 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 hydrogeological 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. . The CONSULTANT shall at all times carry out its duties and responsibilities as expeditiously as possible in accordance with the applicable professional standard of care 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. 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.

(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 receipt of payment by the CONSULTANT 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. ~~The City agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any reuse or modification of the Work Product by the City or any person or entity that obtains the Work Product from or through the City.~~

(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. Notwithstanding the foregoing, the City's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

(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. Such changes shall become effective upon execution by both the parties.

(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. ~~Notwithstanding the foregoing,~~ CONSULTANT shall not be responsible for the construction contractor's failure to carry out the work in accordance with the applicable construction contract documents or for the acts or omissions of any construction contractor, subcontractor, any of their agents or employees. CONSULTANT is not responsible for providing legal advice to the City in connection with the tendering, drafting or interpretation of construction contracts or any other matter whatsoever.

(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 reasonable 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 provided that CONSULTANT shall be entitled to mention the project and the Services provided in future proposals as proof of CONSULTANT's experience with this type of work.

#### **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. The CONSULTANT shall be entitled to reasonably rely upon the information and data provided by the City or obtained from generally acceptable sources within the industry without independent verification except to the extent such verification is expressly included in the Services or consistent with the standard of care in the industry.

(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: ~~a) 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.

~~b) **TERMINATION BY CONSULTANT.** The CONSULTANT may terminate this Agreement upon seven (7) days' notice in writing in the event the City has committed material breach of this Agreement. Non payment of the CONSULTANT's invoices will be considered a material breach of this Agreement.~~

**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.



~~PURSUANT TO FLORIDA STATUTES CHAPTER 558.0035 AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE.~~

**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:

Stantec Consulting Services, Inc.  
Attn: Neil Johnson, Senior Principal  
2056 Vista Parkway, Suite 100  
West Palm Beach, Fl 33411

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](mailto: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.

**SECTION 39: LIMITATION OF LIABILITY.** ~~To the fullest extent permitted by law, the Parties agree to limit the aggregate liability of the CONSULTANT to the amount of fees paid to the CONSULTANT under the applicable Task Order issued under this Agreement.~~ In no event shall either party be liable for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business).

**SECTION 40: CONSULTANT LIMITATION OF LIABILITY.**

**PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.**

IN WITNESS WHEREOF, the parties hereto have made and executed this Continuing Professional Services Agreement for Hydrogeological 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:**

Stantec Consulting Service

By: \_\_\_\_\_  
Neil A. Johnson



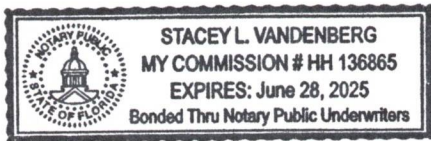
[Corporate Seal]

STATE OF Florida )  
COUNTY OF Palm Beach )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 27 day of February, 2023, by **Stantec Consulting 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.

Stacey L. Vandenberg  
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  
(Hydrogeological)**

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 **Stantec Consulting Services, Inc.** a State of Florida, CORPORATION/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 hydrogeological 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 (Hydrogeological) 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: **Stantec Consulting 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 **Stantec Consulting 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**

	<b>TITLE</b>	<b>HOURLY RATE</b>	
1	Company Officer / Technical Expert	\$	275
2	Principal	\$	250
3	Senior Project Manager	\$	225
4	Sr. Hydrogeologist	\$	225
5	Technical Lead	\$	225
6	Project Manager	\$	205
7	Senior Engineer	\$	205
8	Sr. Scientist	\$	205
9	Hydrogeologist - Field	\$	195
10	Project Engineer	\$	185
11	Sr. Field Representative	\$	175
12	Environmental Scientist	\$	185
13	Project Designer (BIM / Civil 3D)	\$	185
14	Field Representative	\$	145
15	Sr. CADD Designer	\$	155
16	CADD Drafter	\$	125
17	Clerical / Administrative	\$	105

## 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**

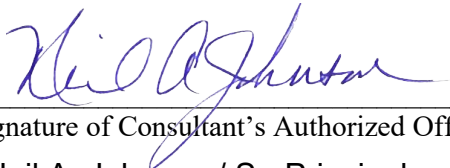
This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant 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.



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Signature of Consultant's Authorized Official

Neil A. Johnson / Sr. Principal

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Name and Title of Consultant's Authorized Official

02/24/2023

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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

Neil A. Johnson / Sr. Principal

\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

02/24/2023

\_\_\_\_\_  
Date

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** City Wide

**TITLE:**

Continuing Contracts for Professional Services for Architecture Category

**SUMMARY:**

Continuing Contracts for Professional Services for Architecture with CPZ Architects, Inc., ACAI Architects, Inc. Song + Associates, Inc. and WGI, Inc. 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 Architecture category, the City received seven qualification submittals. The Evaluation Committee shortlisted six firms for presentations and in the final evaluation meeting recommended award to four firms: CPZ Architects, Inc., ACAI Architects, Inc. Song + Associates, Inc. and WGI, Inc. City staff negotiated rates with each of the recommended firms.

**MOTION:**

Move to approve/disapprove the Agreements for Continuing Contracts for professional services for Architecture with CPZ Architects, Inc., ACAI Architects, Inc. Song + Associates, Inc. and WGI, Inc.

**ATTACHMENT(S):**

Fiscal Impact Analysis – N/A  
Shortlist Results Architecture  
Final Results Architecture  
CPZ Architects, Inc. Agreement  
ACAI Architects, Inc. Agreement  
Song + Associates, Inc. Agreement  
WGI, Inc. Agreement



## **RFQ#23-300 Continuing Contracts for Professional Services**

### **Evaluation Committee Meeting – Shortlisting Results Architecture**

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

COMPANY	TOTAL	RANK
ACAI Associates, Inc.	347	1
CPZ Architects, Inc.	344	2
WGI, Inc.	344	2
Song + Associates, Inc.	340	4
CPH, LLC	337	5
West Architecture + Design, LLC	337	5

Attachments:

Evaluation Sheet for RFQ # 23-300 Continuing Contracts for Professional Services  
(CCNA) Civil Engineering – Architecture

**City of Lake Worth Beach**  
Evaluation Matrix - Shortlisting

**RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Architecture**

		RANKED:	1	5	2	7	4	5	2
Shortlist Evaluation Criteria Score Sheet:		Weight	ACAI	CPH	CPZ	JS&A	Song + Associates	West Architecture	WGI
1	Evidence of personnel availability, capability, experience and skill	35	119	128	119	32	125	125	130
2	Successful past performance for similar projects & accountability	35	123	125	123	31	128	122	126
3	Client Management and Project Staffing Plan	20	65	68	62	51	67	70	73
4	Terminations and/or litigation(if statement not provided – 0 points)	5	20	16	20	20	20	20	15
5	Evidence of veteran business enterprise, small business or local business preference (documents must be provided to claim preference) Completed & verified by Purchasing Division	5	20	0	20	20	0	0	0
<b>Total Points Received:</b>			<b>347</b>	<b>337</b>	<b>344</b>	<b>154</b>	<b>340</b>	<b>337</b>	<b>344</b>
Exhibit "B" - Respondent Information Form			Submitted	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
Exhibit "C" - Drug Free Workplace Form			Submitted	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
Exhibit "D" - References			Submitted	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
Exhibit "E" - Campaign Contribution Statement			Submitted	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
Exhibit "F" - Scrutinized Companies Certification			Submitted	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
Exhibit "G" - Veteran Bus. Enterprise, Small Bus. Local Bus. Preference			Yes, Small Business	n/a	Yes, Small Business	Yes, Small Business	n/a*	n/a	n/a
default, termination, litigation statement			Submitted	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
							*MBE Does not meet LWB Code requirement		

**City of Lake Worth Beach**  
Final Evaluation Matrix - Oral Presentations

**RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Architecture**

		RANKED:	2	1	4	3	6	5
Oral Presentation Evaluation Criteria Score Sheet:		Weight	ACAI	CPZ Architects	WGI	Song + Associates	CPH	West Architecture & Design
1	Ability of professional personnel	35	133	138	130	136	135	127
2	Evidence of successful past performance for similar projects	35	138	136	136	133	135	132
3	Recent, current workload	15	58	59	58	57	55	54.5
4	Location/Convenience to City staff	15	53.5	55.5	55	55	44	56
<b>Total Points Received:</b>			<b>382.5</b>	<b>388.5</b>	<b>379</b>	<b>381</b>	<b>369</b>	<b>369.5</b>



**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**  
**(Architecture)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **CPZ Architects, 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 Architecture 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 Architecture 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 CONSUL TANT 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 an amendment signed by the City Manager. The fee schedule shall be the basis for all fees proposed by the CONSUL TANT 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 CONSUL TANT'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:

CPZ Architects, Inc.  
Attn: Chris P. Zimmerman, President  
4316 W. Broward Boulevard  
Plantation, FL 33317

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](mailto: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 Architecture 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

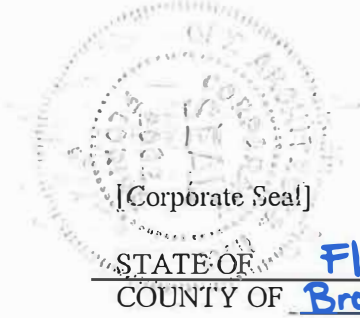
By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngenahayo, Financial Services Director

CONSULTANT:

CPZ ARCHITECTS, INC.

By: \_\_\_\_\_  
*Chris P. Zimmermann*  
CHRIS P. ZIMMERMANN



[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 1 day of March, 2023, by CPZ Architects, 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.

*Greter P. Perez*  
Notary Public Signature

Notary Seal:



GRETER P. PEREZ  
Commission # HH 092899  
Expires February 26, 2025  
Bonded Thru Budget Notary Services

**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  
(Architecture)**

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 **CPZ Architects, 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 Architecture 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 (Architecture) 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: **CPZ ARCHITECTS, 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 **CPZ Architects, 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



Hourly Rates

**CPZ Architects, Inc.**  
**Fee Schedule by hourly rates**  
**Lake Worth Continuing Services**  
**February 23, 2023**

<b>Project Team Personnel</b>	<b>Hourly Rates</b>
<b>CPZ Architects, Inc.</b>	
Principal	\$225 per hour
Architect	\$210 per hour
Senior Project Manager	\$170 per hour
Project Manager	\$155 per hour
Architectural Associate 3	\$140 per hour
Architectural Associate 2	\$125 per hour
Architectural Associate 1	\$100 per hour
Administration	\$ 95 per hour

**CPZ ARCHITECTS, INC.**

4316 WEST BROWARD BOULEVARD PLANTATION, FLORIDA 33317  
200 N. EL MAR DRIVE, SUITE 201B, JENSEN BEACH, FLORIDA 34957  
TEL. (954) 792-8525  
WWW.CPZARCHITECTS.COM

AA# 26000685

## 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**

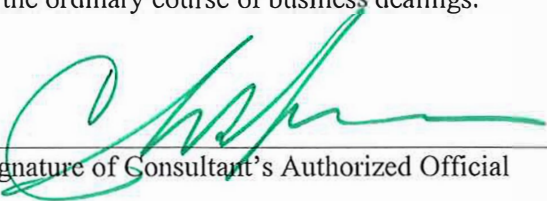
This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant 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

CHRIS P. ZIMMERMAN, PRES.  
\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

2023-03-01  
\_\_\_\_\_  
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

CHRIS P. ZIMMERMAN, Pres.  
Name and Title of Consultant's Authorized Official

2023-03-01  
Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Architecture)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **ACAI 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 Architecture 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 Architecture 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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

ACAI Associates, Inc.  
Attn: Adolfo J. Cotilla, Jr., President  
2937 West Cypress Creek Road, Suite 200  
Ft. Lauderdale, FL 33309

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](mailto: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 Architecture 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:**

**ACAI ASSOCIATES, INC.**

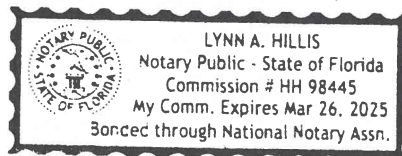
By: \_\_\_\_\_  
Adolfo J. Cotilla, Jr., President

STATE OF Florida )  
COUNTY OF Broward )

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 2nd day of March, 2023, by **ACAI 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.

Lynn A Hillis  
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  
(Architecture)**

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 **ACAI 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 Architecture 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 (Architecture) 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: **ACAI ASSOCIATES, 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 **ACAI 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

12.15.2023 ACAI #SA2723  
RFQ # 23-300 CCNA, Request for Hourly Rates - Architecture

ACAI Associates, Inc.

**Schedule of Hourly Rates\***

Staff Title	Hourly Rate
Principal	\$225.00
Senior Project Manager/Sr Architect/Engineer/Landscape Architect	\$190.00
Project Manager/Architect	\$165.00
Jr. Project Manager	\$137.00
Job Captain	\$154.00
Senior Designer	\$160.00
Sr. Construction Administrator	\$180.00
Construction Administrator	\$165.00
BIM Technician	\$132.00
Cadd Technician	\$110.00
Administrative/Clerical	\$ 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.



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Signature of Consultant's Authorized Official

Adolfo J. Cotilla, Jr., President

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Name and Title of Consultant's Authorized Official

03/02/23

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Date

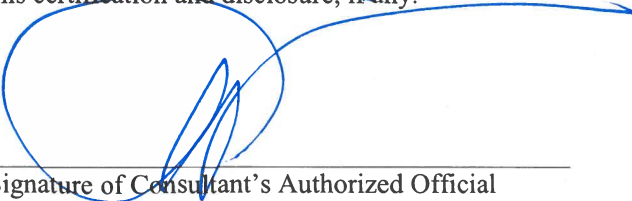
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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 ACAI ASSOCIATES, 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

Adolfo J. Cotilla, Jr., President  
Name and Title of Consultant's Authorized Official

03/02/23  
Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Architecture)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **SONG & 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 Architecture 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 Architecture 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:

SONG & Associates, Inc.,  
Attn: Robert Castrovinci, Principal  
1545 Centrepark Drive North  
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](mailto: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 Architecture 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:

SONG & ASSOCIATES, INC.

By:   
ROBERT CASTROVINCI

[Corporate Seal]

STATE OF FLORIDA )  
COUNTY OF LAKE BEACH )

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 2 day of March, 2023, by **SONG & 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:



**Perry Douglass**  
Comm. #GG955662  
Expires: May 1, 2024  
Bonded Thru Aaron Notary

**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  
(Architecture)**

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 **SONG & 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 Architecture 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 (Architecture) 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: **SONG & ASSOCIATES, INC.**

By: **DO NOT SIGN – SAMPLE ONLY**

[Corporate Seal]

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

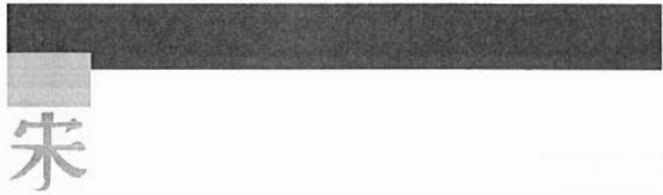
THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this \_\_\_\_ day of \_\_\_\_\_, 2023, **SONG & Associates, Inc.**, by a Florida Corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification, and who did take 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**



SONG + ASSOCIATES, INC.

Hourly Rate Schedule 2023

Prepared for City of Lake Worth – Continuing Contract

Principal	\$ 200.00
Sr. Architect	\$ 185.00
Sr. Project Manager	\$ 150.00
Sr. Designer	\$ 150.00
Sr. Construction Administrator	\$ 150.00
Architect	\$ 145.00
Project Manager	\$ 125.00
Interior Designer	\$ 125.00
Construction Administrator	\$ 120.00
Project Coordinator/ Job Captain	\$ 110.00
CAD/ BIM Technician	\$ 95.00
Administration/Clerical	\$ 70.00

## 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

ROBERT CASTROVINCI / PRINCIPAL

Name and Title of Consultant's Authorized Official

MARCH 2, 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 employec 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

ROBERT CASTROVINCI / PRINCIPAL

Name and Title of Consultant's Authorized Official

MARCH 2, 2023

Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Architecture)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **WGI, 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 Architecture 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 Architecture 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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

WGI, Inc.  
Attn: Brett Oldford, Vice President  
2035 Vista Parkway  
West Palm Beach, Fl 33414

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](mailto: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 Architecture 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. Tortorella, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director



**CONSULTANT:**

**WGI, INC.**  
By: Brett Oldford  
BRETT OLDFORD

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 1st day of March, 2023, by **WGI, 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.

Cyndy Little  
Notary Public Signature

Notary Seal:



**CYNDY LITTLE**  
Notary Public  
State of Florida  
Comm# HH224313  
Expires 3/31/2026



**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  
(Architecture)**

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 **WGI, 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 Architecture 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 (Architecture) 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: **WGI, 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, **WGI, Inc.**, by 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**

City of Lake Worth Beach – RFQ #23-300 CCNA – Architecture  
 February 26, 2023  
 Page 1 of 1

**WGI Rates – RFQ #23-300 CCNA**

<b>ENGINEERING SERVICES</b>	<b>Hourly Rate</b>
Executive Engineer	\$345.00
Chief Engineer	\$335.00
Principal Engineer	\$300.00
Senior Project Manager	\$280.00
Project Manager	\$215.00
Senior Engineer 2	\$255.00
Senior Engineer 1	\$225.00
Engineer 2	\$205.00
Engineer 1	\$175.00
Senior Engineer Intern	\$150.00
Engineer Intern	\$135.00
Chief Utility Coordinator	\$260.00
Senior Utility Coordinator	\$200.00
Utility Coordinator	\$160.00
Chief Designer	\$190.00
Senior Designer	\$160.00
Designer	\$125.00
Field Engineer	\$195.00
Field Inspector	\$145.00
<b>SURVEYING SERVICES</b>	
Chief Surveyor	\$300.00
Principal Surveyor	\$250.00
Senior Project Manager	\$210.00
Project Manager	\$185.00
Senior professional Surveyor	\$170.00
Professional Surveyor	\$160.00
Certified Photogrammetrist	\$190.00
Senior Survey Technician	\$140.00
Survey Technician	\$120.00
SUE Technician	\$120.00
Field Technician	\$90.00
1 Person Field Survey Crew	\$120.00
2 Person Field Survey Crew	\$150.00
3 Person Field Survey Crew	\$190.00
4 Person Field Survey Crew	\$250.00
2 Person SUE Crew	\$160.00
3 Person SUE Crew	\$220.00
4 Person SUE Crew	\$260.00
5 Person SUE Crew	\$300.00
Laser Scan Crew	\$250.00
Hydrographic/Bathymetric Crew	\$325.00

<b>PLANNING SERVICES</b>	<b>Hourly Rate</b>
Executive Planner	\$300.00
Chief Planner	\$240.00
Principal Planner	\$210.00
Senior Project Manager	\$200.00
Project Manager	\$175.00
Senior Planner	\$150.00
Planner	\$115.00
<b>LANDSCAPE ARCHITECTURE SERVICES</b>	
Principal Landscape Architect	\$250.00
Senior Project Manager	\$200.00
Project Manager	\$175.00
Senior Landscape Architect	\$210.00
Landscape Architect	\$175.00
Senior Designer	\$150.00
Designer	\$115.00
Entry Level Designer	\$100.00
<b>ENVIRONMENTAL SERVICES</b>	
Executive Environmental Scientist	\$250.00
Principal Environmental Scientist	\$225.00
Senior Project Manager	\$200.00
Project Manager	\$170.00
Senior Environmental Scientist	\$200.00
Environmental Scientist	\$135.00
Environmental Technician	\$100.00
<b>ARCHITECTURAL SERVICES</b>	
Principal Architect	\$255.00
Senior Project Manager	\$225.00
Project Manager	\$185.00
Senior Architect	\$220.00
Project Architect	\$175.00
Architect	\$150.00
Senior Graduate Architect	\$130.00
Graduate Architect	\$115.00
<b>OTHER PROFESSIONAL SERVICES</b>	
Expert Witness	\$425.00
GIS Technician	\$115.00
Administrative Assistant	\$100.00
Intern	\$80.00
<b>REIMBURSABLE EXPENSES</b>	
Copies, Black & White (each)	\$0.30
Copies, Color (each)	\$1.00
Plots, Black & White (each)	\$2.00
Plots, Color (each)	\$15.00
Mylars (each)	\$70.00
Foam Core Presentation Boards (each)	\$7.50

## 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.



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Signature of Consultant's Authorized Official

Brett Oldford, VP - Civil Engineering

Name and Title of Consultant's Authorized Official

3-1-23

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 WGI, 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

Brett Oldford, VP - Civil Engineering  
\_\_\_\_\_

Name and Title of Consultant's Authorized Official

3-1-23  
\_\_\_\_\_

Date

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** City Wide

**TITLE:**

Continuing Contracts for Professional Services for Surveying Category

**SUMMARY:**

Continuing Contracts for Professional Services for Surveying with WGI, Inc., Dennis J. Leavy & Associates, Engenuity Group, Inc and Avirom & Associates 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 Surveying Category, the City received 9 qualification submittals. The Evaluation Committee shortlisted five firms for presentations and in the final evaluation meeting recommended award to four firms: WGI, Inc., Dennis J. Leavy & Associates, Engenuity Group, Inc and Avirom & Associates. City staff negotiated rates with each of the recommended firms.

**MOTION:**

Move to approve/disapprove to enter into Agreements for Continuing Contracts for professional services for Surveying with WGI, Inc., Dennis J. Leavy & Associates, Engenuity Group, Inc and Avirom & Associates

**ATTACHMENT(S):**

Fiscal Impact Analysis – N/A  
Shortlist Results Surveying  
Final Results Surveying  
WGI, Inc Agreement  
Dennis J. Leavy & Associates Agreement  
Engenuity Group Agreement  
Avirom & Associates Agreement



## **RFQ#23-300 Continuing Contracts for Professional Services**

### **Evaluation Committee Meeting – Shortlisting Results Surveying**

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

COMPANY	TOTAL	RANK
Engenuity	460	1
Dennis J. Leavy	454	2
WGI	447	3
Avirom	446	4
CAS	443	5

Attachments:

Evaluation Sheet for RFQ # 23-300 Continuing Contracts for Professional Services  
(CCNA) Civil Engineering – Surveying

**City of Lake Worth Beach**  
Evaluation Matrix - Shortlisting

**RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Surveying**

RANKED:		4	5	6	2	1	9	8	7	3
Shortlist Evaluation Criteria Score Sheet:		AVIROM	CAS	CTA	DENNIS J. LEAVY	ENGENUITY	JMT	KCI	KEITH	WGI
Weight										
1	Evidence of personnel availability, capability, experience and skill	155	157	161	156	159	145	148	146	168
2	Successful past performance for similar projects & accountability	156	151	157	159	160	141	148	152	168
3	Client Management and Project Staffing Plan	85	85	93	89	91	88	87	83	96
4	Terminations and/or litigation(if statement not provided – 0 points)	25	25	25	25	25	14	16	23	15
5	Evidence of veteran business enterprise, small business or local business preference (documents must be provided to claim preference) Completed & verified by Purchasing Division	25	25	0	25	25	0	0	0	0
<b>Total Points Received:</b>		<b>446</b>	<b>443</b>	<b>436</b>	<b>454</b>	<b>460</b>	<b>388</b>	<b>399</b>	<b>404</b>	<b>447</b>
Exhibit "B" - Respondent Information Form		submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "C" - Drug Free Workplace Form		submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "D" - References		submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "E" - Campaign Contribution Statement		submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "F" - Scrutinized Companies Certification		submitted	submitted		submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "G" - Veteran Bus. Enterprise, Small Bus. Local Bus. Preference default, termination, litigation statement		yes, small business submitted	yes, small business submitted	No. Does not meet LWB requirement* submitted	yes, small business submitted	yes, small business submitted	n/a submitted	n/a submitted	n/a * submitted	n/a submitted
				Business registered at Delray Beach, Ft Lauderdale					*LWB Code does not provide for M/WBE preference	



**City of Lake Worth Beach**  
Final Evaluation Matrix - Oral Presentations

**RFQ # 23-300 Continuing Contracts for Professional Services (CCNA) - Surveying**

		RANKED:	3	2	1	4	n/a
Oral Presentation Evaluation Criteria Score Sheet:		Weight	Engenuity	Dennis J. Leavy	WGI	Avirom	CAS
1	Ability of professional personnel	35	138	139	140	138	0
2	Evidence of successful past performance for similar projects	35	138	139	139	135	0
3	Recent, current workload	15	59	57	59	59	0
4	Location/Convenience to City staff	15	59	60	60	59	0
<b>Total Points Received:</b>			<b>394</b>	<b>395</b>	<b>398</b>	<b>391</b>	<b>withdrawn</b>

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Surveying)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **WGI, Inc.**, a 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 Surveying 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 Surveying 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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

WGI, Inc.  
Attn: Brett Oldford, Vice-President  
2035 Vista Parkway  
West Palm Beach, Fl 33411

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](mailto: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 Surveying 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:**

**WGI, INC.**

By: Brett Oldford  
BRETT OLDFORD

STATE OF Florida  
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 1st day of March, 2023, by **WGI, 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.

Cyndy Little  
\_\_\_\_\_  
Notary Public Signature

Notary Seal:



**CYNDY LITTLE**  
Notary Public  
State of Florida  
Comm# HH224313  
Expires 3/31/2026

**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  
(Surveying)**

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 **WGI, Inc.** a State of 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 Surveying 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 (Surveying) 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: WGI, 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 **WGI, 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

City of Lake Worth Beach – RFQ #23-300 CCNA – Survey  
 February 26, 2023  
 Page 1 of 1

#### WGI Rates – RFQ #23-300 CCNA

<b>ENGINEERING SERVICES</b>	Hourly Rate
Executive Engineer	\$345.00
Chief Engineer	\$335.00
Principal Engineer	\$300.00
Senior Project Manager	\$280.00
Project Manager	\$215.00
Senior Engineer 2	\$255.00
Senior Engineer 1	\$225.00
Engineer 2	\$205.00
Engineer 1	\$175.00
Senior Engineer Intern	\$150.00
Engineer Intern	\$135.00
Chief Utility Coordinator	\$260.00
Senior Utility Coordinator	\$200.00
Utility Coordinator	\$160.00
Chief Designer	\$190.00
Senior Designer	\$160.00
Designer	\$125.00
Field Engineer	\$195.00
Field Inspector	\$145.00
<b>SURVEYING SERVICES</b>	
Chief Surveyor	\$300.00
Principal Surveyor	\$250.00
Senior Project Manager	\$210.00
Project Manager	\$185.00
Senior professional Surveyor	\$170.00
Professional Surveyor	\$160.00
Certified Photogrammetrist	\$190.00
Senior Survey Technician	\$140.00
Survey Technician	\$120.00
SUE Technician	\$120.00
Field Technician	\$90.00
1 Person Field Survey Crew	\$120.00
2 Person Field Survey Crew	\$150.00
3 Person Field Survey Crew	\$190.00
4 Person Field Survey Crew	\$250.00
2 Person SUE Crew	\$160.00
3 Person SUE Crew	\$220.00
4 Person SUE Crew	\$260.00
5 Person SUE Crew	\$300.00
Laser Scan Crew	\$250.00
Hydrographic/Bathymetric Crew	\$325.00

<b>PLANNING SERVICES</b>	Hourly Rate
Executive Planner	\$300.00
Chief Planner	\$240.00
Principal Planner	\$210.00
Senior Project Manager	\$200.00
Project Manager	\$175.00
Senior Planner	\$150.00
Planner	\$115.00
<b>LANDSCAPE ARCHITECTURE SERVICES</b>	
Principal Landscape Architect	\$250.00
Senior Project Manager	\$200.00
Project Manager	\$175.00
Senior Landscape Architect	\$210.00
Landscape Architect	\$175.00
Senior Designer	\$150.00
Designer	\$115.00
Entry Level Designer	\$100.00
<b>ENVIRONMENTAL SERVICES</b>	
Executive Environmental Scientist	\$250.00
Principal Environmental Scientist	\$225.00
Senior Project Manager	\$200.00
Project Manager	\$170.00
Senior Environmental Scientist	\$200.00
Environmental Scientist	\$135.00
Environmental Technician	\$100.00
<b>ARCHITECTURAL SERVICES</b>	
Principal Architect	\$255.00
Senior Project Manager	\$225.00
Project Manager	\$185.00
Senior Architect	\$220.00
Project Architect	\$175.00
Architect	\$150.00
Senior Graduate Architect	\$130.00
Graduate Architect	\$115.00
<b>OTHER PROFESSIONAL SERVICES</b>	
Expert Witness	\$425.00
GIS Technician	\$115.00
Administrative Assistant	\$100.00
Intern	\$80.00
<b>REIMBURSABLE EXPENSES</b>	
Copies, Black & White (each)	\$0.30
Copies, Color (each)	\$1.00
Plots, Black & White (each)	\$2.00
Plots, Color (each)	\$15.00
Mylars (each)	\$70.00
Foam Core Presentation Boards (each)	\$7.50

## 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.



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Signature of Consultant's Authorized Official

**Brett Oldford, CP - Civil Engineering**

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Name and Title of Consultant's Authorized Official

**3-1-23**

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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 WGI, 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

Brett Oldford, VP - Civil Engineering

Name and Title of Consultant's Authorized Official

3-1-23

Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Surveying)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Dennis J. Leavy & Associates, Inc.**, a 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 Surveying 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 Surveying 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:

Dennis J. Leavy & Associates, Inc.  
Attn: David A. Bower, Vice-President  
460 Business Park Way, Suite B  
Royal Palm Beach, Fl 33411

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](mailto: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 Surveying 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:**

**DENNIS J. LEAVY & ASSOCIATES, INC.**

By: David A. Bower  
David A. Bower, Vice President

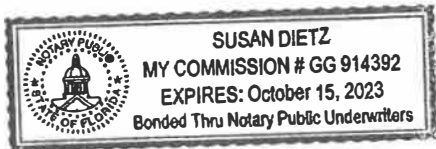
[Corporate Seal]

STATE OF Florida  
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 27<sup>th</sup> day of February, 2023, by **Dennis J. Leavy & 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.

Susan Dietz  
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  
(Surveying)**

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 **Dennis J. Leavy & Associates, Inc.** a State of 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 Surveying 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 (Surveying) 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: DENNIS J. LEAVY & ASSOCIATES, 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 **Dennis J. Leavy & 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**



**DENNIS J. LEAVY & ASSOCIATES, INC**  
Land Surveyors • Mappers



**2023 DJLA Hourly Rates**

Principal .....	\$148.00/hr.
Professional Surveyor and Mapper .....	\$132.00/hr.
Field Survey crew (truck, conventional survey equipment) .....	\$148.00/hr.
Survey Associate.....	\$105.00/hr.
Computer Draftperson .....	\$ 90.00/hr.
Administrative.....	\$ 80.00/hr.

## 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.

David A. Bower

Signature of Consultant's Authorized Official

David A. Bower, Vice President

Name and Title of Consultant's Authorized Official

02/27/23

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 Dennis J. Leavy & Associates, 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

David A. Bower, Vice President  
\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

02/27/23  
\_\_\_\_\_  
Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Surveying)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Engenuity Group, Inc.**, a 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 Surveying 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 Surveying 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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

Engenuity Group, Inc.  
Attn: C. Andre Rayman, President  
1280 N. Congress Avenue, Suite 101  
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](mailto: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 Surveying 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:      ENGENUITY GROUP, INC.**

By: \_\_\_\_\_  
C. Andre Rayman, PSM, President

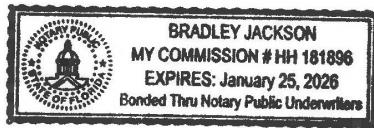
[Corporate Seal]

STATE OF Florida )  
COUNTY OF Palm Beach )

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 22nd day of February, 2023, by **Engenuity Group, 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.

Bradley Jackson  
\_\_\_\_\_  
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  
(Surveying)**

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 **Engenuity Group, Inc.** a State of 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 Surveying 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 (Surveying) 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: ENGENUITY GROUP, 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 **Engenuity Group, 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



C. ANDRE RAYMAN, P.S.M.  
KEITH B. JACKSON, P.E.  
LISA A. TROPEPE, P.E.  
ADAM SWANEY, P.E., LEED AP

<b>CITY OF LAKE WORTH BEACH 2023-2024 FEE SCHEDULE</b>	
<b>EMPLOYEE TITLE</b>	<b>HOURLY FEES</b>
CORPORATE OFFICER	\$220.00
DEPARTMENT DIRECTOR	\$200.00
SR .PROJECT LAND SURVEYOR	\$180.00
PROJECT LAND SURVEYOR	\$145.00
SR. AUTOCAD/GIS TECH	\$120.00
AUTOCAD/GIS TECH	\$105.00
SUE CREW	\$175.00
3 PERSON SURVEY CREW	\$168.00
2 PERSON SURVEY CREW	\$140.00
SR. ADMIN. ASSISTANT	\$80.00
ADMINISTRATIVE ASSISTANT	\$72.00
COURIER	\$55.00

**Per Contract, Rates are effective for first 3 years of contract and can then be renegotiated if contract is renewed**

## 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.



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Signature of Consultant's Authorized Official

C. Andre Rayman, PSM, President

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Name and Title of Consultant's Authorized Official

2/22/2023

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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 Engenuity Group, 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

C. Andre Rayman, PSM, President

\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

2/22/2023

\_\_\_\_\_  
Date

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**RFQ#23-300**

**(Surveying)**

THIS CONTINUING PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Avirom & Associates, Inc.**, a 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 Surveying 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 Surveying 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.

<b><u>Type of Coverage</u></b>	<b><u>Amount of Coverage</u></b>
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:

Avirom & Associates, Inc.  
Attn: Michael D. Avirom, President  
50 SW 2<sup>nd</sup> Avenue, Suite 102  
Boca Raton, FL 33432

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](mailto: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 Surveying 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: AVIROM & ASSOCIATES, INC.**

By: Michael D. Aviom \_\_\_\_\_

[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 23rd day of February, 2023, by **Avirom & 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.

Jennifer Simoneaux  
\_\_\_\_\_  
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  
(Surveying)**

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 **Avirom & Associates, Inc.** a State of 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 Surveying 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 (Surveying) 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: AVIROM & ASSOCIATES, 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 **Avirom & 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



**AVIROM & ASSOCIATES, INC.**  
SURVEYING & MAPPING

**CURRENT HOURLY RATES AS OF NOVEMBER 2022**

Principal	\$ 275.00/Hour
Senior Professional Land Surveyor	\$ 175.00/Hour
Professional Land Surveyor	\$ 150.00/Hour
Project Manager	\$ 150.00/Hour
Survey Crew (2 person)	\$ 160.00/Hour
Survey Crew (3 person)	\$ 200.00/Hour
GPS Field Crew w/ GPS receiver	\$ 175.00/Hour
3D Laser Scanning Crew w/ scanner	\$ 300.00/Hour
CAD Technician	\$ 100.00/Hour
3D CAD Technician	\$ 125.00/Hour
Senior CADD Technician	\$ 125.00/Hour
Court Room/Deposition	\$ 300.00/Hour
All Terrain/Track Vehicle	\$ 300.00/Day
Boat with Go Devil motor	\$ 200.00/Day
1 UAS with Qualified Pilot and Visual Observer	\$ 400.00/Hour
1 Hydrographic Survey Crew with Sounder, GPS & Boat (minimum 1 day required)	\$3,750.00/Day

## 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

Michael D. Aviom / President

\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

2/23/2023

\_\_\_\_\_  
Date

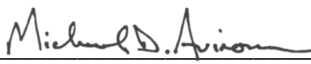
## Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 Avirom & Associates, 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

Michael D. Avirom / President  
\_\_\_\_\_  
Name and Title of Consultant's Authorized Official

2/23/23  
\_\_\_\_\_  
Date

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** Community Sustainability

**TITLE:**

Agreement with Advanced Data Solutions to provide digitizing of property files

**SUMMARY:**

This Professional Services Agreement will provide the City with the ability to provide scanning and digitizing the City's property files to include blueprints, surveys, permits, and photos, as requested by the designated City's Building Division.

**BACKGROUND AND JUSTIFICATION:**

The City's Procurement Policy and Code authorizes the purchases of goods and services through 'piggybacking" other governmental completely procured Agreements. On March 4, 2021, the City of Coral Gables competitively awarded the Agreement for Citywide Record Scanning, Indexing and Disposition Services based on City of Coral Gables' Invitation for Bid (IFB #2020-039), valid until April, 2024. The City of Coral Gables Agreement authorizes the Contractor to extend the terms and conditions to the other government entities. The City has reviewed the unit prices from the City of Coral Gables Agreement and determined that the unit prices are competitive and will result in the best value to the City.

**MOTION:**

Move to approve/disapprove the professional services agreement with Advanced Data Solutions, Inc.

**ATTACHMENT(S):**

Fiscal Impact Analysis  
Advanced Data Solutions Agreement

**FISCAL IMPACT ANALYSIS**

Five Year Summary of Fiscal Impact:

<b>Fiscal Years</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
<b>Inflows</b>					
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
<b>Outflows</b>					
Current Appropriation	100,000	100,000	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
<b>Net Fiscal Impact</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>No. of Addn'l Full-Time Employee Positions</b>					
	0	0	0	0	0

<b>Contract Award - Existing Appropriation</b>	
	Expenditure
Department	Community Sustainability
Division	Building
GL Description	Professional Services – Scanning & Indexing
GL Account Number	103-2020-515.31-90
Project Number	
Requested Funds	\$100,000

**AGREEMENT FOR RECORDS SCANNING, INDEXING, AND DISPOSITION SERVICES**  
**(Utilizing the City of Coral Gables Agreement No. IFB 2020-039)**

THIS AGREEMENT FOR RECORDS SCANNING, INDEXING, AND DISPOSITION SERVICES (“Agreement”) is made as of the \_\_\_\_\_, by and between the **CITY OF LAKE WORTH BEACH**, 7 N. Dixie Highway, Lake Worth Beach, FL 33460, a municipal corporation organized and existing under the laws of the State of Florida, (“CITY”), and **ADVANCED DATA SOLUTIONS, INC.**, a Florida corporation, located at 141 Scarlet Blvd. Suite Oldsmar, FL 34677 (“CONTRACTOR”).

**RECITALS**

**WHEREAS**, the CITY’s Community Sustainability Department is in need of a company to provide Records Scanning, Indexing, and Disposition Services; and,

**WHEREAS**, the CITY’s Procurement Policy and Code authorizes the purchases of goods and services through “piggybacking” other governmental competitively procured Agreements; and

**WHEREAS**, on March 4, 2021, the City of Coral Gables competitively awarded the Agreement for Citywide Records Scanning, Indexing, and Disposition Services based on City of Coral Gables’ Invitation For Bid (IFB #2020-039) (“City Of Coral Gables Agreement”) valid until March, 2023 with three (3) one (1) year renewals; and

**WHEREAS**, on February 16, 2023, the City of Coral Gables extended their Agreement until April 1, 2024.

**WHEREAS**, the City of Coral Gables Agreement authorizes the CONTRACTOR to extend the terms and conditions of the City of Coral Gables Agreement to other government entities at the discretion of the CONTRACTOR; and

**WHEREAS**, the CITY has requested and the CONTRACTOR has agreed to extend the terms and conditions of the City of Coral Gables Agreement to the CITY; and

**WHEREAS**, the CITY has reviewed the unit prices from the City of Coral Gables Agreement, as provided in **Exhibit “A”**, and determined that the unit prices are competitive and will result in the best value to the CITY; and

**WHEREAS**, the CITY finds entering this Agreement with the CONTRACTOR serves a valid public purpose.

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The parties agree that the recitals set forth above are true and correct and are fully incorporated herein by reference.
2. Contract. The City of Coral Gables Agreement is hereby incorporated by reference into and expressly made a part of this Agreement as if set forth at length herein. The CITY shall have all rights and obligations of City of Coral Gables under the City of Coral Gables Agreement except as specifically modified herein. The term of this Agreement shall be consistent with the term of the City of Coral Gables Agreement and valid until April 1, 2024 unless earlier terminated in accordance with the Agreement terms. This Agreement may be extended by the City Manager consistent with the renewal option of the City of Coral Gables Agreement.



3. Not to Exceed Amount. While the CONTRACTOR is not guaranteed that the CITY will utilize this Agreement for any services, if the CITY utilizes this Agreement for services, the not to exceed amount for this Agreement shall be \$100,000 each fiscal year.

4. Purchase Orders. The CITY's ordering mechanism for the work under this Agreement shall be a CITY issued Purchase Order; however, in the event of a conflict, all contractual terms and conditions stated herein and as stated in the City of Coral Gables Agreement shall take precedence over the terms and conditions stated in the CITY issued Purchase Order. The CONTRACTOR shall not provide any work under this Agreement without a CITY issued Purchase Order specifically for this purpose. The CONTRACTOR shall not perform work which is outside the scope of an issued Purchase Order and the CONTRACTOR shall not exceed the expressed amounts stated in the Purchase Order to be paid to the CONTRACTOR. The pricing in each Purchase Order shall be consistent with the pricing set forth in the City of Coral Gables Agreement. Each issued Purchase Order shall be incorporated into this Agreement and made a part hereof.

5. Conflict of Terms and Conditions. Conflicts between documents that make up this Agreement shall be resolved in the following order of precedence:

- a. This Contract (including its exhibits);
- b. The City of Coral Gables Agreement; and,
- c. The CITY issued Purchase Order.

6. Compensation to CONTRACTOR. CONTRACTOR shall submit invoices to the CITY for review and approval by the CITY's representative, indicating that all goods and services have been provided and rendered in conformity with this Agreement and then will be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the CITY representative's approval. CONTRACTOR waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Agreement. In order for both parties herein to close their books and records, CONTRACTOR will clearly state "final invoice" on the CONTRACTOR's final/last billing to the CITY. This certifies that all services have been properly performed and all charges have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the CONTRACTOR. The CITY will not be liable for any invoice from the CONTRACTOR submitted thirty (30) days after the provision of all services.

7. Miscellaneous Provisions.

- A. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in The City of Lake Worth Beach. 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.
- B. Except for any obligation of the CONTRACTOR to indemnify the CITY, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall be liable and responsible for their own attorney's fees incurred in that enforcement action, dispute, breach, default or misrepresentation. FURTHER, 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.
- C. 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.

- D. All notices required in this Agreement shall be sent by certified mail, return receipt requested or by nationally recognized overnight courier, and sent to the addresses appearing on the first page of this Agreement.
- E. The CITY and the CONTRACTOR agree that this Agreement (and the other documents described herein) sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. 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. 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.
- F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be executed electronically.
- G. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- H. In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.
- I. PUBLIC RECORDS. The CONTRACTOR 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:
  - 1. Keep and maintain public records required by the CITY to perform the service.
  - 2. 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.
  - 3. 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 CONTRACTOR does not transfer the records to the CITY.
  - 4. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or

confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records or designee, in a format that is compatible with the information technology systems of the CITY.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: CITY CLERK, AT (561) 586-1662, CITY CLERK@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.**

J. SCRUTINIZED COMPANIES.

1. CONTRACTOR certifies that it and its subcontractors 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 CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

2. If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors 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 CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors 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.

3. The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

4. The CONTRACTOR 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.

5. The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

6. 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.

L. E-VERIFY.

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (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 subcontractors' newly hired employees;
2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, Agreement with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;
4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a Agreement for at least 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.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the CITY and CONTRACTOR hereto have made and executed this Agreement for Citywide Records Scanning, Indexing, and Disposition Services as of 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:

APPROVED FOR FINANCIAL SUFFICIENCY:

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

**CONTRACTOR:**

**ADVANCED DATA SOLUTION, INC.**

[Corporate Seal]

By: \_\_\_\_\_  
*[Signature]*

Print Name: John A. Civile

Title: SVP of Sales

STATE OF FL  
CITY OF Duval

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 3 day of March 2023, by John A. Civile, as the \_\_\_\_\_ [title] of **ADVANCED DATA SOLUTIONS, INC.**, A Florida Corporation, who is personally known to me or who has produced FL DL 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 Public Signature  
Notary Seal:



Monica Smolder  
State of Florida  
My Commission Expires 07/22/2023  
Commission No. GG 345289

**EXHIBIT A**  
**Unit Price Schedule from City of Coral Gables Agreement**

**PRICING SCHEDULE**

ITEM NO.	DESCRIPTION	UNIT OF MEASURE	UNIT PRICE
<b>PICK-UP OF RECORDS</b>			
1	Pick-up of Record(s) from City location	Flat Fee	\$30.00
<b>DISPOSITION SERVICES</b>			
2	Destruction of records, upon completion of scanning/indexing and transferring into the City's records management retention software (Laserfiche).	Box	\$4.50
<b>DOCUMENT SCANNING AND FORMAT DELIVERY</b>			
NOTE: Unit Prices for items 3 to 8 are inclusive of all services outlined under IFB Section 2, paragraph 2.5. Prepping and Indexing is included in the unit pricing.			
3	8.5" x 11"	Page	\$0.045
4	8.5" x 14"	Page	\$0.045
5	11" x 17"	Page	\$0.060
6	17" x 22"	Page	\$0.380
7	22" x 34"	Page	\$0.500
8	34" x 44"	Page	\$0.420
9	36" x 48"	Page	\$0.650
<b>ADDITIONAL/OPTIONAL SERVICES</b>			
ITEM NO.	DESCRIPTION	Unit of Measure	Unit Price
1	Pick-up of Individual File from City location	File	\$75.00
2	Pick-up of Record(s) from Tampa Location: 4745 Oak Fair Blvd, Tampa, FL 33610	Flat Fee	\$75.00
3	Scanning Barcode Sheet Specify Barcodes for indexing	Each	\$0.35
4	Conversion of Microfiche to Digital Format	Image	\$0.08
5	Conversion of Microfiche to Digital Format	Fiche	\$4.00

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** Financial Services

**TITLE:**

Agreement with AndCo Consulting LLC for Investment Consulting Services

**SUMMARY:**

The Agreement will authorize AndCo Consulting LLC to provide Investment Consulting Services for the City's surplus funds and reserves.

**BACKGROUND AND JUSTIFICATION:**

The City Commission recently approved the City's Investment policy. In accordance to the policy the City is authorized to hire a consultant that can provide investment consulting services in accordance to Section 218.415, Florida Statutes, Local Government Investment Policies. The City currently utilizes AndCo as investment consultants for the City's pension funds. AndCo has extensive experience working with cities and vendors to create a program of management and oversight of their reserve portfolio that maintains the liquidity needs as required by law, but also aims to provide higher net rates of return that are typically earned by these portfolios.

The City's procurement code, section 2-112 (c), authorizes the selection of a consultant to provide professional services with a distinctive field of expertise without competitive selection if the consultant is considered to be in the best interest of the City. Based on AndCo's past performance and experience with the City's pension funds, it is recommended to enter into a three (3) years agreement with an optional extension of two (2) one (1) year terms.

**MOTION:**

Move to approve/disapprove the agreement with AndCo Consulting LLC investment consulting services, not to exceed \$30,000 annually.

**ATTACHMENT(S):**

Fiscal Impact Analysis  
Agreement  
Investment Policy

**FISCAL IMPACT ANALYSIS**

Five Year Summary of Fiscal Impact:

<b>Fiscal Years</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
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	30,000	30,000	30,000	30,000	30,000
Capital	0	0	0	0	0
Net Fiscal Impact	30,000	30,000	30,000	30,000	30,000
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

<b>Contract Award - Existing Appropriation</b>	
	Expenditure
Department	Finance
Division	Accounting
GL Description	Contractual services
GL Account Number	001.1220.513.34-50
Project Number	
Requested Funds	\$30,000



**PROFESSIONAL SERVICES AGREEMENT  
(Treasury Reserves Portfolio Investment)**

**THIS PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made this \_\_\_\_\_, between the **City of Lake Worth Beach**, Florida, a municipal corporation (“CITY”) with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **AndCo Consulting LLC**, a limited liability company authorized to do business in the State of Florida (“CONSULTANT”) with its office located at 531 W Morse Blvd, Suite 200, Winter Park, FL 32789.

**RECITALS**

WHEREAS, CONSULTANT has provided the CITY with a written proposal to provide Treasury Reserves Portfolio Investment Consulting Services for the CITY’s Reserve Fund; and

WHEREAS, the CITY’s procurement code, section 2-112 (C), authorizes the selection of a consultant to provide professional services with a distinctive field of expertise without competitive selection; and

WHEREAS, the CITY desires to accept the CONSULTANT’s proposal in order for CONSULTANT to render the services to the CITY as provided herein; and

WHEREAS, the CONSULTANT further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner; and

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

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

NOW THEREFORE, the CITY hereby engages the services of the CONSULTANT, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

**1. RECITALS**

1.1 The recitals set forth above are incorporated into this Agreement as true and correct statements.

**2. TERM**

2.1 The term of this Agreement shall commence upon the approval of this Agreement by the City Commission and shall be for an initial term of three (3) years unless earlier terminated as stated herein. The parties may extend the term for additional two (2), one-year periods by amendment to this Agreement. The City Manager is authorized to approve an amendment to this Agreement to extend the term as set forth herein.

**3. SCOPE OF SERVICES**

3.1 As more specifically set forth in the Consultant’s proposal (dated November 8, 2021) which is attached hereto as **Exhibit “A”** and incorporated herein, the Consultant shall conduct Treasury Reserves Portfolio Investment Consulting Services for the CITY’s Reserve Fund in accordance to the Florida Statue 218.415 Local Government Investment Policies and the CITY’s Investment policy.

3.2 The CONSULTANT has represented to the CITY that it has expertise in the type of services that is required as set forth in this Agreement. The CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the CITY's review and approval and shall be in accordance with the generally accepted standards of practice in the State of Florida, as may be applied to the type of services to be rendered, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the services to be provided and performed by the CONSULTANT. In the event of any conflicts in these requirements, the CONSULTANT shall notify the CITY of such conflict and utilize its best professional judgment to advise CITY regarding resolution of the conflict.

3.3 The CONSULTANT agrees to obtain and maintain throughout the term of this Agreement all such licenses as are required to do business in the State of Florida, the City of Lake Worth Beach, and in Palm Beach County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the services to be provided and performed by the CONSULTANT pursuant to this Agreement.

3.4 The CONSULTANT agrees to employ and designate, in writing, within 14 calendar days after receiving its Notice to Proceed, or other directive to commence services from the CITY, a qualified employee to serve as the CONSULTANT's project manager (the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

3.5 The Scope of Services shall be performed by the CONSULTANT or under its supervision and all personnel engaged in performing the Scope of Services shall be fully qualified and, if required, authorized or permitted under the federal, state and local law to perform such Scope of Services. All of the CONSULTANT's personnel (and all authorized subcontractors), while on CITY premises, shall comply with all CITY requirements governing safety, conduct and security.

3.6 The Scope of Services shall be completed in accordance with the terms and conditions set forth in the Exhibit "A" and in accordance to the CITY's Investment Policy, not attached but referenced herein.

#### **4. INDEPENDENT CONSULTANT; USE OF AGENTS OR ASSISTANTS**

4.1 The CONSULTANT is and shall be, in the performance of the Scope of Services under this Agreement, an independent CONSULTANT, and not an employee, agent, or servant of the CITY. All persons engaged in any of the Scope of Services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONSULTANT's sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the Scope of Services.

4.2 To the extent reasonably necessary to enable the CONSULTANT to perform the Scope of Services hereunder, the CONSULTANT shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the CONSULTANT.

#### **5. FEE AND ORDERING MECHANISM**

5.1 The CITY agrees to compensate CONSULTANT in accordance with the rate schedule set forth in **Exhibit "A"** (the CONSULTANT's rate proposal), which is attached hereto and incorporated herein. The CITY shall not reimburse CONSULTANT for any additional costs incurred as a direct or indirect result of CONSULTANT providing services to the CITY under this Agreement and not set forth in **Exhibit "A"**.

5.2 Should the CITY require additional materials or services, not included in this Agreement, fees and payment for such services will be set forth in a separate amendment, as authorized in accordance with the CITY's procurement code, prior to any such additional materials or services being provided by the CONSULTANT.

## **6. INVOICE**

6.1 The CONSULTANT shall submit an itemized quarterly invoice in arrears to the CITY for approval prior to receiving compensation. The CONSULTANT shall be paid within thirty (30) days of receipt of an approved invoice for services.

6.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONSULTANT within a reasonable time after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any payment to the CONSULTANT until the dispute is resolved.

## **7. AUDIT BY CITY**

7.1 The CONSULTANT shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONSULTANT's performance under this Agreement including, but not limited to, expenses for subcontractors, agents or assistants who performed services under this Agreement, direct and indirect charges for services performed and detailed documentation for all such services performed or to be performed under this Agreement.

## **8. COPIES OF DATA/DOCUMENTS**

8.1 Copies or original documents prepared by the CONSULTANT in relation to services associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

## **9. OWNERSHIP**

9.1 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONSULTANT pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

## **10. WRITTEN AUTHORIZATION REQUIRED**

10.1 The CONSULTANT shall not make changes in the Scope of Services or perform any additional services or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the CONSULTANT's sole risk and without payment from the CITY.

## **11. DEFAULTS, TERMINATION OF AGREEMENT**

11.1 If the CONSULTANT fails to timely perform the Scope of Services or has failed in any other respect to satisfactorily perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the City Manager or designee may give written notice to the CONSULTANT specifying defaults to be remedied. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONSULTANT does not remedy defaults within the allotted time or commence good faith steps to remedy the default to the reasonable satisfaction of the City Manager or designee, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONSULTANT including, without limitation, utilization of another CONSULTANT to provide for such services; and/or, the CITY may withhold any money due or which may become due to the CONSULTANT for such expense and/or services related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) days the CONSULTANT has not remedied defaults or commenced good faith

steps to remedy defaults to the satisfaction of the City Manager or designee, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

11.2 Notwithstanding paragraph 11.1, the CITY reserves the right and may elect to terminate this Agreement at any time, with or without cause. At such time, the CONSULTANT would be compensated only for that services which have been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

11.3 If this Agreement is terminated before the completion of the term, the CONSULTANT shall:

- (a) Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
- (b) Transfer all services in progress, completed services, and other materials related to the terminated services to the CITY in the format acceptable to CITY
- (c) Continue and complete all parts of the services that have not been terminated.

11.4 Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of services provided prior to the date of termination. Notwithstanding the foregoing, the parties acknowledge and agree that the CITY is a municipal corporation existing under the laws 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.

## **12. INSURANCE**

12.1 Prior to commencing the Scope of Services, the CONSULTANT shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. 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 and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the CITY. Failure to comply with the foregoing requirements shall not relieve the CONSULTANT of its liability and obligations under this Agreement. All insurance, other than Workers' Compensation and Professional Liability, required hereunder shall specifically include the "City of Lake Worth Beach" as an "Additional Insured", and the CONSULTANT shall provide additional insured endorsements section of Certificates of Insurance.

12.2. The CONSULTANT shall maintain, during the life of this Agreement, commercial general liability, including contractual liability insurance, on a primary, non-contributory basis in the amount of \$1,000,000 per occurrence (\$2,000,000 aggregate) to protect the CONSULTANT from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the CONSULTANT or by anyone directly employed by or contracting with the CONSULTANT.

12.3. The CONSULTANT shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONSULTANT from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of non-owned automobiles, including rented automobiles whether such operations be by the CONSULTANT or by anyone directly or indirectly employed by the CONSULTANT. CONSULTANT does not currently own any automobiles and shall obtain and maintain coverage consistent with the limits set forth in this paragraph for any owned automobiles acquired during the term of this Agreement.

12.4. The CONSULTANT shall maintain, during the life of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

12.5 The CONSULTANT shall maintain during the life of this Agreement, Cyber Liability insurance with limits not less than \$5,000,000 per occurrence or claim. Coverage shall be sufficiently broad to respond to the duties and obligations as set forth in the Scope of Services and shall include, but not be limited to, claims involving infringement of intellectual property, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with sufficient limits to respond to these obligations.

12.6 The CONSULTANT shall maintain, during the life of this Agreement, standard Professional Liability Insurance in the minimum amount of \$3,000,000.00 for any single loss.

### **13. WAIVER OF BREACH**

13.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

### **14. INDEMNITY**

14.1 The CONSULTANT shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, patent infringement or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including all attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent arising out of or alleged to have arisen out of the acts, omissions, or neglect of the CONSULTANT or any of its agents, employees, subcontractors or by anyone the CONSULTANT directly or indirectly employed or utilized to perform services under this Agreement.

14.2 The CONSULTANT's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONSULTANT whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

14.3 Compliance with any insurance requirements required elsewhere in this Agreement shall not relieve CONSULTANT of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this section.

14.4 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 CONSULTANT. Further, nothing contained in this Agreement shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of

sovereign immunity beyond the waiver provided in section 768.28, Florida Statutes, as amended from time to time.

14.5 The CONSULTANT's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

**15. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

15.1 This Agreement consists of the terms and conditions provided herein, and Exhibit "A". To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the Exhibit "A" (including all specifications, exhibits and addenda attached thereto) 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.

15.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

**16. ASSIGNMENT**

16.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONSULTANT. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONSULTANT and not for the benefit or any other party. The CONSULTANT shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

16.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

**17. SUCCESSORS AND ASSIGNS**

17.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

**18. WAIVER OF TRIAL BY JURY**

18.1 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.

**19. GOVERNING LAW AND REMEDIES**

19.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

19.2 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.

**20. TIME IS OF THE ESSENCE**

20.1 Time is of the essence in the completion of the Scope of Services as specified herein.

**21. NOTICES**

21.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3<sup>rd</sup>) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONSULTANT have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONSULTANT to the CITY shall be given to the CITY address as follows:

City of Lake Worth Beach  
Attn: City Manager  
7 North Dixie Highway  
Lake Worth Beach, Florida 33460

With a copy to:

City of Lake Worth Beach  
Attn: Finance Director  
7 North Dixie Highway  
Lake Worth Beach, Florida 33460

All notices, demands or requests from the CITY to the CONSULTANT shall be given to the CONSULTANT address as follows:

AndCo Consulting LLC  
Attn: Chief Compliance Officer  
531 W Morse Blvd, Suite 200  
Winter Park, Florida 32789

**22. SEVERABILITY**

22.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

**23. DELAYS AND FORCES OF NATURE**

23.1 The CONSULTANT shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Upon the CONSULTANT's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the services for reason beyond the control of the CONSULTANT and, if the CONSULTANT'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the services at any time. If the CONSULTANT is delayed at any time in the progress of the services by any act or neglect of the CITY or its employees, or by any other CONSULTANT employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONSULTANT'S control, or by delay authorized by the CITY pending negotiation or by any cause which

the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONSULTANT's sole remedy for a delay in completion of the services for any reason will be an extension of time to complete the services and CONSULTANT specifically waives any right to seek any monetary damages or losses for a delay in completion of the services, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONSULTANT due to a delay in completion of the services.

**24. COUNTERPARTS**

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

**25. PUBLIC ENTITY CRIMES**

25.1 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 CONSULTANT, supplier or sub-CONSULTANT 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. CONSULTANT will advise the CITY immediately if it becomes aware of any violation of this statute.

**26. PREPARATION**

26.1 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

**27. PALM BEACH COUNTY INSPECTOR GENERAL**

27.1 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.

**28. ENFORCEMENT COSTS**

28.1 Except as required in an indemnification provision herein, all parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to this Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement.

**29. PUBLIC RECORDS**

29.1 CONSULTANT shall comply with Florida's Public Records Laws, Chapter 119, Florida Statutes, and, if it is acting on behalf of the CITY as provided under section 119.011(2), the CONSULTANT specifically agrees to:



- (a) Keep and maintain public records required by the CITY to perform the services under this Agreement.
- (b) Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the CONSULTANT does not transfer the records to the CITY.
- (d) Upon the completion of the 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 services. 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 and 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, 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](mailto:CITYCLERK@LAKEWORTHBEACHFL.GOV), OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.**

### **30. COPYRIGHTS AND/OR PATENT RIGHTS**

30.1 CONSULTANT warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling of the goods, shipped or ordered, as a result of this Agreement and the CONSULTANT agrees to hold the City harmless from any and all liability, loss, or expense occasioned by any such violation.

### **31. CONFIDENTIAL AND PROPRIETARY INFORMATION**

31.1 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.

### **32. EXPORT ADMINISTRATION**

32.1 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.

### **33. INFRINGEMENT INDEMNITY**

33.1 CONSULTANT will defend or settle at its expense a claim or suit brought by a third party against the CITY arising out of a claim asserting that the Scope of Services or other deliverables ("deliverables" hereafter) provided by CONSULTANT under this Agreement infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. CONSULTANT will indemnify and hold harmless the CITY against and from damages, costs, and reasonable attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) CONSULTANT is promptly notified in writing of such claim or suit, (ii) CONSULTANT will have the sole control of the defense and settlement thereof, and (iii) CITY furnishes CONSULTANT, on reasonable request, information available to CITY for such defense. The CITY will not admit any such claim without prior consent of CONSULTANT.

(a) In the event of a claim of infringement, CONSULTANT shall, at its option:

1. procure for CITY the right to continue using the deliverables provided under this Agreement; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, CONSULTANT will refund to CITY the fee actually paid by CITY under the Agreement (as amortized on a straight-line basis over the time in which the CITY was able to use the deliverables).

(b) CONSULTANT will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by CONSULTANT or by its recommendation; or
2. combination of the deliverables with products other than those supplied by CONSULTANT;
3. the alleged infringement or misappropriation relates to such modification or combination; and/or
4. the specifications or written direction of the CITY directs CONSULTANT to construct, fabricate or otherwise provide the infringing deliverables, design, apparatus or, article, with CONSULTANT's products, services, or work product.

(c) CONSULTANT will also not have any indemnification obligation with respect to a claim: (i) if it has provided CITY with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with this Agreement.

(d) CONSULTANT's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon CONSULTANT whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of this Agreement.

**34. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH**

34.1 CONSULTANT certifies that all material, equipment, etc., contained in this bid meets all OSHA requirements. CONSULTANT further certifies that, if the material, equipment, etc., delivered is subsequently found to be deficient in any OSHA requirements in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONSULTANT.

**35. FEDERAL AND STATE TAX**

35.1 The CITY is exempt from payment of Florida State Sales and Use Tax. CONSULTANT is not authorized to use the CITY's Tax Exemption Number.

**36. PROTECTION OF PROPERTY**

36.1 The CONSULTANT shall at all times guard against damage or loss to the property of the CITY or of other vendors or CONSULTANTS and shall be held responsible for replacing or repairing any such loss or damage. The CITY may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the successful CONSULTANT or its agents. The CONSULTANT shall be responsible to safeguard all of their property such as tools and equipment while on site. The CITY will not be held responsible for any loss of CONSULTANT property due to theft or vandalism.

**37. E-VERIFY**

37.1 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 subcontractors (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 subcontractors' newly hired employees;
- (b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor 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 subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;
- (d) Comply fully, and ensure all of its subcontractors 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 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.

**38. SCRUTINIZED COMPANIES**

38.1 CONSULTANT certifies that it and its subcontractors 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 subcontractors are found to have submitted a false certification; or if the CONSULTANT or any

of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

38.2 If this Agreement is for one million dollars or more, the CONSULTANT certifies that it and its subcontractors 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 subcontractors are found to have submitted a false certification; or if the CONSULTANT or any of its subcontractors 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.

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

38.4 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.

38.5 The CONSULTANT agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONSULTANT shall immediately notify the CITY of the same.

38.6 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.

**39. SURVIVABILITY**

39.1 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.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**  
**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF the parties hereto have made and executed this **Treasury Reserves Portfolio Investment 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:

APPROVED FOR FINANCIAL  
SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

CONSULTANT: **AndCO Consulting LLC**

By: \_\_\_\_\_  
*[Signature]*

Print Name: Sara Searle

Title: Chief Compliance Officer

STATE OF Florida )  
COUNTY OF Orange )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 3rd day of March 2023, by Sara Searle, as the CCO [title] of **AndCo Consulting LLC**, a 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.

*[Signature]*  
\_\_\_\_\_  
Notary Public Signature  
Notary Seal:



**KIM SPURLIN**  
Commission # GG 355222  
Expires November 13, 2023  
Bonded Thru Budget Notary Services

**EXHIBIT "A"**  
**Consultants Proposal (2 Pages)**

**Clients first.**



To: Bruce Miller, Finance Director and Andre McAden, Controller;  
Lake Worth Beach, FL

From: Tim Nash

Date: November 8, 2021

Re: Treasury Reserves Portfolio Investment Consulting Services

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We are grateful for the opportunity to work with all four City of Lake Worth Beach Pension Funds and are happy to provide some detail as to how we may be able to assist the City of Lake Worth Beach with the management of your treasury reserves portfolio.

AndCo is an independent institutional investment consulting firm. We are structured as a Limited Liability Company and we are 100% employee-owned and managed. We have no parent or affiliated companies. AndCo advises approximately 690 institutional clients with approximately \$96 billion of assets under advisement. We have client relationships all over the United States along with Bermuda and Canada. Our mission is to represent the sole interest of our clients by redefining independence. Our vision is to be a transformational organization viewed as the leader in our industry. We continuously seek to place the interests of our clients first, serving with care and a level of stewardship that only true independence can provide. We believe this can help lead to better overall results.

Our firm has extensive experience working with cities and vendors to create a program of management and oversight of their reserve portfolio that maintains the liquidity needs as required by law, but also aims to provide higher net rates of return than are typically earned by these portfolios. The following is a summary of some distinctions between AndCo and our competitors, and additionally, pursuant to our discussions and per your request, a summary of a program we manage for the City of Jacksonville Beach that we think could be a good model to use as you look to enhance your reserve portfolio.

**AndCo's distinctions between our competitors:**

- We accept full fiduciary responsibility for each of our clients, without equivocation or exception.
- We only provide our services on a flat-fee basis. We do not receive any compensation derived from the investments, from investment companies, or based on performance results.
- We consult over 690 institutional clients with \$96 billion in assets under advisement. This includes over 450 public funds with approximately \$64 billion in assets.
- An experienced and credentialed team supports each consultant. Our seasoned team of 91 professionals includes 24 CFA® Charter holders and 39 advanced degrees.

**Similar entity:**

Please find the attached report which highlights the structure and returns of the City of Jacksonville Beach Treasury Portfolio. Their Plan utilizes three separate account managers

who manage portfolios of securities where all securities have a maturity of five-years or less. This was created intentionally as a protection against a potential loss of market liquidity similar to what was experienced in 2008. Should the financial markets experience an environment negatively affecting liquidity, the City can simply end active management of the portfolios and allow all securities held within the investment program to mature to cash over the ensuing 5-year period. In addition to the enhanced liquidity profile of the portfolio, since 10/1/2009 the Treasury Portfolio has achieved a net (of fees) return of 0.68% greater than the Florida SBA. This outperformance delta works out to be approximately \$540,000/year in excess earnings. Please note the scope of services as referenced in the attached Jacksonville Beach Treasury Portfolio client agreement with AndCo Consulting. AndCo was retained for a retainer fee of **\$42,000** payable as an annual hard dollar fee billed quarterly in arrears.

If there are any questions regarding the referenced client and their scope of services, its potential for validation to fulfill with a negotiation for a new contract with AndCo and the City of Lake Worth Beach, please contact Ashlie Gossett at the City of Jacksonville Beach. She is aware that we have provided this agreement and contact information for your review.

*\*Past performance is not indicative of future performance. There is no guarantee that other clients will experience similar results as various factors can cause actual outcomes to differ materially.*

#### **Sample Florida Municipal Reserve Plan Clients:**

City of Altamonte Springs  
City of Casselberry  
City of Jacksonville Beach  
University of Central Florida

#### **Proposed fee for Services to City of Lake Worth Beach Treasury Reserve Plan:**

We provide each of our clients all services offered by our firm for our base fee. This allows the peace of mind to know you will never have to choose between cost and your fiduciary duties. As stated in our proposal, we propose an annual hard dollar full-service investment consulting retainer fee of \$30,000 which incorporates a discount for multiple relationships with The City of Lake Worth Beach. In addition, we would guarantee this proposed fee for 3 years.

Trust, integrity, confidence, and respect are the cornerstones of any successful business relationship. We always have and always will ensure that our clients come first. We would be honored to expand our relationship with the City of Lake Worth Beach as investment consultants for the City's Operating Reserves Portfolio.

We would be happy to provide any further clarification regarding our proposal. Please feel free to contact us at the phone number listed below with any questions. Thank you in advance for your time and consideration; it is greatly appreciated.

Tim Nash  
Senior Consultant  
AndCo Consulting  
(407)-902-3739  
[timn@AndCoConsulting.com](mailto:timn@AndCoConsulting.com)





# INVESTMENT POLICY

Implements Resolution #28-2010 Effective  
Date: 08/17/2010

Amendment # 1: 43-2012  
Effective Date: 09/11/2012

Amendment # 2: 65-2013  
Effective Date: 12/03/2013

Amendment # 3: 85-2022  
Effective Date: 11/01/2022

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**ATTACHMENT B: Investment Pool/Fund Questionnaire**

## PURPOSE

The purpose of this Investment Policy (hereafter “policy”) is to set forth the investment objectives and parameters for the management of public funds of City of Lake Worth Beach (hereinafter “City”) cash surplus funds and reserves. This policy is designed to ensure the prudent management of public funds, the availability of operating and capital funds when needed, and an investment return competitive with comparable funds and financial market indices.

## SCOPE

In accordance with § 218.415, Florida Statutes, this policy applies to the investment of public funds in excess of the amounts needed to meet current expenses, which includes cash and investment balances (hereafter “portfolios”) of the following funds:

- General Fund
- Special Revenue Funds
- Debt Service Funds
- Capital Project Funds
- Enterprise Funds
- Internal Service Funds
- Trust and Agency Funds
- Any new fund created by the governing body

The policy does not apply to the investment of principal, interest, reserve, construction, capitalized interest, and redemption or escrow accounts created by ordinance or resolution pursuant to the issuance of bonds where the investments are held by an authorized depository. Also, this policy does not apply to funds not under investment control of the City, such as Employee Pension Plans.

## INVESTMENT OBJECTIVES

The following investment objectives will be applied in the management of the City's funds.

### Safety of Principal

The primary objective of the Director of Financial Services investment activities is the protection of City funds (preservation of capital). Investment transactions shall seek to keep capital losses to a minimum, whether they are from securities defaults or erosion of market value.

Maintenance of Liquidity

The second highest priority is liquidity of funds. The Director of Financial Services investment strategy will provide sufficient liquidity to meet the City's reasonable anticipated cash flow requirements.

Return on Investment

The third highest priority is income. The optimization of investment returns shall be secondary to the requirements for safety and liquidity. Return on investment is of least importance compared to the safety and liquidity objectives described above. However, return is attempted through active management where the investment manager utilizes a total return strategy (which includes both realized and unrealized gains and losses in the portfolios). This total return strategy seeks to increase the value of the portfolios through reinvestment of income and capital gains. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. The investment manager or City designee will execute trades that minimize the risk of loss to achieve the highest perceived relative value based on its potential to enhance the total return of the portfolios.

Diversification

Director of Financial Services will seek to control credit and market risks and diversify fixed income investments regarding specific types, maturities, and financial institutions. Diversification is important to ensure that potential losses on individual securities do not exceed the income generated from the remainder of the portfolios.

**Credit Risk**

Minimizing Credit Risk will be accomplished by limiting the maximum percentage that may be invested in any one entity or instrument at any one time, as outlined in this policy.

**Market Risk**

Risks of market price volatility shall be controlled through maturity diversification limitations established by this policy.

PERFORMANCE MEASUREMENT

In order to assist in the evaluation of the portfolio's performance, the City will use performance benchmarks for short-term and long-term portfolios. The use of benchmarks will allow the City to measure its returns against other investors in the same markets.

- A. The short-term investment portfolios shall be designed with the annual objective of exceeding the weighted average return (net book value rate of return) of the S&P Rated GIP Index/All 30-Day Gross of Fees Yield.
- B. The long-term investment portfolios shall be designed with the annual objective of exceeding the return of the BofA Merrill Lynch 1-3 Year U.S. Treasury Index compared to the portfolios' total rate of return. The BofA Merrill Lynch 1-3 Year U.S. Treasury Index represents all U.S. Treasury securities maturing over one year, but less than three years. This maturity range is an appropriate benchmark based on the objectives of the City.

#### PRUDENCE AND ETHICAL STANDARDS

The "prudent person" standard shall be used by all City Staff and third-party vendors providing investment services in the management of the overall portfolio. The Financial Services Director, his/her designee, or persons performing the investment functions, acting suitable capacity in accordance with these written policies and procedures, and exercising due diligence, shall not be responsible for an individual security's credit risk or market price changes provided that appropriate monitoring efforts are performed. For any external City Designee(s), it is expected that they will have a higher fiduciary standard of care, acting in suitable capacity. The "prudent person" standard is herewith understood to mean the following:

*Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived from the investment.*

The Prudent Person standard shall be applied to all activities associated with managing City funds, including; the investing, reinvesting funds and in acquiring, retaining, managing, and disposing of investments. Those individuals responsible for the City's investment oversight and management, including third party vendors, shall exercise: the judgment, care, skill, prudence, and diligence under the circumstances then prevailing, which persons of prudence, discretion, and intelligence, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the funds, so as to minimize the risk, considering the probable income as well as the probable safety of their capital.

The Financial Services Department staff involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Also, employees involved in the investment process shall disclose to the Financial Services Director any material

financial interests in financial institutions that conduct business with the City, and they shall further disclose any material personal financial/investment positions that could be related to the performance of the City's investment program.

#### DELEGATION OF AUTHORITY

Responsibility for the administration of the investment program is hereby delegated to the Financial Services Director or his/her designee, who shall establish investment procedures based on this policy. No person may engage in an investment transaction except as stated in the Internal Control Section of the policy. The City may appoint an outside investment manager as "Agent" for the City's investments. (See Section "External Investment Manager".) It is further recommended that if the City does appoint an outside investment manager, that they are a fiduciary of the City. Positions authorized as investment signatories are Financial Services Director, Assistant Financial Services Director, and Treasurer. The Financial Services Director or his/her designee shall be responsible for the implementation of internal controls and monitoring the activities of subordinate staff.

#### SECURITY SELECTION PROCESS

When purchasing or selling securities the Financial Services Director or his/her designee shall select the security which provides the highest rate of return within the parameters of this policy, given the current objectives and needs of the City's portfolios. These selections shall be made utilizing one of the following methods:

1. Comparison to the current market price as indicated by one of the market pricing resources available to the City (such as the City's financial advisors, the Wall Street Journal, or a comparable nationally recognized financial publication providing daily market pricing).
2. The City shall avoid conflicts of interest in the selection of institutions used for all City investments.

In most situations, the City or its agent shall utilize the best execution policy of the agent to select the securities to be purchased or sold. Selection by the best execution policy of the agent, as indicated above, shall be utilized when, in the judgment of the investment staff, competitive bidding would inhibit the process to select the securities to be purchased or sold.

## AUTHORIZED INVESTMENTS

No investment shall be made using City funds unless the authorized investment is listed in this Section. The following are the investment requirements and allocation limits on security types, issuers, and maturities as established by the City. Diversification strategies within the established guidelines shall be reviewed and revised periodically as necessary by the Financial Services Director or his/her designee. The Financial Services Director or his/her designee, and/or City's investment manager shall have the option to further restrict investment percentages from time to time based on market conditions, risk and diversification investment strategies. The percentage allocations requirements for investment types and issuers are calculated based on the original cost of each investment, at the time of purchase. The following requirements do not apply to funds derived from the sale of debt.

- 1) **U.S. Treasury & Government Guaranteed** - U.S. Treasury obligations, and obligations the principal and interest of which are backed or guaranteed by the full faith and credit of the U.S. Government.
- 2) **Federal Agency/GSE** - Debt obligations, participations or other instruments issued or fully guaranteed by any U.S. Federal agency, instrumentality or government-sponsored enterprise (GSE).
- 3) **Corporates** – U.S. dollar denominated corporate notes, bonds or other debt obligations issued or guaranteed by a domestic corporation, financial institution, non-profit, or other entity.
- 4) **Municipals** – Obligations, including both taxable and tax-exempt, issued or guaranteed by any State, territory or possession of the United States, political subdivision, public corporation, authority, agency board, instrumentality or other unit of local government of any State or territory.
- 5) **Agency Mortgage Backed Securities** - Mortgage-backed securities (MBS), backed by residential, non-Agency commercial mortgage backed securities, multi-family or commercial mortgages, that are issued or fully guaranteed as to principal and interest by a U.S. Federal agency or government sponsored enterprise, including but not limited to pass-throughs, collateralized mortgage obligations (CMOs) and REMICs.
- 6) **Asset-Backed Securities** - Asset-backed securities (ABS) whose underlying collateral consists of loans, leases or receivables, including but not limited to auto loans/leases, credit card receivables, student loans, equipment loans/leases, or home-equity loans.
- 7) **Non-Negotiable Certificate of Deposit and Savings Accounts** - Non-negotiable interestbearing time certificates of deposit, or savings accounts in banks organized under the laws of this state or in national banks organized under the laws of the United States and doing business in this state, provided that any such deposits are secured by the Florida Security for Public Deposits Act, Chapter 280, Florida Statutes.



- 8) **Commercial Paper** – U.S. dollar denominated commercial paper issued or guaranteed by a domestic corporation, company, financial institution, trust or other entity, only unsecured debt permitted.
- 9) **Money Market Funds** - Shares in open-end and no-load money market mutual funds, provided such funds are registered under the Investment Company Act of 1940 and operate in accordance with Rule 2a-7.

A thorough investigation of any money market fund is required prior to investing. Attachment B is a questionnaire that contains a list of questions, to be answered prior to investing, that cover the major aspects of any investment pool/fund. A current prospectus must be obtained.

- 10) **Local Government Investment Pools** – State, local government or privately-sponsored investment pools that are authorized pursuant to state law.

A thorough investigation of any intergovernmental investment pool is required prior to investing. Attachment B is a questionnaire that contains a list of questions, to be answered prior to investing, that cover the major aspects of any investment pool/fund. A current prospectus must be obtained.

- 11) **The Florida Local Government Surplus Funds Trust Funds (“Florida Prime”)** A thorough investigation of the Florida Prime is required prior to investing. Attachment B is a questionnaire that contains a list of questions, to be answered prior to investing, that cover the major aspects of any investment pool/fund. A current prospectus or portfolio report must be obtained.

- 12) Inter-Fund Loans permitted under the City's Comprehensive Financial Policies

### **General Investment and Portfolio Limits**

1. General investment limitations:
  - a. Investments must be denominated in U.S. dollars and issued for legal sale in U.S. markets.
  - b. Minimum ratings are based on the highest rating by any one Nationally Recognized Statistical Ratings Organization (“NRSRO”), unless otherwise specified.
  - c. All limits and rating requirements apply at time of purchase.
  - d. Should a security fall below the minimum credit rating requirement for purchase, the investment manager will notify the Financial Services Director.

- e. The maximum maturity (or average life for MBS/ABS) of any investment is 5.5 years. Maturity and average life are measured from settlement date. The final maturity date can be based on any mandatory call, put, pre-refunding date, or other mandatory redemption date.
2. General portfolio limitations:
  - a. The maximum effective duration of the aggregate portfolio is 3 years.
3. The following are **NOT PERMITTED** investments, unless specifically authorized by statute and with prior approval of the governing body:
  - a. Trading for speculation
  - b. Derivatives (other than callables and traditional floating or variable-rate instruments)
  - c. Mortgage-backed interest-only structures -(I/Os)
  - d. Inverse or leveraged floating-rate and variable-rate instruments
  - e. Currency, equity, index and event-linked notes (e.g. range notes), or other structures that could return less than par at maturity
  - f. Private placements and direct loans, except as may be legally permitted by Rule 144A or commercial paper issued under a 4(2) exemption from registration
  - g. Convertible, high yield, and non-U.S. dollar denominated debt
  - h. Short sales
  - i. Use of leverage
  - j. Futures and options
  - k. Mutual funds
  - l. Equities, commodities, currencies and hard assets

#### EXISTING INVESTMENTS

Any investments currently held that do not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies so invested shall be reinvested only as provided for in this policy.

#### Maturity and Liquidity Requirements

- A. To the extent possible, an attempt will be made to match investment maturities with known cash needs and anticipated cash flow requirements. Investments of current operating funds shall have maturities of no longer than twenty-four (24) months. Investments of bond reserves, construction funds, and other non-operating funds shall have a term appropriate to the need for funds and in accordance with debt covenants, but in no event shall exceed five and one-half (5.50) years. The maturities of the underlying

securities of a repurchase agreement will follow the requirements of the Master Repurchase Agreement.

- B. The Finance staff's policy is to "buy and hold" but the maturity composition of the portfolio and the general economic conditions will be evaluated to determine if a replacement investment would be advantageous. Accounting losses may be incurred in this situation if an economic gain is achieved. The portfolios maturity may be shortened or extended dependent on interest rate projections or the portfolios quality may be improved by reducing the maturity or risk of security.
  
- C. Investments do not necessarily have to be made for the same length of time that the funds are available. The basic criteria for consideration for investments are listed below:
  - 1. Keep maturities short in a period of constantly rising interest rates based on treasury bill auctions or the daily Federal Funds rate and also keep maturities short in a period of an inverted treasury yield curve (short-term rates are higher than the long-term rates).
  - 2. Maturities should be lengthened when the treasury yield curve is normal and is expected to remain that way based on economic reports taken as a whole. The yield curve is normal when short-term rates are lower than long-term rates.
  - 3. Maturities should be lengthened when interest rates are expected to fall based on economic reports taken as a whole.
  - 4. The yield curves of the market should be analyzed for significant breaks in yields over various maturity dates. The points at which the yield curve breaks are the points at which there are significant marginal declines in yields for incremental changes in the maturity dates. Investments should be made at these breaks in the yield curve so that yields will be maximized.

## PORTFOLIO COMPOSITION

Prudent investing necessitates that the portfolios be diversified as to instruments and dealers. The following are guidelines for investments and limits on security issues, issuers, and maturities as established by the Finance staff. The Finance Director shall have the option to restrict or increase investments from time to time based on market conditions. Purchases of investments based on bond covenant requirements shall not be included in the portfolios' composition calculations. The percentage allocations requirements for investment types and issuers are calculated based on the original cost of each investment, at the time of purchase.

### **Permitted Investments**

Sector	Sector Maximum (%)	Per Issuer Maximum (%)	Minimum Ratings Requirement <sup>1</sup>	Maximum Maturity
U.S. Treasury	100%	100%	N/A	5.50 Years (5.50 Years avg. life <sup>4</sup> for GNMA)
GNMA		40%		
Other U.S. Government Guaranteed (e.g. AID, GTC)		10%		
Federal Agency/GSE: FNMA, FHLMC, FHLB, FFCB*	80%	40% <sup>3</sup>	N/A	5.50 Years
Federal Agency/GSE other than those above		10%		
Corporates	40% <sup>2</sup>	5%	Highest ST or Three Highest LT Rating Categories (A-1/P-1, A-/A3 or equivalent)	5.50 Years
Municipals	40%	5%	Highest ST or Three Highest LT Rating Categories (SP-1/MIG 1, A-/A3, or equivalent)	5.50 Years
Agency Mortgage-Backed Securities (MBS)	40%	40% <sup>3</sup>	N/A	5.50 Years Avg. Life <sup>4</sup>
Non-Negotiable Collateralized Bank Deposits or Savings Accounts	50%	None, if fully collateralized	None, if fully collateralized.	3 Years
Commercial Paper (CP)	30% <sup>2</sup>	5%	Highest ST Rating Category (A-1/P-1, or equivalent)	270 Days
Money Market Funds (MMFs)	50%	25%	Highest Fund Rating by all NRSROs who rate the fund (AAAm/Aaa-mf, or equivalent)	N/A
Intergovernmental Pools (LGIPs)	50%	25%	Highest Fund Quality and Volatility Rating Categories by all NRSROs who rate the LGIP, (AAAm/AAAf, S1, or equivalent)	N/A
Florida Local Government Surplus Funds Trust Funds ("Florida Prime")	25%	N/A	Highest Fund Rating by all NRSROs who rate the fund (AAAm/Aaa-mf, or equivalent)	N/A
Inter-Fund Loans	As needed	As needed	N/A	N/A

**Notes:**

<sup>1</sup> Rating by at least one SEC-registered Nationally Recognized Statistical Rating Organization ("NRSRO"), unless otherwise noted. ST=Short-term; LT=Long-term.

<sup>2</sup> Maximum allocation to all corporate and bank credit instruments is 50% combined.

<sup>3</sup> The maturity limit for MBS and ABS is based on the expected average life at time of settlement, measured using Bloomberg or other industry standard methods.

\* Federal National Mortgage Association (FNMA); Federal Home Loan Mortgage Corporation (FHLMC); Federal Home Loan Bank or its District banks (FHLB); Federal Farm Credit Bank (FFCB).

## RISK AND DIVERSIFICATION

Assets held shall be diversified to control the risk of loss resulting from over-concentration of assets in a specific maturity, issuer, instrument, dealer, or bank through which these instruments are bought and sold. Diversification strategies within the established guidelines shall be reviewed and revised periodically as necessary by the appropriate management staff.

## AUTHORIZED INVESTMENT INSTITUTIONS AND DEALERS

The Financial Services Director shall only purchase certificates of deposit from financial institutions which are qualified as public depositories by the Treasurer of the State of Florida.

### Brokers/Dealers

The City may utilize dealers designated as "Primary Dealers" by the Federal Reserve Bank of New York, for purchases and sales of securities. The City may also utilize non-primary (regional) dealers. All securities traded with approved broker/dealers must be DTC eligible. DTC eligible securities are delivered through a computerized system established by the Depository Trust Company instead of physical delivery. DTC eligibility assures proper security delivery. All securities purchased by the City under this policy shall be purchased using the "Delivery Versus Payment" procedure. Both primary and non-primary dealers must qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule). The firms must provide the following information prior to executing investment trades with the City:

1. Audited annual financial statement.
2. Regulatory history, through either the Office of the Comptroller or the Currency for dealer banks, or the Financial Industry Regulatory Authority, Inc. (FINRA) for securities firms.
3. Statement of any pending lawsuits materially affecting the firm's business.
4. Proof of state registration.

The City's investment manager shall utilize and maintain its own list of approved primary and non-primary dealers.

## EXTERNAL INVESTMENT MANAGER

### Purpose

The purpose of this section is to set forth the policy and objectives governing the City's use of external investment managers. The outside investment manager for the City is required to adhere to all of the principals as set forth by the City policy concerning; purpose, scope, objectives, prudence, internal controls, safekeeping and custody, accounting methods, debt service and bond covenants requirements, diversification, liquidity, credit risk, market risk and reporting requirements.

### Monitoring and Adjusting the Portfolio

The external investment officer will constantly monitor the contents of the portfolio, the available markets and the relative values of competing securities and will adjust the portfolio accordingly. The external investment manager is required to provide the City with a confirmation of each transaction executed within each calendar month by providing the Finance Department with a calendar month statement detailing each investment transaction and a summary of all monthly accumulated investment transactions. The confirmations should include all information necessary to allow the City to accurately monitor the activity of the external investment officer for compliance purposes (including purchase price, coupon, premium/discount, investment/transaction costs and the effective yield of the investment at the time of purchase and compliance with this policy).

### Authorized Investments

The external investment manager may invest only in the authorized investments instruments, listed above.

### Due Diligence Requirements

Attachment B is a questionnaire that contains a list of questions, to be answered prior to investing, that cover the major aspects of any investment pool/fund. Additionally, a current prospectus or equivalent documentation, including an Investment Policy, Financial Statements, and Portfolio Holdings must be obtained.

### Accounting Methods

Investments will be carried at market value. Gains and losses from investments will be credited or charged to investment income at the time of sale. The external investment manager is restricted from executing a trade that will realize a "Net Loss" in any of the City's accounts without written authorization from the City Manager. A "Net Loss" is defined as any sale in which the principal loss realized on the sale of a security, in an account, is greater than the income (including accrued income) generated by that individual account during the City's fiscal year. Premiums or discounts on securities may be amortized over the life of the securities. The City shall comply with

Government Accounting Standards Board (GASB) requirements for reporting fiscal year end investment balances.

#### Performance Evaluation

The external investment manager's performance shall be measured at least annually based on the total return of the portfolio. The City will evaluate the investment manager by comparing results during the City's fiscal year to the BofA Merrill Lynch 1-3 Year U.S. Treasury Index.

#### Fees

All fees will be determined annually in advance based on the City's fiscal year ending September 30.

#### THIRD PARTY CUSTODIAL AGREEMENTS

All securities, with the exception of certificates of deposits, shall be held with a third-party custodian; and all securities purchased by the City should be properly designated as an asset of the City. The Financial Services Director will execute a Third-Party Custodial Safekeeping Agreement with a commercial bank or the commercial bank's trust department. A third party custodian is defined as any bank depository chartered by the Federal Government, the State of Florida, or any other state or territory of the United States which has a branch or principal place of business in the State of Florida as defined in § 658.12 Florida Statutes, or by a national association organized and existing under the laws of the United States which is authorized to accept and execute trusts and which is doing business in the State of Florida. Third party agents will maintain participation in SIPC. Certificates of deposits maintained by book-entry at the issuing bank shall clearly identify the City as the owner. All securities purchased and/or collateral obtained by the City shall be properly designated as an asset of the City and held in safekeeping by the custodian and no withdrawal of such securities, in whole or in part, shall be made from safekeeping except by an authorized Finance staff member. The Third-Party Custodial Safekeeping Agreement shall include letters of authority from the Financial Services Director with details as to responsibilities of each party, notification of security purchases, sales, delivery, repurchase agreements, wire transfers, safekeeping and transactions costs, procedures in case of wire failure or other unforeseen mishaps including liability of each party.

#### BEST EXECUTION BID POLICY

After the Financial Services Director, Financial Services Directors Designee, or investment manager has determined the approximate maturity date based on cash flow needs and market

conditions and has analyzed and selected one or more optimal types of investment, the Best Execution method will be used to purchase the securities.

On an exception basis, securities may be purchased utilizing the comparison to current market price method. Acceptable current market price providers include, but are not limited to:

1. The Wall Street Journal or a comparable nationally recognized financial publication providing daily market pricing.
2. Daily market pricing provided by the City's custody agents.

The Financial Services Department shall utilize the Best Execution process to purchase or sell the securities. Selection by comparison to a current market price, as indicated above, shall only be utilized when, in the judgment of the Finance Director or his/her designee, competitive bidding would inhibit the selection process. Examples of when this method may be used include:

1. When no active market exists for the issue being traded due to the age or depth of the issue.
2. When a security is unique to a single dealer, for example, a private placement.
3. When the transaction involved new issues or issues in the "when issued" market.

If the maturing investment is a certificate of deposit, then of the contacts made, one shall be the present holder of the funds subject to the portfolio diversification requirements in this policy. Due to the cost of safekeeping, one business day repurchase agreements less than \$1,000,000 and overnight sweep repurchase agreements will not be bid, but may be placed with the depository bank relating to the demand account for which the repurchase agreement was purchased.

Notwithstanding the above, in order to afford local banks within the City opportunities to enhance the economics of the local area, an aggregate face value of up to \$1,000,000 in certificates of deposit may be purchased from a local bank provided the following additional conditions have been satisfied:

1. The bank is located within the boundaries of City of Lake Worth Beach or has a branch office located within the boundaries of City of Lake Worth Beach.
2. The bank matches the highest bid of three or more bids from other non-local banks.



## INTERNAL CONTROLS

The Financial Services Director or his/her designee shall establish and monitor a set of written internal controls designed to protect the City's funds and ensure proper accounting and reporting of securities transactions. The internal controls should be designed to prevent losses of funds, which might arise from fraud, employee error, and misrepresentation by third parties, or imprudent actions by employees. No person may engage in an investment transaction except as authorized under the terms of this policy. Such internal controls shall include, but not be limited to, the following:

1. All securities purchased or sold will be transferred only under the "delivery versus payment" (D.V.P.) method to ensure that funds or securities are not released until all criteria relating to the specific transaction are met.
2. The Financial Services Director or his/her designee is authorized to accept, on behalf of and in the name of City of Lake Worth Beach, bank trust receipts or confirmations as evidence of actual delivery of the obligations or securities in return for investments of funds.
3. Trust receipts or confirmations shall fully describe the various obligations or securities held. The receipt or confirmation shall state that the investment is held in the name of City of Lake Worth Beach.
4. The actual obligations or securities, whether in book-entry or physical form, on which trust receipts or confirmations are issued, may be held by a third-party custodial bank and/or institution or a designated correspondent bank which has a correspondent relationship to the City's third-party custodian.
5. Other internal controls such as:
  - A. Written documentation of all transactions; including, telephone transactions
  - B. Adequate separation of duties
  - C. Custodial safekeeping
  - D. Supervisory control of employee actions and operations review
  - E. Interim and annual performance evaluations and reporting
6. All daily investment activity is coordinated by an assigned Accountant and reviewed by the Treasurer as well as the Financial Services Director. The Treasurer oversees day-today operations; however, the whole investment function is under direct control of the Financial Services Director.

## CONTINUING EDUCATION

City employees responsible for making investment decisions shall complete 8 hours of continuing education annually in subjects or courses of study related to investment practices and products.

## REPORTING

On an annual basis, the Financial Services Director or his/her designee shall submit to the City Commission a written report on all invested funds. The annual report shall provide all, but not limited to, the following items;

1. a complete list of all invested funds
2. the name or type of security in which the funds are invested
3. the amount invested
4. the maturity date
5. earned income
6. the book value
7. the market value
8. the yield on each investment

The annual report will show performance on both a book value and total rate of return basis (if applicable) and will compare the results to the above-stated performance benchmarks. All investments shall be reported at fair value per the then prevailing GASB Statement governing the fair value reporting of investments (currently GASB 72).

## AUDITS

As part of the City's annual audit, the City's independent CPA's, pursuant to F.S. 11.45, shall report the City's compliance with F.S. 218.415.

## POLICY REVIEW AND AMENDMENT

The Finance staff and the Financial Services Director or his/her designee shall review these policies in their entirety on an annual basis.

This policy may be amended in writing from time to time by the City Commission.

## Attachment A

### Glossary of Cash and Investment Management Terms

The following is a glossary of key investing terms, many of which appear in the City's policy. This glossary clarifies the meaning of investment terms generally used in cash and investment management. This glossary has been adapted from the GFOA Sample Investment Policy and the Association of Public Treasurers of the United States and Canada's Model Investment Policy.

**Accrued Interest.** Interest earned but which has not yet been paid or received.

**Agency.** See "Federal Agency Securities."

**Ask Price.** Price at which a broker/dealer offers to sell a security to an investor. Also known as "offered price."

**Asset Backed Securities (ABS).** A fixed-income security backed by notes or receivables against assets other than real estate. Generally issued by special purpose companies that "own" the assets and issue the ABS. Examples include securities backed by auto loans, credit card receivables, home equity loans, manufactured housing loans, farm equipment loans, and aircraft leases.

**Average Life.** The average length of time that an issue of serial bonds and/or term bonds with a mandatory sinking fund feature is expected to be outstanding.

**Bankers' Acceptance (BA's).** A draft or bill of exchange drawn upon and accepted by a bank. Frequently used to finance shipping of international goods. Used as a short-term credit instrument, bankers' acceptances are traded at a discount from face value as a money market instrument in the secondary market on the basis of the credit quality of the guaranteeing bank.

**Basis Point.** One hundredth of one percent, or 0.01%. Thus 1% equals 100 basis points.

**Bearer Security.** A security whose ownership is determined by the holder of the physical security. Typically, there is no registration on the issuer's books. Title to bearer securities is transferred by delivery of the physical security or certificate. Also known as "physical securities."

**Benchmark Bills:** In November 1999, FNMA introduced its Benchmark Bills program, a short-term debt securities issuance program to supplement its existing discount note program. The program includes a schedule of larger, weekly issues in three- and six-month maturities and biweekly issues in one-year for Benchmark Bills. Each issue is brought to market via a Dutch (single price) auction. FNMA conducts a weekly auction for each Benchmark Bill maturity and accepts both competitive and non-competitive bids through a web-based auction system. This program is in addition to the variety of other discount note maturities, with rates posted on a daily basis, which FNMA offers. FNMA's Benchmark Bills are unsecured general obligations that are issued in book-entry form through the Federal Reserve Banks. There are no periodic payments

of interest on Benchmark Bills, which are sold at a discount from the principal amount and payable at par at maturity. Issues under the Benchmark program constitute the same credit standing as other FNMA discount notes; they simply add organization and liquidity to the shortterm Agency discount note market.

**Benchmark Notes/Bonds:** Benchmark Notes and Bonds are a series of FNMA “bullet” maturities (non-callable) issued according to a pre-announced calendar. Under its Benchmark Notes/Bonds program, 2, 3, 5, 10, and 30-year maturities are issued each quarter. Each Benchmark Notes new issue has a minimum size of \$4 billion, 30-year new issues having a minimum size of \$1 billion, with re-openings based on investor demand to further enhance liquidity. The amount of noncallable issuance has allowed FNMA to build a yield curve in Benchmark Notes and Bonds in maturities ranging from 2 to 30 years. The liquidity emanating from these large size issues has facilitated favorable financing opportunities through the development of a liquid overnight and term repo market. Issues under the Benchmark program constitute the same credit standing as other FNMA issues; they simply add organization and liquidity to the intermediate- and longterm Agency market.

**Benchmark.** A market index used as a comparative basis for measuring the performance of an investment portfolio. A performance benchmark should represent a close correlation to investment guidelines, risk tolerance, and duration of the actual portfolio's investments.

**Bid Price.** Price at which a broker/dealer offers to purchase a security from an investor.

**Bond.** Financial obligation for which the issuer promises to pay the bondholder (the purchaser or owner of the bond) a specified stream of future cash-flows, including periodic interest payments and a principal repayment.

**Book Entry Securities.** Securities that are recorded in a customer’s account electronically through one of the financial markets electronic delivery and custody systems, such as the Fed Securities wire, DTC, and PTC

(as opposed to bearer or physical securities). The trend is toward a certificate-free society in order to cut down on paperwork and to diminish investors’ concerns about the certificates themselves. The vast majority of securities are now book entry securities.

**Book Value.** The value at which a debt security is reflected on the holder's records at any point in time. Book value is also called “amortized cost” as it represents the original cost of an investment adjusted for amortization of premium or accretion of discount. Also called “carrying value.” Book value can vary over time as an investment approaches maturity and differs from “market value” in that it is not affected by changes in market interest rates.

**Broker/Dealer.** A person or firm transacting securities business with customers. A “broker” acts as an agent between buyers and sellers, and receives a commission for these services. A “dealer” buys and sells financial assets from its own portfolio. A dealer takes risk by owning inventory of

securities, whereas a broker merely matches up buyers and sellers. See also "Primary Dealer."

**Bullet Notes/Bonds.** Notes or bonds that have a single maturity date and are non-callable.

**Call Date.** Date at which a call option may be or is exercised.

**Call Option.** The right, but not the obligation, of an issuer of a security to redeem a security at a specified value and at a specified date or dates prior to its stated maturity date. Most fixed-income calls are a par, but can be at any previously established price. Securities issued with a call provision typically carry a higher yield than similar securities issued without a call feature. There are three primary types of call options (1) European - one-time calls, (2) Bermudan - periodically on a predetermined schedule (quarterly, semi-annual, annual), and (3) American - continuously callable at any time on or after the call date. There is usually a notice period of at least 5 business days prior to a call date.

**Callable Bonds/Notes.** Securities which contain an imbedded call option giving the issuer the right to redeem the securities prior to maturity at a predetermined price and time.

**Certificate of Deposit (CD).** Bank obligation issued by a financial institution generally offering a fixed rate of return (coupon) for a specified period of time (maturity). Can be as long as 10 years to maturity, but most CDs purchased by public agencies are one year and under.

**Collateral.** Investment securities or other property that a borrower pledges to secure repayment of a loan, secure deposits of public monies, or provide security for a repurchase agreement.

**Collateralization.** Process by which a borrower pledges securities, property, or other deposits for securing the repayment of a loan and/or security.

**Collateralized Mortgage Obligation (CMO).** A security that pools together mortgages and separates them into short, medium, and long-term positions (called tranches). Tranches are set up to pay different rates of interest depending upon their maturity. Interest payments are usually paid monthly. In "plain vanilla" CMOs, principal is not paid on a tranche until all shorter tranches have been paid off. This system provides interest and principal in a more predictable manner. A single pool of mortgages can be carved up into numerous tranches each with its own payment and risk characteristics.

**Commercial Paper.** Short term unsecured promissory note issued by a company or financial institution. Issued at a discount and matures for par or face value. Usually a maximum maturity of 270 days and given a short-term debt rating by one or more NRSROs.

**Convexity.** A measure of a bond's price sensitivity to changing interest rates. A high convexity indicates greater sensitivity of a bond's price to interest rate changes.

**Corporate Note.** A debt instrument issued by a corporation with a maturity of greater than one year and less than ten years.

**Counterparty.** The other party in a two-party financial transaction. "Counterparty risk" refers to the risk that the other party to a transaction will fail in its related obligations. For example, the bank or broker/dealer in a repurchase agreement.

**Coupon Rate.** Annual rate of interest on a debt security, expressed as a percentage of the bond's face value.

**Current Yield.** Annual rate of return on a bond based on its price. Calculated as (coupon rate / price), but does not accurately reflect a bond's true yield level.

**Custody.** Safekeeping services offered by a bank, financial institution, or trust company, referred to as the "custodian." Service normally includes the holding and reporting of the customer's securities, the collection and disbursement of income, securities settlement, and market values.

**Dealer.** A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his/her own account.

**Delivery Versus Payment (DVP).** Settlement procedure in which securities are delivered versus payment of cash, but only after cash has been received. Most security transactions, including those through the Fed Securities Wire system and DTC, are done DVP as a protection for both the buyer and seller of securities.

**Depository Trust Company (DTC).** A firm through which members can use a computer to arrange for securities to be delivered to other members without physical delivery of certificates. A member of the Federal Reserve System and owned mostly by the New York Stock Exchange, the Depository Trust Company uses computerized debit and credit entries. Most corporate securities, commercial paper, CDs, and BAs clear through DTC.

**Derivatives.** (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, or (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities, or commodities). For hedging purposes, common derivatives are options, futures, interest rate swaps, and swaptions.

**Derivative Security.** Financial instrument created from, or whose value depends upon, one or more underlying assets or indexes of asset values.

**Designated Bond.** FFCB's regularly issued, liquid, non-callable securities that generally have a 2 to 3-year original maturity. New issues of Designated Bonds are \$1 billion or larger. Reopenings of existing Designated Bond issues are generally a minimum of \$100 million. Designated Bonds are offered through a syndicate of two to six dealers. Twice each month the Funding Corporation announces its intention to issue a new Designated Bond, reopen an existing issue, or to not issue or reopen a Designated Bond. Issues under the Designated Bond program constitute the same credit standing as other FFCB issues; they simply add organization and liquidity to the intermediate- and long-term Agency market.

**Discount Notes.** Unsecured general obligations issued by Federal Agencies at a discount. Discount notes mature at par and can range in maturity from overnight to one year. Very large primary (new issue) and secondary markets exist.

**Discount Rate.** Rate charged by the system of Federal Reserve Banks on overnight loans to member banks. Changes to this rate are administered by the Federal Reserve and closely mirror changes to the "fed funds rate."

**Discount Securities.** Non-interest bearing money market instruments that are issued at discount and redeemed at maturity for full face value. Examples include: U.S. Treasury Bills, Federal Agency Discount Notes, Bankers' Acceptances, and Commercial Paper.

**Discount.** The amount by which a bond or other financial instrument sells below its face value. See also "Premium."

**Diversification.** Dividing investment funds among a variety of security types, maturities, industries, and issuers offering potentially independent returns.

**Dollar Price.** A bond's cost expressed as a percentage of its face value. For example, a bond quoted at a dollar price of 95 ½, would have a principal cost of \$955 per \$1,000 of face value.

**Duff & Phelps.** One of several NRSROs that provide credit ratings on corporate and bank debt issues.

**Duration.** The weighted average maturity of a security's or portfolio's cash-flows, where the present values of the cash-flows serve as the weights. The greater the duration of a security/portfolio, the greater its percentage price volatility with respect to changes in interest rates. Used as a measure of risk and a key tool for managing a portfolio versus a benchmark and for hedging risk. There are also different kinds of duration used for different purposes (e.g. MacAuley Duration, Modified Duration).

**Fannie Mae.** See "Federal National Mortgage Association."

**Fed Money Wire.** A computerized communications system that connects the Federal Reserve System with its member banks, certain U. S. Treasury offices, and the Washington D.C. office of the Commodity Credit Corporation. The Fed Money Wire is the book entry system used to transfer cash balances between banks for themselves and for customer accounts.

**Fed Securities Wire.** A computerized communications system that facilitates book entry transfer of securities between banks, brokers and customer accounts, used primarily for settlement of U.S. Treasury and Federal Agency securities.

**Fed.** See "Federal Reserve System."

**Federal Agency Security.** A debt instrument issued by one of the Federal Agencies. Federal Agencies are considered second in credit quality and liquidity only to U.S. Treasuries.

**Federal Agency.** Government sponsored/owned entity created by the U.S. Congress, generally for the purpose of acting as a financial intermediary by borrowing in the marketplace and directing proceeds to specific areas of the economy considered to otherwise have restricted access to credit markets. The largest Federal Agencies are GNMA, FNMA, FHLMC, FHLB, FFCB, SLMA, and TVA.

**Federal Deposit Insurance Corporation (FDIC).** Federal agency that insures deposits at commercial banks, currently to a limit of \$250,000 per depositor per bank.

**Federal Farm Credit Bank (FFCB).** One of the large Federal Agencies. A government sponsored enterprise (GSE) system that is a network of cooperatively-owned lending institutions that provides credit services to farmers, agricultural cooperatives and rural utilities. The FFCBs act as financial intermediaries that borrow money in the capital markets and use the proceeds to make loans and provide other assistance to farmers and farm-affiliated businesses. Consists of the consolidated operations of the Banks for Cooperatives, Federal Intermediate Credit Banks, and Federal Land Banks. Frequent issuer of discount notes, agency notes and callable agency securities. FFCB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and agricultural industry. Also, issues note under its "designated note" program.

**Federal Funds (Fed Funds).** Funds placed in Federal Reserve Banks by depository institutions in excess of current reserve requirements, and frequently loaned or borrowed on an overnight basis between depository institutions.

**Federal Funds Rate (Fed Funds Rate).** The interest rate charged by a depository institution lending Federal Funds to another depository institution. The Federal Reserve influences this rate by establishing a "target" Fed Funds rate associated with the Fed's management of monetary policy.

**Federal Home Loan Bank System (FHLB).** One of the large Federal Agencies. A government sponsored enterprise (GSE) system, consisting of wholesale banks (currently twelve district banks) owned by their member banks, which provides correspondent banking services and credit to various financial institutions, financed by the issuance of securities. The principal purpose of the FHLB is to add liquidity to the mortgage markets. Although FHLB does not directly fund mortgages, it provides a stable supply of credit to thrift institutions that make new mortgage loans. FHLB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes and callable agency securities. Also, issues notes under its "global note" and "TAP" programs.

**Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac").** One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides stability and



assistance to the secondary market for home mortgages by purchasing first mortgages and participation interests financed by the sale of debt and guaranteed mortgage backed securities. FHLMC debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities, and MBS. Also, issues notes under its "reference note" program.

**Federal National Mortgage Association (FNMA or "Fannie Mae").** One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides liquidity to the residential mortgage market by purchasing mortgage loans from lenders, financed by the issuance of debt securities and MBS (pools of mortgages packaged together as a security). FNMA debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities and MBS. Also issues notes under its "benchmark note" program.

**Federal Reserve Bank.** One of the 12 distinct banks of the Federal Reserve System.

**Federal Reserve System (the Fed).** The independent central bank system of the United States that establishes and conducts the nation's monetary policy. This is accomplished in three major ways: (1) raising or lowering bank reserve requirements, (2) raising or lowering the target Fed Funds Rate and Discount Rate, and (3) in open market operations by buying and selling government securities. The Federal Reserve System is made up of twelve Federal Reserve District Banks, their branches, and many national and state banks throughout the nation. It is headed by the seven-member Board of Governors known as the "Federal Reserve Board" and headed by its Chairman.

**Financial Industry Regulatory Authority, Inc. (FINRA).** A private corporation that acts as a self-regulatory organization (SRO). FINRA is the successor to the National Association of Securities Dealers, Inc. (NASD). Though sometimes mistaken for a government agency, it is a non-governmental organization that performs financial regulation of member brokerage firms and exchange markets. The government also has a regulatory arm for investments, the Securities and Exchange Commission (SEC).

**Fiscal Agent/Paying Agent.** A bank or trust company that acts, under a trust agreement with a corporation or municipality, in the capacity of general treasurer. The agent performs such duties as making coupon payments, paying rents, redeeming bonds, and handling taxes relating to the issuance of bonds.

**Fitch Investors Service, Inc.** One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

**Floating Rate Security (FRN or "floater").** A bond with an interest rate that is adjusted according to changes in an interest rate or index. Differs from variable-rate debt in that the changes to the

rate take place immediately when the index changes, rather than on a predetermined schedule. See also "Variable Rate Security."

**Freddie Mac.** See "Federal Home Loan Mortgage Corporation." **Ginnie**

**Mae.** See "Government National Mortgage Association."

**Global Notes:** Notes designed to qualify for immediate trading in both the domestic U.S. capital market and in foreign markets around the globe. Usually large issues that are sold to investors worldwide and therefore have excellent liquidity. Despite their global sales, global notes sold in the U.S. are typically denominated in U.S. dollars.

**Government National Mortgage Association (GNMA or "Ginnie Mae").** One of the large Federal Agencies. Government-owned Federal Agency that acquires, packages, and resells mortgages and mortgage purchase commitments in the form of mortgage-backed securities. Largest issuer of mortgage pass-through securities. GNMA debt is guaranteed by the full faith and credit of the U.S. government (one of the few agencies that are actually full faith and credit of the U.S. government).

**Government Securities.** An obligation of the U.S. government, backed by the full faith and credit of the government. These securities are regarded as the highest quality of investment securities available in the U.S. securities market. See "Treasury Bills, Notes, Bonds, and SLGS."

**Government Sponsored Enterprise (GSE).** Privately owned entity subject to federal regulation and supervision, created by the U.S. Congress to reduce the cost of capital for certain borrowing sectors of the economy such as students, farmers, and homeowners. GSEs carry the implicit backing of the U.S. government, but they are not direct obligations of the U.S. government. For this reason, these securities will offer a yield premium over U.S. Treasuries. Examples of GSEs include: FHLB, FHLMC, FNMA, and SLMA.

**Government Sponsored Enterprise Security.** A security issued by a Government Sponsored Enterprise. Considered Federal Agency Securities.

**Index.** A compilation of statistical data that tracks changes in the economy or in financial markets.

**Interest-Only (IO) STRIP.** A security based solely on the interest payments from the bond. After the principal has been repaid, interest payments stop and the value of the security falls to nothing. Therefore, IOs are considered risky investments. Usually associated with mortgage-backed securities.

**Internal Controls.** An internal control structure ensures that the assets of the entity are protected from loss, theft, or misuse. The internal control structure is designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that 1) the cost of a control should not exceed the benefits likely to be derived and 2) the valuation of costs and benefits requires estimates and judgments by management. Internal controls should address the following points:

1. **Control of collusion** - Collusion is a situation where two or more employees are working in conjunction to defraud their employer.
2. **Separation of transaction authority from accounting and record keeping** - A separation of duties is achieved by separating the person who authorizes or performs the transaction from the people who record or otherwise account for the transaction.
3. **Custodial safekeeping** - Securities purchased from any bank or dealer including appropriate collateral (as defined by state law) shall be placed with an independent third party for custodial safekeeping.
4. **Avoidance of physical delivery securities** - Book-entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.
5. **Clear delegation of authority to subordinate staff members** - Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
6. **Written confirmation of transactions for investments and wire transfers** - Due to the potential for error and improprieties arising from telephone and electronic transactions, all transactions should be supported by written communications and approved by the appropriate person. Written communications may be via fax if on letterhead and if the safekeeping institution has a list of authorized signatures.
7. **Development of a wire transfer agreement with the lead bank and third-party custodian** - The designated official should ensure that an agreement will be entered into and will address the following points: controls, security provisions, and responsibilities of each party making and receiving wire transfers.

**Inverse Floater.** A floating rate security structured in such a way that it reacts inversely to the direction of interest rates. Considered risky as their value moves in the opposite direction of normal fixed-income investments and whose interest rate can fall to zero.

**Investment Advisor.** A company that provides professional advice managing portfolios, investment recommendations, and/or research in exchange for a management fee.

**Investment Adviser Act of 1940.** Federal legislation that sets the standards by which investment companies, such as mutual funds, are regulated in the areas of advertising, promotion, performance reporting requirements, and securities valuations.

**Investment Grade.** Bonds considered suitable for preservation of invested capital, including bonds rated a minimum of Baa3 by Moody's, BBB- by Standard & Poor's, or BBB- by Fitch. Although "BBB" rated bonds are considered investment grade, most public agencies cannot invest in securities rated below "A."

**Liquidity.** Relative ease of converting an asset into cash without significant loss of value. Also, a relative measure of cash and near-cash items in a portfolio of assets. Additionally, it is a term describing the marketability of a money market security correlating to the narrowness of the spread between the bid and ask prices.

**Local Government Investment Pool (LGIP).** An investment by local governments in which their money is pooled as a method for managing local funds, (e.g., Florida State Board of Administration's Florida Prime Fund).

**Long-Term Core Investment Program.** Funds that are not needed within a one-year period.

**Market Value.** The fair market value of a security or commodity. The price at which a willing buyer and seller would pay for a security.

**Mark-to-market.** Adjusting the value of an asset to its market value, reflecting in the process unrealized gains or losses.

**Master Repurchase Agreement.** A widely accepted standard agreement form published by the Securities Industry and Financial Markets Association (SIFMA) that is used to govern and document Repurchase Agreements and protect the interest of parties in a repo transaction.

**Maturity Date.** Date on which principal payment of a financial obligation is to be paid.

**Medium Term Notes (MTN's).** Used frequently to refer to corporate notes of medium maturity (5-years and under). Technically, any debt security issued by a corporate or depository institution with a maturity from 1 to 10 years and issued under an MTN shelf registration. Usually issued in smaller issues with varying coupons and maturities, and underwritten by a variety of broker/dealers (as opposed to large corporate deals issued and underwritten all at once in large size and with a fixed coupon and maturity).

**Money Market.** The market in which short-term debt instruments (bills, commercial paper, bankers' acceptance, etc.) are issued and traded.

**Money Market Mutual Fund (MMF).** A type of mutual fund that invests solely in money market instruments, such as: U.S. Treasury bills, commercial paper, bankers' acceptances, and repurchase agreements. Money market mutual funds are registered with the SEC under the Investment Company Act of 1940 and are subject to "rule 2a-7" which significantly limits average maturity

and credit quality of holdings. MMF's are managed to maintain a stable net asset value (NAV) of \$1.00. Many MMFs carry ratings by a NRSRO.

**Moody's Investors Service.** One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

**Mortgage Backed Securities (MBS).** Mortgage-backed securities represent an ownership interest in a pool of mortgage loans made by financial institutions, such as savings and loans, commercial banks, or mortgage companies, to finance the borrower's purchase of a home or other real estate. The majority of MBS are issued and/or guaranteed by GNMA, FNMA, and FHLMC. There are a variety of MBS structures with varying levels of risk and complexity. All MBS have reinvestment risk as actual principal and interest payments are dependent on the payment of the underlying mortgages which can be prepaid by mortgage holders to refinance and lower rates or simply because the underlying property was sold.

**Mortgage Pass-Through Securities.** A pool of residential mortgage loans with the monthly interest and principal distributed to investors on a pro-rata basis. The largest issuer is GNMA.

**Municipal Note/Bond.** A debt instrument issued by a state or local government unit or public agency. The vast majority of municipals are exempt from state and federal income tax, although some non-qualified issues are taxable.

**Mutual Fund.** Portfolio of securities professionally managed by a registered investment company that issues shares to investors. Many different types of mutual funds exist (e.g., bond, equity, and money market funds); all except money market funds operate on a variable net asset value (NAV).

**Negotiable Certificate of Deposit (Negotiable CD).** Large denomination CDs (\$100,000 and larger) that are issued in bearer form and can be traded in the secondary market.

**Net Asset Value.** The market value of one share of an investment company, such as a mutual fund. This figure is calculated by totaling a fund's assets including securities, cash, and any accrued earnings, then subtracting the total assets from the fund's liabilities, and dividing this total by the number of shares outstanding. This is calculated once a day based on the closing price for each security in the fund's portfolio. (See below.)

$$\frac{[(\text{Total assets}) - (\text{Liabilities})]}{(\text{Number of shares outstanding})}$$

**NRSRO.** A "Nationally Recognized Statistical Rating Organization" (NRSRO) is a designated rating organization that the SEC has deemed a strong national presence in the U.S. NRSROs provide credit ratings on corporate and bank debt issues. Only ratings of a NRSRO may be used for the regulatory purposes of rating. Includes Moody's, S&P, Fitch, and Duff & Phelps.

**Offered Price.** See also "Ask Price."

**Open Market Operations.** A Federal Reserve monetary policy tactic entailing the purchase or sale of government securities in the open market by the Federal Reserve System from and to primary dealers in order to influence the money supply, credit conditions, and interest rates.

**Par Value.** The face value, stated value, or maturity value of a security.

**Physical Delivery.** Delivery of readily available underlying assets at contract maturity.

**Portfolio.** Collection of securities and investments held by an investor.

**Premium.** The amount by which a bond or other financial instrument sells above its face value. See also "Discount."

**Primary Dealer.** A designation given to certain government securities dealer by the Federal Reserve Bank of New York. Primary dealers can buy and sell government securities directly with the Fed. Primary dealers also submit daily reports of market activity and security positions held to the Fed and are subject to its informal oversight. Primary dealers are the largest buyers and sellers by volume in the U.S. Treasury securities market.

**Prime Paper.** Commercial paper of high quality. Highest rated paper is A-1+/A-1 by S&P and P1 by Moody's.

**Principal.** Face value of a financial instrument on which interest accrues. May be less than par value if some principal has been repaid or retired. For a transaction, principal is par value times price and includes any premium or discount.

**Prudent Expert Rule.** Standard that requires that a fiduciary manage a portfolio with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. This statement differs from the "prudent person" rule in that familiarity with such matters suggests a higher standard than simple prudence.

**Prudent Investor Standard.** Standard that requires that when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. More stringent than the "prudent person" standard as it implies a level of knowledge commensurate with the responsibility at hand.

**Qualified Public Depository** - Per Subsection 280.02(26), F.S., "qualified public depository" means any bank, savings bank, or savings association that:

1. Is organized and exists under the laws of the United States, the laws of this state or any other state or territory of the United States.

2. Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.
3. Has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss.1811 et seq.
4. Has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits.
5. Meets all requirements of Chapter 280, F.S.
6. Has been designated by the Chief Financial Officer as a qualified public depository.

**Range Note.** A type of structured note that accrues interest daily at a set coupon rate that is tied to an index. Most range notes have two coupon levels; a higher accrual rate for the period the index is within a designated range, the lower accrual rate for the period that the index falls outside the designated range. This lower rate may be zero and may result in zero earnings.

**Rate of Return.** Amount of income received from an investment, expressed as a percentage of the amount invested.

**Realized Gains (Losses).** The difference between the sale price of an investment and its book value. Gains/losses are “realized” when the security is actually sold, as compared to “unrealized” gains/losses which are based on current market value. See “Unrealized Gains (Losses).”

**Reference Bills:** FHLMC’s short-term debt program created to supplement its existing discount note program by offering issues from one month through one year, auctioned on a weekly or on an alternating four-week basis (depending upon maturity) offered in sizeable volumes (\$1 billion and up) on a cycle of regular, standardized issuance. Globally sponsored and distributed, Reference Bill issues are intended to encourage active trading and market-making and facilitate the development of a term repo market. The program was designed to offer predictable supply, pricing transparency, and liquidity, thereby providing alternatives to U.S. Treasury bills. FHLMC’s Reference Bills are unsecured general corporate obligations. This program supplements the corporation’s existing discount note program. Issues under the Reference program constitute the same credit standing as other FHLMC discount notes; they simply add organization and liquidity to the short-term Agency discount note market.

**Reference Notes:** FHLMC’s intermediate-term debt program with issuances of 2, 3, 5, 10, and 30year maturities. Initial issuances range from \$2 - \$6 billion with re-openings ranging \$1 - \$4 billion.

The notes are high-quality bullet structures securities that pay interest semiannually. Issues under the Reference program constitute the same credit standing as other FHLMC notes; they simply add organization and liquidity to the intermediate- and long-term Agency market.

**Repurchase Agreement (Repo).** A short-term investment vehicle where an investor agrees to buy securities from a counterparty and simultaneously agrees to resell the securities back to the counterparty at an agreed upon time and for an agreed upon price. The difference between the purchase price and the sale price represents interest earned on the agreement. In effect, it represents a collateralized loan to the investor, where the securities are the collateral. Can be DVP, where securities are delivered to the investor's custodial bank, or "tri-party" where the securities are delivered to a third-party intermediary. Any type of security can be used as "collateral," but only some types provide the investor with special bankruptcy protection under the law. Repos should be undertaken only when an appropriate Securities Industry and Financial Markets Association (SIFMA) approved master repurchase agreement is in place.

**Reverse Repurchase Agreement (Reverse Repo).** A repo from the point of view of the original seller of securities. Used by dealers to finance their inventory of securities by essentially borrowing at short-term rates. Can also be used to leverage a portfolio and in this sense, can be considered risky if used improperly.

**Safekeeping.** Service offered for a fee, usually by financial institutions, for the holding of securities and other valuables. Safekeeping is a component of custody services.

**Secondary Market.** Markets for the purchase and sale of any previously issued financial instrument.

**Securities Industry and Financial Markets Association (SIFMA).** The bond market trade association representing the largest securities markets in the world. In addition to publishing a Master Repurchase Agreement, widely accepted as the industry standard document for Repurchase Agreements, the SIFMA also recommends bond market closures and early closes due to holidays.

**Securities Lending.** An arrangement between and investor and a custody bank that allows the custody bank to "loan" the investors investment holdings, reinvest the proceeds in permitted investments, and shares any profits with the investor. Should be governed by a securities lending agreement. Can increase the risk of a portfolio in that the investor takes on the default risk on the reinvestment at the discretion of the custodian.

**Sinking Fund.** A separate accumulation of cash or investments (including earnings on investments) in a fund in accordance with the terms of a trust agreement or indenture, funded by periodic deposits by the issuer (or other entity responsible for debt service), for the purpose of assuring timely availability of moneys for payment of debt service. Usually used in connection with term bonds.



**Spread.** The difference between the price of a security and similar maturity U.S. Treasury investments, expressed in percentage terms or basis points. A spread can also be the absolute difference in yield between two securities. The securities can be in different markets or within the same securities market between different credits, sectors, or other relevant factors.

**Standard & Poor's.** One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

**STRIPS (Separate Trading of Registered Interest and Principal of Securities).** Acronym applied to U.S. Treasury securities that have had their coupons and principal repayments separated into individual zero-coupon Treasury securities. The same technique and "strips" description can be applied to non-Treasury securities (e.g., FNMA strips).

**Structured Notes.** Notes that have imbedded into their structure options such as step-up coupons or derivative-based returns.

**Supranational.** Supranational organizations are international financial institutions that are generally established by agreements among nations, with member nations contributing capital and participating in management. These agreements provide for limited immunity from the laws of member countries. Bonds issued by these institutions are part of the broader class of Supranational, Sovereign, and Non-U.S. Agency (SSA) sector bonds. Supranational bonds finance economic and infrastructure development and support environmental protection, poverty reduction, and renewable energy around the globe. For example, the World Bank, International Finance Corporation (IFC), and African Development Bank (AfDB) have "green bond" programs specifically designed for energy resource conservation and management. Supranational bonds, which are issued by multi-national organizations that transcend national boundaries. Examples include the World Bank, African Development Bank, and European Investment Bank.

**Swap.** Trading one asset for another.

**TAP Notes:** Federal Agency notes issued under the FHLB TAP program. Launched in 6/99 as a refinement to the FHLB bullet bond auction process. In a break from the FHLB's traditional practice of bringing numerous small issues to market with similar maturities, the TAP Issue Program uses the four most common maturities and reopens them up regularly through a competitive auction. These maturities (2, 3, 5, and 10 year) will remain open for the calendar quarter, after which they will be closed and a new series of TAP issues will be opened to replace them. This reduces the number of separate bullet bonds issued, but generates enhanced awareness and liquidity in the marketplace through increased issue size and secondary market volume.

**Tennessee Valley Authority (TVA).** One of the large Federal Agencies. A wholly owned corporation of the United States government that was established in 1933 to develop the resources of the Tennessee Valley region in order to strengthen the regional and national economy and the

national defense. Power operations are separated from non-power operations. TVA securities represent obligations of TVA, payable solely from TVA's net power proceeds, and are neither obligations of nor guaranteed by the United States. TVA is currently authorized to issue debt up to \$30 billion. Under this authorization, TVA may also obtain advances from the U.S. Treasury of up to \$150 million. Frequent issuer of discount notes, agency notes, and callable agency securities.

**Total Return.** Investment performance measured over a period of time that includes coupon interest, interest on interest, and both realized and unrealized gains or losses. Total return includes, therefore, any market value appreciation/depreciation on investments held at period end.

**Treasuries.** Collective term used to describe debt instruments backed by the U.S. government and issued through the U.S. Department of the Treasury. Includes Treasury bills, Treasury notes, and Treasury bonds. Also a benchmark term used as a basis by which the yields of non-Treasury securities are compared (e.g., "trading at 50 basis points over Treasuries").

**Treasury Bills (T-Bills).** Short-term direct obligations of the United States government issued with an original term of one year or less. Treasury bills are sold at a discount from face value and do not pay interest before maturity. The difference between the purchase price of the bill and the maturity value is the interest earned on the bill. Currently, the U.S. Treasury issues 4-week, 13week, and 26-week T-Bills.

**Treasury Bonds.** Long-term interest-bearing debt securities backed by the U.S. government and issued with maturities of ten years and longer by the U.S. Department of the Treasury.

**Treasury Notes.** Intermediate interest-bearing debt securities backed by the U.S. government and issued with maturities ranging from one to ten years by the U.S. Department of the Treasury. The Treasury currently issues 2-year, 3-year, 5-year, and 10-year Treasury Notes.

**Trustee.** A bank designated by an issuer of securities as the custodian of funds and official representative of bondholders. Trustees are appointed to insure compliance with the bond documents and to represent bondholders in enforcing their contract with the issuer.

**Uniform Net Capital Rule.** SEC Rule 15c3-1 that outlines the minimum net capital ratio (ratio of indebtedness to net liquid capital) of member firms and non-member broker/dealers.

**Unrealized Gains (Losses).** The difference between the market value of an investment and its book value. Gains/losses are "realized" when the security is actually sold, as compared to "unrealized" gains/losses which are based on current market value. See also "Realized Gains (Losses)."

**Variable-Rate Security.** A bond that bears interest at a rate that varies over time based on a specified schedule of adjustment (e.g., daily, weekly, monthly, semi-annually, or annually). See also "Floating Rate Note."

**Weighted Average Maturity (or just “Average Maturity”).** The average maturity of all securities and investments of a portfolio, determined by multiplying the par or principal value of each security or investment by its maturity (days or years), summing the products, and dividing the sum by the total principal value of the portfolio. A simple measure of risk of a fixed-income portfolio.

**Weighted Average Maturity to Call.** The average maturity of all securities and investments of a portfolio, adjusted to substitute the first call date per security for maturity date for those securities with call provisions.

**Yield Curve.** A graphic depiction of yields on like securities in relation to remaining maturities spread over a time line. The traditional yield curve depicts yields on U.S. Treasuries, although yield curves exist for Federal Agencies and various credit quality corporates as well. Yield curves can be positively sloped (normal) where longer-term investments have higher yields, or “inverted” (uncommon) where longer-term investments have lower yields than shorter ones.

**Yield to Call (YTC).** Same as “Yield to Maturity,” except the return is measured to the first call date rather than the maturity date. Yield to call can be significantly higher or lower than a security’s yield to maturity.

**Yield to Maturity (YTM).** Calculated return on an investment, assuming all cash-flows from the security are reinvested at the same original yield. Can be higher or lower than the coupon rate depending on market rates and whether the security was purchased at a premium or discount. There are different conventions for calculating YTM for various types of securities.

**Yield.** There are numerous methods of yield determination. In this glossary, see also "Current Yield," "Yield Curve," "Yield to Call," and "Yield to Maturity."

**Attachment B**  
**Investment Pool/Fund Questionnaire**

1. A description of eligible investment securities, and a written statement of investment policy and objectives.
2. A description of interest calculations and how it is distributed, and how gains and losses are treated.
3. Does the pool have a stable net asset value or floating net asset value?
4. What are the liquidity gates and fees?
5. A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.
6. A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.
7. A schedule for receiving statements and portfolio listings.
8. Are reserves, retained earnings, etc. utilized by the pool/fund?
9. A fee schedule, and when and how is it assessed.
10. Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** City Clerk

**TITLE:**

Resolution No. 06-2023 – Clarifying Article III, Section 3 of the City Charter so that the designation of appointments be done annually at the first meeting in April

**SUMMARY:**

Designations of Appointments have been done annually following the City's election, but with the change in term length, elections are no longer held every year.

**BACKGROUND AND JUSTIFICATION:**

Article III, Legislative, Section 3, Mayor, vice mayor, and vice mayor pro tem, states that the Vice Mayor and Vice Mayor Pro Tem shall be done annually at the first regular city commission meeting after the general election. This was not an issue historically as the city had elections every year, but with the extension of the terms of the elected officials from two years to three years in 2018, elections are no longer annual. The City Commission gave consensus at the March 8, 2023 Pre-Agenda Work Session to clarify the Charter language by resolution so that the appointments are consistent with the intent of the Charter and would be held annually at the first meeting in April.

**MOTION:**

Move to approve/disapprove Resolution No. 06-2023 – clarifying Article III, Section 3 of the City Charter so that the designation of appointments be done annually at the first meeting in April.

**ATTACHMENT(S):**

Fiscal Impact Analysis – N/A  
Resolution 06-2023  
Article III Section 3 of the Charter

RESOLUTION NO. 06-2023 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING ARTICLE III, SECTION 3 OF THE CITY CHARTER TO CLARIFY THAT DESIGNATION OF APPOINTMENTS BE HELD ON AN ANNUAL BASIS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Article III (Legislative); Section 3 (Mayor, Vice Mayor, Vice Mayor Pro Tem) states that election of the vice mayor and vice mayor pro tem shall be done annually at the first regular city commission meeting after the general election; and

WHEREAS, City elections were held on an annual basis until 2018 when the term length for the elected officials changed from two years to three years by referendum; and

WHEREAS, the City Commission gave consensus at its March 8, 2023 Pre-Agenda Work Session to clarify the Charter language to be consistent with the intent of the Charter.

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

SECTION 1: The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are incorporated herein by this reference.

SECTION 2: Appointments shall be made annually at the first Regular City Commission Meeting in April.

SECTION 3: This resolution shall become effective upon adoption.

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

Mayor Betty Resch  
Vice Mayor Christopher McVoy  
Commissioner Sarah Malega  
Commissioner Kimberly Stokes  
Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

LAKE WORTH BEACH CITY COMMISSION

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, City Clerk

Sec. 3. - Mayor, vice mayor, and vice mayor pro tem.

The mayor shall be elected as provided in this article, and the city commission shall elect from among its members a vice mayor, and a vice mayor pro tem to serve at the pleasure of the city commission. Election of the vice mayor and vice mayor pro tem shall be done annually at the first regular city commission meeting after the general election. The mayor shall preside at meetings of the commission, shall be recognized as head of city government for all ceremonial purposes, by the governor for purposes of military law, for civil emergencies, for service of process, execution of contracts, deeds and other documents, and as the city official designated to represent the city in all agreements with other governmental entities or certifications to other governmental entities, but shall have no administrative duties except as required to carry out the responsibilities herein. The vice mayor shall act as mayor in the absence or disability of the mayor. The vice mayor pro tem shall act as mayor in the absence or disability of the mayor and vice mayor. In addition to other duties, the mayor shall have a voice and a vote in all commission proceedings, but shall have no veto power.

Sec. 4. - Compensation.

The city commission may determine the annual compensation of commissioners by ordinance, but no increase in compensation shall be adopted more frequently than every two (2) years.

Sec. 5. - Vacancies; forfeiture of office; filling of vacancies.

- (a) *Vacancies.* The office of the mayor or of a commissioner shall become vacant upon the death, resignation, removal from office in any manner authorized by law, or forfeiture of such office by a member; such vacancy to be declared by the remaining members of the commission.
- (b) *Forfeiture of office or candidacy.* The mayor or a commissioner shall forfeit such office or candidacy if lacking at any time during a term of office or candidacy any qualification for the office prescribed by this charter or by law.
- (c) *Filling of vacancies.* A vacancy of the city commission shall be filled in one of the following ways:
  - (1) If there are less than six (6) months remaining in the unexpired term or if there are less than six (6) months before the next regular city election, the city commission by a majority vote of the remaining members shall choose and appoint a successor to serve until a newly elected commissioner or mayor is qualified.
  - (2) If there are more than six (6) months remaining in the unexpired term and no general city election is scheduled within six (6) months, the city commission shall fill the vacancy by a special election to be held no more than sixty (60) days following the occurrence of the vacancy. If a run-off election is necessary, it shall be scheduled two (2) weeks after the special election.
- (d) *Extraordinary vacancies.* In the event that three (3) or more members of the city commission are removed by death, disability, the law, or forfeiture of office, the governor shall appoint an interim commission that shall call a special election as provided in (c)(2) above and such election shall be held in the same manner as the first election under this charter.

Sec. 6. - Prohibitions.



# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** March 21, 2023

**DEPARTMENT:** City Commission

**TITLE:**

Resolution No. 09-2023 -- opposing House Bill 1011 (HB1011) that only specified flags may be flown by local governments

**SUMMARY:**

On February 22, 2023, Florida Representative David Borrero filed HB 1011, which provides that certain governmental agencies and units of local government may only display specified flags.

**BACKGROUND AND JUSTIFICATION:**

The Florida Legislature is currently considering HB1011 that would limit the exhibition or display of flags, in any manner, by a governmental agency, local government, or unit of local government to only the State flag, the United States flag, the POW-MIA flag, and the official state Firefighter Memorial Flag. This is not only an infringement of free speech; it would not allow the city to fly its own flag. This bill also would not allow the city to fly the pride flag which has been done annually for many years. Many municipalities are adopting such a resolution and sending it to the Governor and Florida Legislators.

**MOTION:**

Move to approve/disapprove Resolution No. 09-2023 opposing House Bill 1011 that only specified flags may be flown.

**ATTACHMENT(S):**

Resolution 09-2023

**RESOLUTION NO. 09-2023 -- A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, URGING ALL MEMBERS OF THE FLORIDA LEGISLATURE TO OPPOSE HOUSE BILL 1011 ("HB 1011") DISPLAY OF FLAGS BY GOVERNMENTAL ENTITIES; DIRECTING THE CITY CLERK TO TRANSMIT A COPY OF THIS RESOLUTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, House Bill 1011 ("HB 1011") infringes on the free speech rights of the City Commission and its members, and interferes with their ability to perform their official duties; and

**WHEREAS**, on February 22, 2023, Florida Representative David Borrero filed HB 1011, which provides that certain governmental agencies and units of local government may only display specified flags; and

**WHEREAS**, HB 1011, if approved, would limit the exhibition or display of flags, in any manner, by a governmental agency, local government, or unit of local government to only the State flag, the United States flag, the POW-MIA flag, and the official state Firefighter Memorial Flag; and

**WHEREAS**, HB 1011, if approved, would not even allow the City of Lake Worth Beach ("City") to fly its own municipal flag; and

**WHEREAS**, HB 1011 further intrudes into Home Rule as provided for in Section 2(b), Article VIII of the Constitution of the State of Florida; and

**WHEREAS**, the City has embraced its reputation as a destination for the lesbian, gay, bisexual, transgender and queer (LGBTQ) community; and

**WHEREAS**, the City is home to the Compass Community Center, whose mission is to engage, empower and enrich the lives of lesbian, gay, bisexual, transgender and queer (LGBTQ) people and those impacted by HIV and AIDS; and

**WHEREAS**, the City is proud to fly the pride flag annually at City Hall for Palm Beach Pride Month; and

**WHEREAS**, the LGBTQ community has had a lasting and positive impact on the City; and

**WHEREAS**, as the government decision makers of the City, the City

Commission may select views it wishes to express, including the selection of monuments that portray what it views as appropriate for the place in question, based on aesthetics, history, and local culture; and

**WHEREAS**, the City Commission of the City of Lake Worth Beach believes it is in the best interest of the public to adopt this Resolution opposing HB 1011.

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

**Section 1.** The above "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are incorporated herein by this reference.

**Section 2.** The City Commission of the City of Lake Worth Beach urges all members of the Florida Legislature to oppose the adoption of HB 1011 and any other related bills.

**Section 3.** In the event the Florida Legislature adopts HB 1011, or any other related bill, the City Commission urges the Florida Legislature to amend HB 1011 to allow the City to fly the City flag, and the Honor and Remember Flag that meets the requirements of section 256.16, Florida Statutes.

**Section 4.** The City Commission further directs City Administration to transmit a copy of this Resolution to the to the Florida Governor, Florida Senate President, the Speaker of the Florida House, the Palm Beach County Legislative Delegation, the Florida League of Cities, the Broward County League of Cities, the Palm Beach County League of Cities, the Miami-Dade County League of Cities and any other interested parties.

**Section 5.** All Resolutions or parts of Resolutions in conflict herewith, be and the same are repealed to the extent of such conflict.

**Section 6.** If any section, sentence, clause or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

**Section 7.** This Resolution shall become effective upon its adoption.

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

Mayor Betty Resch  
Vice Mayor Christopher McVoy  
Commissioner Sarah Malega

Commissioner Kimberly Stokes  
Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and adopted on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2023.

LAKE WORTH BEACH CITY COMMISSION

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, City Clerk