

AGREEMENT

THIS AGREEMENT is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 N.W. 1st Avenue, Delray Beach, FL 33444 and TP Southern Charm Limited LLC, a Pennsylvania Limited Liability Corporation (hereinafter referred to as "Contractor"), whose address is 381 Millgate Drive, Bellefonte, PA, this 13th day of February, 2020.

WHEREAS, the City has a need to procure services relating to an Information Technology audit, assessments, recommendations, and development of a strategic plan proposal (collectively herein referred to as "Services"); and,

WHEREAS, the City's Purchasing Policies and Procedures Manual allows the City Manager to approve contracts for Consultant/Professional Services up to \$65,000 without performing a competitive procurement process (herein referred to as "Professional Services Exception"); and

WHEREAS, the City desires to obtain Services from Contractor utilizing the Professional Services Exception; and,

WHEREAS, the Contractor has provided the City a proposal to perform Services; and,

WHEREAS, the Contractor agrees to provide Services to the City in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

1 The above recitals are true and correct and are incorporated herein by reference.

2 The Contractor shall provide Services to the City, in accordance with and pursuant to Contractor's proposal, attached hereto and incorporated herein as Exhibit "A", and the terms and conditions of this Agreement.

3 The City shall pay the Contractor in accordance with the pricing schedule detailed in Exhibit "A".

4 This Agreement is in full force and effect upon full execution by the City through the completion of the Services and upon full acceptance by the City.

5 The City, at its sole discretion, reserves the right to terminate this Agreement with or without cause immediately upon providing 15-day written notice to Contractor. Upon receipt

of such notice, the Contractor shall not incur any additional costs under the Agreement. The City shall be liable only for reasonable costs incurred by Contractor prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."

6 The Contractor shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the Contractor or its employees, agents, servants, partners, principals, or subcontractors. The Contractor shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided the obligations of this section shall survive the term of this Agreement.

7 Contractor shall provide certificates of insurance to the City evidencing its insurance coverage and naming the City as an additional insured. Such insurance shall be in an amount and form as described in Exhibit "B" and shall be delivered to the City prior to execution of this Agreement. If Contractor fails to provide the certificates of insurances in a form acceptable to the City, the City may immediately terminate this Agreement.

8 Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For CITY:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

[Remainder of page intentionally left blank.]

With copy to:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney

For CONTRACTOR:

TP Southern Charm Limited, LLC
381 Millgate Road
Bellefonte, PA 16823
Attn: Pamela Edkin, President

9 Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.

10 This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.

11 **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, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.**

- a. Contractor shall comply with public records laws, specifically to:
 - i. Keep and maintain public records required by the City to perform the service.
 - ii. 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 Florida Statute or as otherwise provided by law.
 - iii. 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 the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
 - iv. Upon completion of the 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, in a format that is compatible with the information technology systems of the City.

- v. If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

12 Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

13 The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

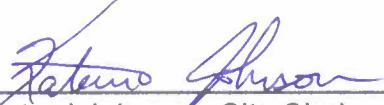
14 The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. The City's purchase order terms and conditions.
- c. Any subsequent information submitted by Contractor during the evaluation and negotiation process.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the City and the Contractor executed this Agreement as of the day and year first above written.

ATTEST:



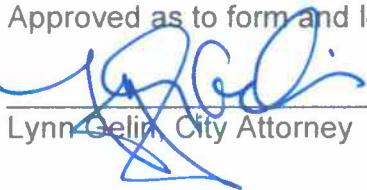
Katerri Johnson, City Clerk

CITY OF DELRAY BEACH

By: 

for George Gretsas, City Manager

Approved as to form and legal sufficiency:



Lynn Gelin, City Attorney

CONTRACTOR

By: 

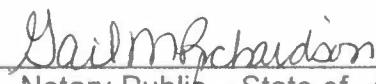
Print Name: Timothy R. Eakin
Title: Vice-President, TP Southern Chain, LTD

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
(SENATE)
Gail M. Richardson, Notary Public
Bellefonte Boro, Centre County
My Commission Expires Dec. 22, 2020
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

STATE OF Pennsylvania
COUNTY OF Centre

The foregoing instrument was acknowledged before me by means of physical presence or
 online notarization, this 6th day of February, 2020, by
Timothy R. Eakin (name of person), as Contractor (type of
authority) for City of Del Ray Beach (name of party on behalf of whom instrument was
executed).

Personally known OR Produced Identification
Type of Identification Produced P. Drivers License



Notary Public – State of Pennsylvania

EXHIBIT A

Statement of Work

For the Office of the City Manager of the City of Delray Beach, FL.

Provided by: Timothy R. Edkin, TP Southern Charm Limited, LLC
381 Millgate Road
Bellefonte, PA 16823
tedkin@edkin.net 954-871-4330

OBJECTIVE: To provide an assessment of the City Information Technology Department (IT) to determine the effectiveness of meeting the needs of key government operations, including an analysis and evaluation of the procedures and processes used to deliver essential services to City Departments. Other tasks as may be assigned by the City Manager's Office (CMO).

SCOPE: Obtain an understanding and evaluation of the City IT environment, structure, organization, policy & procedures, and routines used to provide IT services. Determine the effectiveness of product delivery and support to IT customers. Identify, if any found, opportunities for improvement in service delivery and in IT department operations. Access to IT personnel, processes, systems, and applications along with system users will be essential to achieve the objective.

DELIVERABLE: Report to the CMO summarizing findings, listing any recommendations, and detailing the results of the scope of work performed.

TASKS:

1. Assess and evaluate IT operations in the following areas:

Customer Service Levels
Procedures
Budget
Processes
Procurement
Backup/Restore
Disaster Operations
Disaster Recovery/Business Continuity
Internal and external networks
Communication Operations
Organization
Product Development
Existing Contracts
Application delivery.

PROCESS:

1. Interview IT staff.
2. Review IT Procedures.
3. Interview Department Leaders for IT support and functionality.
4. Interview selected Department Customers.
5. Review IT software and hardware contracts.
6. Identify City computer applications.
7. Review computer operations and backup/restore structures.
8. Review Disaster Recovery and Business Continuity processes.
9. Review Emergency Operations Center (EOC) setup and support.
10. Interview Radio System vendor.
11. Evaluate fiber optic network usage.
12. Review public Wi-Fi capability.

TIMELINE: Evaluation to be delivered to the CMO within 90 days of engagement.

LOCATION: Work to be performed in the city of Delray Beach and associated City of Delray Beach facilities.

PRICE:

One hundred fifty (150) hours will be applied each month on this SOW.

Rate will be \$107.00 per hour inclusive of all expenses.

Monthly price will be \$16,050.

Maximum length of project is four (4) months.

Total cost of contract not to exceed \$64,200.

Invoicing will occur on a bi-monthly schedule.

EXHIBIT B
INSURANCE REQUIREMENTS

The required insurance coverage is to be issued by an insurance company authorized, licensed and registered to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the City of Delray Beach shall be notified at least thirty (30) days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of Contractor's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the City of Delray Beach.

Contractor shall provide insurance coverage as follows:

1. Workers' Compensation Insurance – as required by law.
2. Employer's Liability Insurance - \$100,000 per occurrence, \$100,000 for each disease, and \$500,000 for aggregate disease
3. Comprehensive General Liability Insurance – with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for Bodily Injury and Property Damage.
4. Automobile Liability Insurance - for owned, non-owned and hired vehicles – with a limit of not less than \$500,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
5. Professional Liability Insurance - with limits of not less than \$1,000,000 per occurrence.

All renewal or replacement certificates of insurance shall be forwarded to the City Purchasing Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

CITY ATTORNEY OFFICE - LEGAL REVIEW CHECKLIST

Name of Agreement: IT Audit Agreement--Professional Services

Department: Purchasing

Contact person: J. Alvarez

City Manager approval

City Commission approval

Agenda item #:

Agenda meeting date:

Resolution #:

Agreement Action:

New <input type="radio"/>	Renewal* <input type="radio"/>	Amendment* <input type="radio"/>	*Renewal: Only change is the agreement term *Amendment: For changes other than/in addition to term
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Does the Contractor require the City to sign first?: No

For City Attorney Use only:

Agreement Terms: **Comments/Specific Provision in Agreement**

Term (Duration of Agreement)	Exhibit A-4 months
Termination Clause	p.5-15 day written notice
Renewal Clause	n/a
Insurance	City standard
Indemnification	City standard
Assignment	p.9
Fiscal Funding Requirement	p.13
FL. Public Records Provision (2016)	p.11
Inspector General Provision	p.12
Governing Law	Florida
Venue	Palm Beach County
Attorney's fees	

Business Principles:

Comments

Fees: Total Value	\$64,200 (16,050/month)
Fees: Per Fiscal Year	

Other Issues:

Comments

Non-Negotiable Issues/ Miscellaneous Issues/ Special Considerations	Professional Services Agreement for IT consultant; w/in CM authority
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Consistent with applicable policies including, but not limited to, Procurement policies. Yes

Attorney: Lynn Gelin, Esq.

Reviewed and approved as to form and legal sufficiency only

AUTHORIZATION FORM



Do not write / CM Office Only

CMO Log #: _____

Rcv'd Date: _____

Originator:

Jennifer Alvarez Purchasing Dept. x7123 2/10/20
 Name _____ Department _____ Ext. _____ Date _____

Description of Request: _____
 Sign Agreement with TP Southern Charm

Department Leave Form Check Request Form Acquisition Approval

Budget Transfer Grant Item Memorandum Service Authorization Approval

Other (Please Specify) _____
 Sign Agreement with TP Southern Charm

BT prepared transferring \$65K from Salaries to prof svc.

Department Head Signature: *[Signature]*

Finance Signature (If Required): *[Signature]* 2-10-20

Assigned to: S. Fisher _____ A. Love _____ On _____

Review Completed by Staff – Comments:

RETURN TO ORIGINATOR FOR ADDITIONAL COMMENTS

APPROVED FOR CITY MANAGER, GEORGE GRETAS' SIGNATURE

TRACKING:

Returned to _____ Department for additional information on: _____

Forwarded to _____ Department for action on: _____