

**CITY OF DELRAY BEACH  
COMMUNITY DEVELOPMENT BLOCK GRANT  
HOUSING REHABILITATION PROGRAM AGREEMENT**

BETWEEN

THE CITY OF DELRAY BEACH

and

COSUGAS LLC, (CONTRACTOR)

and

CHRISTINE AND ALFONZA BENNETT (OWNER)

BID # 2017-004

This **CDBG Agreement** (“Agreement”) is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as “City”), whose address is 100 NW 1<sup>st</sup> Avenue, Delray Beach, FL 33444, COSUGAS LLC., a Florida Corporation (hereinafter referred to as “Contractor”), whose address is 1059 Waterside Circle, Weston, FL33327, and Christine & Alfonza Bennett, (hereinafter referred to as “Owner”), 323 NW 2<sup>nd</sup> Avenue, Delray Beach, FL 33444 this \_\_\_\_\_ day of \_\_\_\_\_, 2017

WHEREAS, the City has been allocated Community Development Block Grant Funds through the U.S. Department of Housing and Urban Development (HUD) to provide for the renovation or repair of existing substandard homes (“Housing Rehabilitation Grant”).

WHEREAS, Christine and Alfonza Bennett (“Owner”) is the beneficiary of a Housing Rehabilitation Grant for the repair or renovation of the property that she owns and occupies, located at 3063 Dolphin Drive, Delray Beach, FL 33445 (“Property”), which is legally described as follows:

Lot 9, Block 49, a Subdivision of the S ½ of Blocks 49 and 57, excepting the N 250’ of the E ½ of the S ½ of Block 57, DELRAY BEACH, FLORIDA, in the Plat Book 12, page 86, of the Public Records of Palm Beach County, Florida.

**P I D # 12-43-46-16-01-049-0090**

WHEREAS, the City issued Invitation to Bid # 2017-004 on September 14, 2016 for housing rehabilitation work to be conducted at Property ("Project"). City awarded the bid to Contractor after finding it was the lowest responsive, responsible bidder.

WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the City, the Contractor, and the Owner agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 11, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The City Commission of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The Delray Beach City Manager or the Director of the Delray Beach Neighborhood Services Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Contractor and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 **City Manager** - The administrative head of City appointed by the Board.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Board.
- 1.6 **Project** - The Project consists of the services described in Article 2.

ARTICLE 2

SCOPE OF SERVICES

- 2.1 Contractor shall perform all work identified in this Agreement and Exhibit "A". The Scope of Services is a description of Contractor's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

- 2.2 Contractor acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.
- 2.3 The Contractor shall furnish all supervision, technical personnel, labor, materials, equipment and all other appurtenance thereto and perform and complete all work in accordance with the contract documents as prepared by the City of Delray Beach.

### ARTICLE 3

#### TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on the date it is fully executed by the Parties and shall end on **sixty (60) days after the date the building permit for the work described in Exhibit A is issued**. 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.
- 3.2 All duties, obligations, and responsibilities of Contractor required by this Agreement shall be completed no later than **sixty (60) days after the date the building permit for the work described in Exhibit A is issued**. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.
- 3.3 In the event services are scheduled to end due to the expiration of this Agreement, the Contractor agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than three months beyond the term of the Agreement. The Contractor shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement as amended.

### ARTICLE 4

#### COMPENSATION

- 4.1 City will pay Contractor, Cosugas LLC.) the total of **Forty-Eight Thousand Sixteen Dollars and 15/100 Cents (\$48,016.50)** for all reimbursables provided for in Section 4.2, which amounts shall be accepted by Contractor as full compensation for all such work and expenses. Such funds represent the Housing Rehabilitation Grant paid on behalf of the Owner and shall be furnished to the City from the Community Development Block Grant Program. Contractor acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Contractor for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

## 4.2 METHOD OF BILLING AND PAYMENT

4.2.1 Contractor may submit invoices for compensation only after the services for which the invoices are submitted have been completed. Partial payments equal to 90% of the value of the work in place, not to exceed 75% of the contract amount may be made. All payment requests will require owner's signature. However, the City shall not be stopped from distributing funds if the City determines the owner has unreasonably failed to sign a payment request.

An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed.

4.2.2 City shall pay Contractor within thirty (30) calendar days of receipt of Contractor's proper invoice, or as required by Florida Law. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

4.2.3 Final payment will be made after:

1. The Contractor executes a lien release and warranty on forms furnished by the City, relative to work performed, materials furnished, and certification that all amounts due for labor and/or materials have been paid. The Contractor, by execution of the contract, holds the City and property owner harmless from all claims or liens for labor or materials furnished or used in performance of the work covered by this contract, whether furnished or used by the Contractor or any subcontractor.

2. The contractors and the Owner agree to defend, indemnify, and hold harmless the City and its officers, agents, and employees from and against any and all suits, claims, actions, legal proceedings, demands, or liabilities (and any and all costs, expenses, liabilities, including attorney's fees associated therewith, made against the City which arise, directly, or indirectly from the Contractor's or Owner's negligent acts, errors or admission during performance under this agreement).

3. The City conducts a final inspection and approves and accepts all work performed by the Contractor. Final acceptance of the job shall not subject the City to any legal responsibility or liability of any kind. The parties agree that the City is not a signatory to this contract and does not have any responsibilities under this contract either express or implied, except to settle disputes between the parties which do not constitute a breach of contract, to conduct a final inspection to approve work performed by the Contractor, and to hold and

distribute funds. In the event that the performance by the Contractor is unsatisfactory or unacceptable for any reason, the Contractor agrees to correct any deficiencies at no additional cost to the City.

4. The Contractor will guarantee that all work performed is free from defects for a period of one year from the date of final acceptance of all work required by the contract. If any defects appear during the warranty year, the Contractor will correct as expeditiously as possible.

4.4 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

4.5 Payment shall be made to Contractor at:

Cosugas, LLC  
1059 Waterside Circle.  
Weston, FL 33327

## ARTICLE 5

### INDEMNIFICATION

Contractor shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Contractor shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

## ARTICLE 6

### INSURANCE

- 6.1 Contractor shall maintain at its sole expense, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit "B" in accordance with the terms and conditions stated in this Article.
- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Contractor shall name City as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is City of Delray Beach, Florida. This official title shall be used in all insurance documentation.
- 6.3 Within fifteen (15) days of notification of award, Contractor shall provide to City proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. City reserves the right to obtain a certified copy of any policies required by the Article upon request. Coverage is not to cease and is to remain in force until the City determines all performance required of Contractor is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit "B." City shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to City upon expiration.
- 6.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.
- 6.5 If Contractor uses a subconsultant or subcontractor, Contractor shall ensure that each subconsultant or subcontractor names "City of Delray Beach, Florida" as an additional insured under the subconsultant's or subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

## ARTICLE 7

### TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be

effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Contractor provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Contractor shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.
- 7.5 In the event this Agreement is terminated for any reason, any amounts due Contractor shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

## ARTICLE 8

### THE CONTRACT

- 8.1 The executed contract documents shall consist of the following:
- a. This Contract
  - b. Lien Agreement
  - \* c. Signed Copy of Bid
  - d. Memorandum of Understanding

- \* e. Notice to Proceed
- \* f. Payment Requests
- \* g. Warranty Documents
- h. Lead Base Paint Receipt & Booklet (if required)
- i. Subordination Policy (if required)

\* pertaining to contractor signature requirement

## ARTICLE 9

### LEAD BASED PAINT

- 9.1 In accordance with the Lead Based Paint Poisoning Prevention Act, no lead based paints shall be used in any area intended for human habitation.

## ARTICLE 10

### NON-DISCRIMINATION

- 10.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Contractor to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

Contractor shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Contractor shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Contractor represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. City hereby materially relies on such representation in entering into this Agreement. An untrue



representation of the foregoing shall entitle City to terminate this Agreement and recover from Contractor all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

## ARTICLE 11

### MISCELLANEOUS

#### 11.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City, and, if a copyright is claimed, Contractor grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until all documents are received as provided herein.

#### 11.2 PUBLIC RECORDS

**IF THE SECOND PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SECOND PARTY'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. 1<sup>ST</sup> AVE., DELRAY BEACH FLORIDA.**

Second Party 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 Second Party 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 Second Party or keep and maintain public records required by the City to perform the service. If the Second Party transfers all public records to the City upon completion of the Agreement, the Second Party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Second Party keeps and maintains public records upon completion of the Agreement, the Second Party 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 Second Party 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.

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

11.3 INSPECTOR GENERAL.

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 sub licensees and lower tier sub licensees. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its sub licensee or lower tier sub licensees 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.

11.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Contractor and its subcontractors that are related to this Project. Contractor and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Contractor and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Second Party or its subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and its subcontractors shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall ensure that the requirements of this Section 11.3 are included in all agreements with its subcontractor(s).

#### 11.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Contractor's compensation under this Agreement is based upon representations supplied to City by Contractor, and Contractor certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

#### 11.6 PUBLIC ENTITY CRIME ACT

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Contractor further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Contractor has been placed on the convicted vendor list.

#### 11.7 INDEPENDENT CONTRACTOR

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

#### 11.8 THIRD PARTY BENEFICIARIES

Neither Contractor nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### 11.9 NOTICES

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 Manager  
City of Delray Beach  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444

For Contractor:

Cosugas, LLC  
1059 Waterside Circle.  
Weston, FL 33327

#### 11.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of all Parties. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except as may specifically provided for herein. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

#### 11.11 CONFLICTS

Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Contractor's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

#### 11.12 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 11.13 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

#### 11.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Contractor elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

#### 11.15 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

#### 11.16 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

#### 11.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

#### 11.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

#### 11.19 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

#### 11.20 PRIOR AGREEMENTS

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

#### 11.21 PAYABLE INTEREST

11.21.1 Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or

may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

11.21.2 Rate of Interest. In any instance where the prohibition or limitations of Section 9.21.1 are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

#### 11.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. The attached Exhibits A and B are incorporated into and made a part of this Agreement.

#### 11.23 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

#### 11.24 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

#### 11.25 DISPUTE RESOLUTION

All internal disputes between the Owners and Contractor arising out of or related to the work shall be decided by Program Administrators. All other disputes constituting a breach of this agreement, which cannot be resolved by the Owner and Contractor, shall be resolved by a Court of competent jurisdiction pursuant to the laws of the State of Florida with venue in Palm Beach County, Florida.

THIS AGREEMENT, together with other documents enumerated in this ARTICLE 5, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provisions in any component part, the provision of the component part first enumerated in this ARTICLE 5 shall govern, except as otherwise specifically stated.



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

ATTEST:

CITY OF DELRAY BEACH

\_\_\_\_\_  
Chevelle Nubin, City Clerk

By: \_\_\_\_\_  
City Manager

Approved as to form and legal sufficiency:

\_\_\_\_\_  
R. Max Lohman, City Attorney

CONTRACTOR, Cosugas, LLC

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, as \_\_\_\_\_ (name of officer or agent, title of officer or agent), of \_\_\_\_\_ (name of corporation acknowledging), a \_\_\_\_\_ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification

\_\_\_\_\_  
Notary Public – State of Florida

OWNER

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

Print Name: \_\_\_\_\_

(SEAL)  
STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2017, by \_\_\_\_\_. He/She is personally known to me or has produced  
\_\_\_\_\_ (type of identification) as identification

\_\_\_\_\_  
Notary Public – State of Florida

**EXHIBIT A**

SCOPE OF SERVICES

## EXHIBIT B

### INSURANCE REQUIREMENTS OF THE CITY OF DELRAY BEACH

Contractor shall not commence operations under the terms of this Agreement until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Delray Beach Risk Management. If you have any questions call (561) 243-7150.

A. The successful contractor shall not commence any work in connection with an agreement until it has obtained all of the following types of insurance and has provided proof of same to the County, in the form of a certificate *prior* to the start of any work, nor shall the successful contractor allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida.

B. The successful contractor and/or subcontractor shall maintain the following types of insurance, with the respective limits:

1. AUTOMOBILE:

a. Combined Single Limit: \$300,000.00 per accident,

**OR**

b. Bodily Injury: \$300,000.00 per person,

**AND**

Property Damage: \$100,000.00 per accident;

2. GENERAL LIABILITY: Minimum limit of \$500,000 per occurrence and One Million Dollars (\$1,000,000.00) in the aggregate annually providing coverage for Premises and Operations, Products and Completed Operations, Fire Legal Liability, and Personal and Advertising Injury Liability. Insurance Policies must be obtained through insurance companies that are authorized to transact business in the State of Florida by the Department of Financial Services, and they must carry a minimum rating of A.M. Best of A- as to management and VII as to financial size.

3. GENERAL AGGREGATE: Two Million Dollars (\$2,000,000.00);

4. EXCESS COVERAGE: One Million Dollars (\$1,000,000.00);

5. PRODUCTS LIABILITY: Two Million Dollars (\$2,000,000.00);

6. WORKERS' COMPENSATION: Covering all employees and providing benefits as required by Florida Statute 440 and Employers' liability insurance which covers the statutory obligation for all persons engaged in the performance of the work required hereunder with limits not less than One Million Dollars (\$1,000,000.00) per occurrence regardless of the size of your firm. Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury

sustained by such employees in the course and scope of their employment.. Evidence of qualified self-insurance status will suffice for this subsection.

7. Motor Vehicle Liability Insurance covering all vehicles associated with Contractor operations to include all owned, non-owned and hired vehicles.

The coverage will be written on an occurrence basis with limits of liability not less than \$500,000.00 combined single limit per each occurrence.

C. The CONTRACTOR **shall name the City of Delray Beach as an Additional Insured**, to the extent of the services to be provided hereunder, on all required insurance policies, and provide the City with proof of same.

D. Certificates of Insurance: The successful contractor and/or subcontractor shall provide the City's Purchasing Department with a Certificate of Insurance evidencing such coverage for the duration of this Agreement. Said Certificate of Insurance shall be dated and show:

1. The name of the insured contractor,
2. The specified job by name and job number,
3. The name of the insurer,
4. The number of the policy,
5. The effective date,
6. The termination date,
7. A statement that the insurer will mail notice to the City at least thirty (30) days prior to any material changes in the provisions or cancellation of the policy.
8. The Certificate Holders Box must read as follows:

**100 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444**

**Any other wording in the Certificate Holders Box shall not be acceptable.**

Non-conforming certificates will be returned for correction.

E. Waiver: Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicates less coverage than is required, does not constitute a waiver of the successful contractor's obligation to fulfill the insurance requirements specified herein.

F. Subcontractors: The successful contractor shall ensure that any sub-contractor(s), hired to perform any of the duties contained in the Scope of Services of an Agreement, maintain the same insurance requirements set forth herein. In addition, the successful contractor shall maintain proof of same on file and made readily available upon request by the City.

G. Loss Deductible Clause: The City shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the successful contractor and/or subcontractor providing such insurance.

H. The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage, non-renewal or cancellation.

Contractor shall furnish to the City, Certificate(s) of Insurance evidencing insurance required by the provisions set forth above, upon execution of the agreement. If any of the above coverages expire during the term of this Agreement, Contractor will provide a renewal certificate at least ten (10) days prior to expiration.

Mail to: City of Delray Beach, Attn. Risk Manager, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, Florida 33444 with copies to Assistant City Manager and Neighborhood Services Division 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, FL 33444

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*The City reserves the unilateral right to modify the insurance requirements set forth at anytime during the process of solicitation or subsequent thereto.*

**Failure to submit this form including copies of current Insurance Certificates may be grounds for disqualification of your submittal.**