

MASTER CONSULTANT/SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) is by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as “City”) whose address is 100 NW 1st Avenue, Delray Beach, Florida 33444 and NFP Retirement, Inc. (hereinafter referred to as “Consultant”), a Michigan corporation authorized to do business in Florida whose address is 3835 PGA Blvd., Suite 1101, Plam Beach Gardens, FL 33410, this ____ day of _____ 2024.

WHEREAS, the City desires to procure retirement plan consulting services; and

WHEREAS, the City desires to procure said goods from Consultant utilizing existing contract prices provided to Martin County, Florida, pursuant to its Request for Proposal No. 2023-3473; and

WHEREAS, in accordance with Request for Proposal No. 2023-3473, Martin County entered a three (3) year agreement with Consultant for retirement plan consulting services on May 9, 2023, through May 8, 2026, with two (2) three (3) year options to renew not to exceed nine (9) years (“Martin County Agreement”); and

WHEREAS, the Consultant agrees to extend the terms, conditions, and pricing of the Martin County Agreement to the City, subject to the terms and conditions of this Agreement, the City’s Purchasing Ordinance, and Florida Law.

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 Consultant shall provide retirement plan consulting services to the City, in accordance with and pursuant to the same terms, conditions, and pricing of the Martin County Agreement, in accordance with the Consultant’s Pricing Proposal Summary attached hereto as Exhibit “A”.
3. This Agreement shall terminate on May 8, 2026, unless the Martin County Agreement is renewed or otherwise permissibly extended by Martin County. If the Martin County Agreement is renewed or otherwise permissibly extended, this Agreement shall automatically renew or extend for the same term.
4. The City at its sole discretion reserves the right to terminate this contract with or without cause immediately upon providing written notice to Consultant. Upon receipt of such notice, the Consultant shall not incur any additional costs under the contract. The City shall be liable only for the reasonable costs incurred by Consultant prior to the date of the notice of termination. The City shall be the sole judge of “reasonable costs.”
5. 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

FOR CONSULTANT:

NFP Retirement, Inc.
3835 PGA Blvd., Suite 1101
Plam Beach Gardens, FL 33410
Attn: Hannah Dowling, Assistant Vice President
Phone: 949-460-9898
Email: jami.chapman@nfp.com

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

7. 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. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

8. 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

a. Consultant 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 Consultant 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 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 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.
- v. If the Consultant 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.

9. Consultant 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 Consultant and its subconsultants and lower tier subconsultants. Consultant understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Consultant or its subconsultants and lower tier subconsultants 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.

10. 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.

11. By entering into this Agreement, Consultant acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Consultant affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subconsultants to provide an affidavit attesting that the subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subconsultant knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Consultant, the Consultant may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Consultant.

12. The Consultant 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 Consultant or its employees, agents, servants, partners, principals, or subconsultants. The Consultant 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 Consultant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Consultant 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.

13. 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. Terms and Conditions of Request for Proposal 2023-3473.
- c. Consultant's response to Solicitation No. RFP 2023-3473 Retirement Plan Consulting Services and any subsequent information submitted by Consultant during the evaluation and negotiation process.

[Remainder of page intentionally left blank]

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

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: _____
Thomas F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

NFP RETIREMENT, INC.

By: _____

Print Name: _____

Title: _____

(SEAL)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__ by _____

(name of person), as _____ (type of authority)
for _____ (name of party on behalf of whom instrument was executed).

Personally known ____ OR Produced Identification ____
Type of Identification Produced _____

Notary Public – State of _____