

AGREEMENT
BETWEEN
THE CITY OF DELRAY BEACH
AND
BATALLAN ENTERPRISES, INC. D/B/A PROPERTY WORKS, INC.
FOR
BID NO. 2015-39

This is an Agreement ("Agreement"), made and entered into by and between: Delray Beach, a municipal corporation of the State of Florida, hereinafter referred to as "City,"

and

Batallan Enterprises D/B/A Property Works, a Florida corporation, hereinafter referred to as "Second Party," (collectively referred to as the "Parties").

WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties 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 9, 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, Environmental Services Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Second Party 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 Second Party shall perform all work identified in this Agreement and Exhibit "A". The Scope of Services is a description of Second Party'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 Second Party impractical, illogical, or unconscionable.
- 2.2 Second Party 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.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 This contract is in full force and effect upon full contract execution by the City of Delray Beach. 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 Second Party required by this Agreement shall be completed no later than one (1) year after full contract execution by the City of Delray Beach. 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 Second Party 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 Second Party

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. The Chief Purchasing Officer shall notify Second Party of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

ARTICLE 4

COMPENSATION

- 4.1 City will pay Second Party, in the manner specified in Section 4.3, the total amount of Forty Three Thousand One Hundred Dollars (\$43,100.00) for work actually performed and completed pursuant to this Agreement. Second Party acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Second Party for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Second Party'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 Second Party may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. 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. Second Party shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit "B"). The certification shall be accompanied by a copy of the notification sent to each subcontractor and supplier listed in item 2 of the form, explaining the good cause why payment has not been made.
- 4.2.2 City shall pay Second Party within thirty (30) calendar days of receipt of Second Party'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 Second Party to comply with a term, condition, or requirement of this Agreement.
- 4.2.3 Second Party shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from City for such subcontracted work or supplies. If Second Party withholds an amount from subcontractors or

suppliers as retainage, such retainage shall be released and paid within thirty (30) days following receipt of payment of retained amounts from City.

4.3 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.

4.4 Payment shall be made to Second Party at:

Batallan Enterprises, Inc.
P.O. Box 6942
West Palm Beach, FL 33405

ARTICLE 5

INDEMNIFICATION

Second Party 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, Second Party, 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, Second Party 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 Second Party 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 Second Party 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 "C" 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. Second Party 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, Second Party 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 Second Party 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 "C." 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 Second Party uses a subconsultant or subcontractor, Second Party 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, Second Party'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 Second Party 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 Second Party 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, Second Party shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Second Party acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Second Party, 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 Second Party shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

ARTICLE 8

NON-DISCRIMINATION

- 8.1 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 Second Party 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.

Second Party 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.

Second Party 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. Second Party 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, Second Party shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Second Party 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 Second Party all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

ARTICLE 9

MISCELLANEOUS

9.1 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, Second Party 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 Second Party, whether finished or unfinished, shall become the property of City and shall be delivered by Second Party to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Second Party shall be withheld until all documents are received as provided herein.

9.2 PUBLIC RECORDS

City is a public agency subject to Chapter 119, Fla. Stat. Second Party shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Purchaser agrees to:

- 9.2.1 Keep and maintain all records that ordinarily and necessarily would be required by the City.
- 9.2.2 Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- 9.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- 9.2.4 Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Second Party at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. All records shall be transferred to the City prior to final payment being made to the Second Party.

9.2.5 If 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.

9.3 INSPECTOR GENERAL

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

9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Second Party and its subcontractors that are related to this Project. Second Party 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 Second Party 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.

Second Party 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.

Second Party shall ensure that the requirements of this Section 9.3 are included in all agreements with its subcontractor(s).

9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Second Party's compensation under this Agreement is based upon representations supplied to City by Second Party, and Second Party 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.

9.6 PUBLIC ENTITY CRIME ACT

Second Party 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, Second Party 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 Second Party has been placed on the convicted vendor list.

9.7 INDEPENDENT CONTRACTOR

Second Party is an independent contractor under this Agreement. Services provided by Second Party pursuant to this Agreement shall be subject to the supervision of Second Party. In providing such services, neither Second Party 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 Second Party or Second Party's agents any authority of any kind to bind City in any respect whatsoever.

9.8 THIRD PARTY BENEFICIARIES

Neither Second Party 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.

9.9 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 Hall
100 N.W. 1st Avenue
Delray Beach, Florida 33444

For Second Party:

Batallan Enterprises, Inc.
P.O. Box 6942
West Palm Beach, FL 33405

9.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Second Party 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 Second Party of this Agreement or any right or interest herein without City's written consent.

Second Party 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.

Second Party shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Second Party'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.

9.11 CONFLICTS

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

None of Second Party'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 Second Party 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 Second Party 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 Second Party is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Second Party shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Second Party.

9.12 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.

9.13 COMPLIANCE WITH LAWS

Second Party 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.

9.14 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 Second Party 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.

9.15 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.

9.16 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.

9.17 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.

9.18 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, SECOND PARTY 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.

9.19 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 Second Party or others delegated authority to or otherwise authorized to execute same on their behalf.

9.20 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.

9.21 PAYABLE INTEREST

9.21.1 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 Second Party 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.

9.21.2 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).

9.22 INCORPORATION BY REFERENCE

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

9.23 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.

9.25 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.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: City through its Board, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 6th day of October, 2015, and Second Party, signing by and through its _____, duly authorized to execute same.

ATTEST:



City Clerk

CITY OF DELRAY BEACH, FLORIDA

By 

Cary D. Glickstein, Mayor

27th day of October, 2015.

APPROVED AS TO FORM:



City Attorney

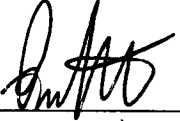
AGREEMENT BETWEEN DELRAY BEACH, FLORIDA

AND

BATALLAN ENTERPRISES, INC. D/B/A PROPERTY WORKS, INC.

SECOND PARTY

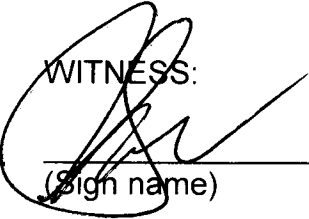
WITNESS:



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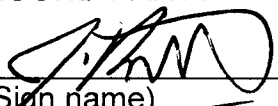
Preston Skarus
(Print name)

WITNESS:



(Sign name)

Augusto S Batallan
(Print name)

By 

(Sign name) Jason Batallan
President

(Print name, Title)

19th day of OCTOBER, 2015

(SEAL)

EXHIBIT A

SCOPE OF SERVICES

The scope of services consists of an annual contract to mow, trim, and edge fifteen (15) stormwater retention locations consisting of approximately 10.46 acres. An add-on alternate is being taken for fertilizing these areas.

LOCATIONS/ACCESS:

The following listed locations and acres, more or less, are included as part of the bid:

Pond ID #	Project #	Location	Acreage	
			Retention	Lot
08001	1991-057	NW 10 th Avenue & Lake Ida Road	1.72	2.08
08R004	2004-055	Roosevelt Avenue & Lake Ida	1.18	2.14
17R003	2003-062 (B)	NW 15 th Avenue & NW 3 rd Street	0.77	0.77
18R001	2003-062	Dr Carol Knol Way & N. Congress Avenue	1.22	1.73
09R001	2002-040 (A)	NE 3 rd Ave & Between NE 17 th & NE 18th St	0.31	0.45
09R002	2002-040 (B)	NE 3 rd Ave & Between NE 15 th & NE 16th St	0.27	0.39
09R003	2002-040 (C)	NE 3 rd Ave & NE 14 th Street	0.31	0.41
20R002	1993-058	City Car Impound Lot	0.02	0.02
17R002	1999-061	SW 4 th Avenue & SW 1 st Street	0.55	0.76
20R005	2003-020	SW 7 th Avenue (400 block)	0.32	0.32
17R005	2007-013	SW 11 th Avenue & SW 2 nd Street	0.14	0.18
20R003	1994-084 (E & W)	SW 10 th Avenue & Wallace Drive (2 sites)	1.02	1.07
20R001	1993-012	South Ridge Road & Sterling Road	0.05	0.32
29R001	2000-045	Lindell Blvd. & Old Dixie Highway	0.56	0.76
21R001	1996-010 (east)	55 SE 410 th Street (FPL)	0.55	0.68
21R002	1996-010 (south)	Park Avenue & Old Dixie Highway (3 sites)	0.2	0.37
		TOTAL ACREAGE	9.19	12.45

⇒ Ficus hedges at the following locations shall be maintained by the Contractor as part of this Contractor as part of this bid package.

Pond ID #	Project #	Location
20R001	1993-012	South Ridge Road & Sterling Road
20R003	1994-084 (E & W)	SW 10 th Avenue & Wallace Drive (2 sites)
21R001	1996-010 (east)	55 SE 410 th Street (FPL)
29R001	2000-045	Lindell Blvd. & Old Dixie Highway

SECTION #2:

This includes two locations - Area 1 and Area 2 for the Improved Water Retention Areas:

Area #1

A water retention area at Lindell Boulevard and South Dixie Highway. It is a rectangular area with the southern perimeter being Lindell and the eastern perimeter located west of Dixie Highway and F.E.C. Railroad.

Area #2

A series of three water retention areas along NE 3rd Avenue. The first Lot "C" is located on the east side of NE 3rd Avenue, just north of NE 14th Street. Lot "B" is just a few lots north of "C", and lot "A" is a few lots north of that, across from the back of Plumosa Elementary School."

SPECIAL CONDITIONS

Landscape Maintenance Functions and Tasks

TURF CARE

Maintain turf areas in a healthy, growing, green, trim condition by performing the following operations:

1.1.MOWING GENERAL:

Mowing shall be performed in a workman-like manner that ensures smooth surface appearance without scalping or leaving any "missed" uncut grass.

- a. All mowers must be adjustable and adjusted to the proper cutting height and level for the kind of grass and current condition of the turf. Mower blade height adjustment to be measured from a level floor surface to the parallel and level plane of the mower blades.
- b. All mower blades are to be sharp enough to cut, rather than to tear grass blades.
- c. All litter and debris is to be removed from turf BEFORE mowing to avoid shredding that will damage turf appearance, or items that may be propelled by mower blades. Any items shredded, i.e., paper, branches, debris, shall be the responsibility of the contractor to remove.
- d. Grass clippings or debris caused by mowing or trimming will be removed from adjacent walks, drives, gutter, and curbs or surfaces on the same day as mowed or trimmed.

- e. Mowing will not be done when weather or conditions will result in damaged turf.
- f. Trim / edge each time area is mowed.

1.2. MOWING SPECIFICS (BAHIS GRASS):

- a. Bahia grass shall not be cut to a height below 3 inches.
- b. Grass shall be mowed once a week, March 1st through November 1st and every other week between November 1st to February 28th.

2. EDGING: Edging shall be performed to coincide with mowing operations.

3. WEED CONTROL: "Landscape Maintenance Weed Control"

- a. Weeds are to be manually or mechanically removed from shrub, hedge, ground cover or flowerbeds monthly; weeds are not to be mulched over.
- b. A granular pre-emergent herbicide shall be applied in shrub beds, twice a year, prior to mulching in March and October. The use of Round-up or similar systemic herbicides is not applicable in bedding area or hedge lines.

4. PRUNING:

- a. Shrub and Hedge Care: Maintain/trimmed monthly; maintain shrubs in a healthy, growing correct-color condition and in the shape and area specified, or as specifically directed by City Designee.
- b. "Maintenance Pruning" shall consist of the removal of dead and/or broken branches suckers or sprouts, branches that may hang over walkways, grow through fences, obscure roadway vision, etc. Pruning is performed to have shrubs appear orderly and neat at all times.
- c. All pruning will be accomplished in accordance with standard practices including:
 - (1) use sharp cutters
 - (2) Do not use hedge shears for pruning
 - (3) Machetes will not be permitted for any operations
- d. Palm Trees shall be trimmed monthly. The fronds shall be removed between the 9:00 and 3:00 position, i.e. no fronds shall be removed above a horizontal level. Dead fronds shall be removed as they appear.
- e. Shade Trees shall be pruned to remove sucker growth and to maintain clear visibility between grade and a height of six feet. All damaged, dead or diseased limbs resulting from weather or pests shall be removed immediately.

⇒ SPECIAL NOTE: All debris, limbs and fronds will be picked up the same day of

pruning. Failure to pick debris will result in a \$50.00 per day fault fee, as long as debris remains.

5. IRRIGATION:

Irrigation systems will be checked by City personnel upon each mowing operation to ensure no damage to heads or valves. Any leads or valves damaged by Contractor in the act of mowing will be replaced by Contractor at his cost. If the City provides the replacement parts the cost will be deducted from payments due the Contractor.

6. CHEMICAL PEST CONTROL:

- a. Turf Insecticide Program Sodded areas shall be inspected by the Landscape Contractor for the presence of insects, such as cinch bugs, any worms, sod web worms, and mole crickets. Appropriate applications of approved pesticides shall be applied effectively control the outbreak.
- b. Shrub, Tree, Groundcover Insect Control shall be for specific insects identified as problematic and treated as needed upon City authorization. Some specific insects to be controlled are aphids, scale and grasshoppers.
- c. Disease Control in turf and shrub will be by identification and diagnosis and application of appropriate fungicide or bactericide as needed upon authorization of the City.
- d. Bahia Weed and Feed Application Weed and Feed shall be applied to Bahia areas in early March and early October with a slow release, high analysis fertilizer containing micronutrients and herbicide compatible with Bahia sod.
- e. Shade Tree Fertilization fertilizer shall be applied in April and September with an 8-10-10 or 10-10-10 complete fertilizer with microelements.
- f. Palm Tree Fertilization Palms shall be fertilized in April and September with a complete 13-3-13 palm fertilizer containing microelements at a rate of one (1) pound of fertilizer per inch of trunk diameter.
- g. Shrub and Groundcover Fertilization shall be fertilized in April and September with a 12-6-8 with microelements at the rate of % pound of fertilizer per 100 sq. ft. of shrub area.

7. **SPECIAL NOTE – General Use of Chemicals:

- a. All work involving the use of chemicals shall be in compliance with all Federal, State and local laws and will be accomplished by or under the direction of a Florida Certified Pesticide Applicators' license. Application shall be in strict accordance with all governing regulations.
- b. A listing of proposed chemicals to include commercial name, application rates and type of usage shall be submitted to the Streets Superintendent for approval at the beginning of the Contract. All proposed chemicals shall be approved by

Florida Department of Agriculture. No work shall begin until written approval of use is obtained from the City.

Chemicals shall only be applied by or under the supervision of those persons possessing a valid Florida Certified Pesticide Applicators license. Applications shall in strict accordance with all governing regulations.

- c. Special attention will be given to specified areas prior to national holidays to ensure that the City is at its best during these times. Contractor will check area two days prior to holiday and verify that maintenance has been properly performed.
- d. Records must be kept and retained as prescribed by law for the use of pesticides of all operations stating dates, times, methods of applications, chemical formulations, applicator's names and weather conditions. A copy of the detailed chemical application shall be submitted to the Public Works Streets Superintendent within 48 hours of application.
- e. Chemicals shall be applied when air currents are still and using methods to prevent drifting into adjacent property and preventing any toxic exposure to persons whether or not they are in or near the project.
- f. Any soil or plants contaminated by misuse of chemicals on the sites will be removed and replaced at cost to the responsible Contractor.

8. **MULCH:**

Shredded cypress mulch (**not red mulch**) shall be added to planting beds on a quarterly (January, April, July and October). A granular pre-emergent herbicide shall be applied to all shrub beds PRIOR to the application of mulch. Beds will be clean of weeds when new mulch is applied.

9. **REPLACEMENTS:**

The City shall replace any landscape, irrigation, or structures damaged by maintenance operations or due to neglect to perform these specifications and charge cost to maintenance contractor (Contractor will be notified prior to replacement of repair by City designee).

10. **DAMAGES:**

Damage to landscape material due to any cause shall be immediately corrected by Contractor. This includes straightening and staking any fallen or leaning trees and palms; removal of dead or damaged material; and minor sod grading displaced by vehicles. Any pits left from tree removal shall be filled with good soil and sod shall be laid to match existing grade. (Contractors must contact City designee within 24 hours of such repair).

11. REPORTS:

The Contractor shall provide a checklist filled out and returned to the City (Public Works Street Support) within 48 hours after each maintenance operation. All maintenance operations, weather conditions, chemicals/pest control used, date they were performed shall be noted and any reports of damages shall be described. No payments will be made unless all reports are provided.

12. GENERAL:

a. No maintenance shall be performed on weekends or during holiday unless requested in writing and approved by the City.

b. Failure to respond to requests by City within 24 hours due to inadequate maintenance procedures, litter, limbs, and other debris not removed will result in \$50.00 a day deduction from the following payment application.

13. The locations listed below will require additional Maintenance.

AREA/SECTION #1: is a water retention area at Lindell Boulevard and South Dixie Highway. It is a rectangular area with the southern perimeter being Lindell and the eastern perimeter located west of Dixie Highway and the F.E.C. Railroad.

AREA / SECTION #2: is a series of three (3) water retention areas along NE 3rd Avenue. The first Lot "C" is located on the east side of NE 3rd Avenue, just north of NE 14th Street. Lot "B" is just a few lots north of "C" and lot "A" is a few lots north of that, across from the back of Plumusa Elementary School.

EXHIBIT B

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RFP/RLI/Bid/Contract No. 2015-39

Project Title STORMWATER RETENTION AREAS
LANDSCAPE MAINTENANCE AGREEMENT

The undersigned CONTRACTOR hereby swears under penalty of perjury that:

1. CONTRACTOR has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 4.2.3 of the Agreement, except as provided in paragraph 2 below.
2. The following subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractor or
Supplier's name
and address

Date of disputed
invoice

Amount in
dispute

N/A

N/A

N/A

3. The undersigned is authorized to execute this Certification on behalf of CONTRACTOR.

Dated OCTOBER 19, 2015

BATALLAN ENTERPRISES INC. DBA PROPERTYWORKS
Contractor

By [Signature]
(Signature)

By JASON BATALLAN / President
(Name and Title)

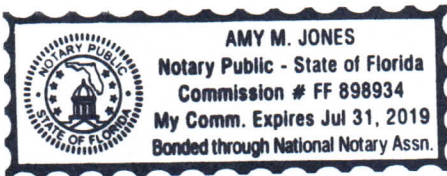
CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS
(Continued)

STATE OF Florida)
) SS.
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 19th day of October, 2015, by Jason Batulan who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this 19th day of October, 2015

(NOTARY SEAL)



Amy M. Jones
(Signature of person taking acknowledgment)

Jason Batulan
(Name of officer taking acknowledgment)
typed, printed, or stamped

President
(Title or rank)

My commission expires: 7/31/2019

(Serial number, if any)

EXHIBIT C

INSURANCE REQUIREMENTS OF THE CITY OF DELRAY BEACH

Second Party 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 Manager. If you have any questions call (561) 243-7150.

The following insurance coverage shall be required.

- A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute 440 and including Employers Liability coverage, regardless of the size of your firm. Second Party 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.
- B. General liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 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.
- C. Motor Vehicle Liability Insurance covering all vehicles associated with Second Party 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 \$1,000,000.00 combined single limit per each occurrence.
- D. 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.

Second Party shall furnish to the City, Certificate(s) of Insurance evidencing insurance required by the provisions set forth above. If any of the above coverages expire during the term of this Agreement, Second Party 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. 1st Avenue, Delray Beach, Florida 33444 with a copy to Assistant City Manager, 100 N.W. 1st Avenue, Delray Beach, FL 33444