

AGREEMENT
BETWEEN
THE CITY OF DELRAY BEACH
AND
WEST ARCHITECTURE + DESIGN, LLC
FOR
ARCHITECTURAL CONSULTING SERVICES FOR DELRAY BEACH RAILWAY
STATION (PROJECT NO. 16-080)

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

West Architecture + Design, 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 designee. 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 and shall expire two years from that date. 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 two years 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 One Hundred Forty Three Thousand Seven Hundred Ninety Dollars (\$143,790.00) for work actually performed and completed pursuant to this Agreement and Four Thousand Nine Hundred Dollars (\$4,900.00) for all reimbursables provided for in Section 4.2, which amounts shall be accepted by Second Party as full compensation for all such work and expenses. 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 REIMBURSABLES

- 4.2.1 In accordance with and pursuant to the City's procurement code and subject to the limitations set forth below, reasonable expenses, which are directly attributable to the Project may be charged at no more than actual cost. The maximum sum which may be charged for expenses shall not exceed Four Thousand Nine Hundred Dollars (\$4,900.00), and shall be limited to the following:

- a) Identifiable transportation expenses in connection with the Project, subject to the limitations of Section 112.061, Florida Statutes. Transportation expenses to locations outside the Miami-Dade/Broward/Palm Beach County area or from locations outside the Miami-Dade/Broward/Palm Beach County area will not be reimbursed unless specifically authorized in advance and in writing by the Contract Administrator.
- b) Cost of printing drawings and specifications which are required by or of Second Party to deliver services set forth in this Agreement.

- c) Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets.
- d) Fees paid for securing approval of authorities having jurisdiction over the Project.
- e) Minting, reproductions, plots, standard form documents.
- f) Postage, handling and delivery.
- g) Expense of overtime work requiring higher than regular rates, if authorized in advance by City.
- h) Renderings, models, mock-ups, professional photography, and presentation materials requested by City.
- i) Architect's Consultants' expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Client requests such insurance in excess of that normally carried by the Architect's consultants.
- j) All taxes levied on professional services and on reimbursable expenses.
- k) Site office expenses.
- l) Other similar Project-related expenditures.

4.2.2 A detailed statement of expenses must accompany any request for reimbursement. Expenses other than auto travel must be documented by copies of paid receipts, checks, or other evidence of payment.

4.2.3 Second Party acknowledges that the dollar limitation set forth in Section 4.2.1 is a limitation upon, and describes the maximum extent of, City's obligation to reimburse Second Party for expenses, but does not constitute a limitation, of any sort, upon Second Party's obligation to incur such expenses or perform the services identified in Article 2.

4.3 METHOD OF BILLING AND PAYMENT

4.3.1 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.

- 4.3.2 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.
- 4.3.3 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.
- 4.4 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 Second Party at:

West Architecture + Design, LLC
318 South Dixie Highway
Suite 4-5
Lake Worth, FL 33460

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 eight (8) 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

9.2.1 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. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK MAY BE REACH VIA TELEPHONE AT 561-243-7060 OR BY EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

9.2.2 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.
- v. 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.

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:

Peter Ganci
318 South Dixie Highway
Suite 4-5
Lake Worth, FL 33460

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.

ARTICLE 10 ORDER OF PRECEDENCE

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. RFQ No. 2016-081C, Architectural Consulting Services for Delray Beach Railway Station, dated March 28, 2016, and all its addenda;
- C. Second Party's response to RFQ No. 2016-081C, Architectural Consulting Services for Delray Beach Railway Station, and any subsequent information submitted by Second Party during the evaluation process.

(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 _____ day of _____, 20____, and Second Party, signing by and through its _____, duly authorized to execute same.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By _____
Cary D. Glickstein, Mayor

_____ day of _____, 20____.

APPROVED AS TO FORM:

R. Max Lohman, City Attorney

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA

AND

WEST ARCHITECTURE + DESIGN, LLC

SECOND PARTY

WITNESS:

(Sign name)

(Print name)

WITNESS:

(Sign name)

(Print name)

By _____
(Sign name)

(Print name, Title)

____ day of _____, 20____

(SEAL)

EXHIBIT A

SCOPE OF SERVICES

1. Scope of Work

Second Party is pleased to provide this proposal for architectural and engineering services for the adaptive use and rehabilitation of the Historic Delray Beach Railway Station. The building consists of approximately 6,600 square feet of which 4,200 square feet comprises the historic freight depot plus 2,400 square feet that served passenger functions. During negotiation meetings between City and Second Party, the decision was made to restore the 4,200 square foot freight depot section for use as storage, possibly by City departments. This space will not be air conditioned. The remaining 2,400 square feet will be designed as leasable office space. Second Party does recommend, however, that the electric service be sized for future uses that might include a restaurant. Second Party will also plan for the addition of a future grease trap, although a grease trap will not be installed at this time. Second Party, along with its consultants, will provide basic architectural and engineering services under this Agreement to City of Delray Beach.

1. HISTORIC STRUCTURE REPORT and SCHEMATIC DESIGN:

The Consultant team members will assemble on site to evaluate the resource, including the building and site. Prior to the scheduled site visit, Second Party will prepare base drawings for the consultants use in evaluating the building. These existing condition drawings will be used to verify and note existing conditions. Based on Second Party's findings, updates to the existing condition drawings will be made. The drawings required prior to the site visit will include the following:

- Site Plan
- Roof Plan
- Floor Plan(s)
- Exterior Elevations of all four sides
- Building Sections: one longitudinal and one cross section

The Historic Structure Report will include the following:

TABLE OF CONTENTS

I. INTRODUCTION

- Executive Summary
- Acknowledgments
- Secretary of Interior's Standards for Historic Preservation Projects

II. HISTORY & SIGNIFICANCE

III. CHRONOLOGY

IV. BIBLIOGRAPHY

V. HISTORIC PERIOD OF CONCERN

VI. ADAPTIVE REUSE POTENTIAL

VII. ARCHITECTURAL ANALYSIS by BUILDING ELEMENT

- Evaluation Criteria / Definitions
- General Statement of Condition and Form
- Exterior Environment & Site Condition

Exterior Walls
Exterior Openings - Doors
Exterior Openings - Windows
Porches
Foundation / Floor Structures
Roof
Chimneys
Finishes/Details/Embellishments
Interior General Statement of Condition
Interiors / Room by Room Analysis
Electrical, Mechanical and Plumbing

VIII. STRUCTURAL REPORT

Introduction
Existing Structural Conditions
Field Observations
Evaluations & Recommendations
Existing Structural Conditions Evaluation Criteria
Structural Photographs

IX. WORK PRIORITIES & RECOMMENDATIONS

X. BUDGET CONSIDERATIONS

XI. GRANT SOURCES LIST

XII. EXISTING CONDITIONS

Photographs
Architectural Drawings

- Existing Conditions
- Probable Historic Configuration
- Structural
- Schematic Design Options

XIII. HISTORIC PHOTOS & HISTORIC REFERENCES

DELIVERABLES

Second Party will submit draft reports for review and comment. All review comments will be incorporated into the final document. Division of Historical Resources (DHR) will receive a copy either digitally or hard copy, as appropriate.

Final deliverables for the Historical Structure Report (HSR) will include five (5) bound copies of the final report and one (1) disc of the report master for reproduction. One of these bound copies will be delivered to DHR.

2. DESIGN PHASE: (ARCHITECTURAL, STRUCTURAL AND MEP)

Following the review and comment of the above HSR, Second Party will establish a construction scope appropriate to the grant requirements and the long range plans of the City of Delray Beach. The design development documents will consist of the following:

Selective demolition drawings to include: floor plans, framing, and exterior elevations.

Construction build back drawings to include: floor plans, building sections, roof plan, schematic framing and exterior elevations. A site plan will be included.
Schematic MEP plans will be included.
A specification Table of Contents will be provided.

These design development documents will be Second Party's 30% construction document submittal.

Deliverables will consist of the above.

3. 60% CONSTRUCTION DOCUMENTS SUBMITTAL:

This submittal will include a further development of the documents including, but not limited to: Selective demolition drawings to include: a site plan, floor plans, building sections, roof plan, and exterior elevations, wall sections, details, and schedules will be developed. Mechanical, electrical and plumbing will be developed. Note that a decision as to appropriate systems will have been made during the schematic and design development phase based on input from the City of Delray Beach.

An outline specification will be prepared. These documents will constitute a 60% construction document submittal.

Deliverables will consist of the above.

4. 90% CONSTRUCTION DOCUMENTS SUBMITTAL:

The documents will be developed to a final biddable set of documents. The submittal will include all drawings, plans, technical specifications, and terms and conditions specific to this project that are required for the solicitation document. These documents will be submitted to City for final review and comment. City's comments, along with the consultant team and City of Delray Beach final review comments will be incorporated into the final bid/permit set. After City's acceptance of documents, the City's Purchasing Department will create the solicitation document.

- **All proposed engineering and construction plans shall adhere to and comply with The Secretary of the Interior's Standards for Historic Rehabilitation.**

5. BOARD MEETINGS

A. Meet with the following Boards during the design/engineering phase for approvals and recommendations and make presentations:

- Planning and Zoning Board
- Site Plan Review Advisory Board (If Necessary)
- Parking Management Advisory Board
- Historic Preservation Board
- City Commission
- Community Redevelopment Agency
- Additional Boards as Required

6. COST ESTIMATE

A. Provide detailed construction cost estimate for the proposed on-site work.

7. GRANT WRITING ASSISTANCE

A. Not included in proposal; grant writing to be performed by City.

8. BIDDING AND PERMITTING PHASE:

Second Party will assist City with advertisement and solicitation of bids and submit for permit reviews. Second Party will attend a pre-bid conference, provide City with meeting minutes, and provide responses to bidder questions to City for issuance of addenda as needed. Second Party will review the Purchasing Department's recommended bid for award.

9. CONSTRUCTION PHASE:

During construction, Second Party will attend bi-monthly meetings, take minutes and distribute them to all team members. Second Party will respond to RFI's, review shop drawings and submittals, issue bulletins, field directions, change orders and other documents as may be required. Second Party will conduct all required final inspections, issue a Certificate of Substantial Completion with punch list and obtain all required closeout documents.

SITE INVESTIGATION AND SITE PLAN

(INCLUDED IN THE FEE BREAKDOWN OF THE PHASES ABOVE)

This portion of the proposal covers the anticipated tasks required for the Planning, Surveying, Civil Engineering and Landscape Architecture services for the Historic Renovation of the Delray Beach Railway Station.

1. SURVEYING SERVICES

Update Boundary Survey in accord with Florida Standards of Practice as set forth in Chapter 5J17.05 FAC pursuant to Section 472.027 Florida Statutes

- Recover or reset exterior boundary corners.
- Delineate all platted easements together with all plottable easements from current title commitment, if supplied by client prior to completion of survey.
- Research FEMA flood zone and note on survey.
- Re-calculate square footage of property.
- Certify survey to all parties concerned.

Topographic Survey in accord with Standard of Practice as set forth in Chapter 5J-17.05 FAC pursuant to Section 472.027 Florida Statutes

- Establish on-site benchmarks based upon NGVD 29 Datum with conversion to NAVD 1988 Datum.
- Location of underground utilities will be limited to above ground evidence and as-built records made available to surveyor.
- Establish elevations on approximate 50' intervals and points of locations.
- Obtain finish floor elevations, elevation of the railroad tracks and centerline of adjacent roads.

- Locate specimen trees 4" diameter and larger, providing common name, diameter and position of trees. The location of shrubbery and landscaping will not be included. Outline dense areas of trees.

Notes

- Does not include Elevation Certificate.
- Does not include tree removal permitting and mitigation determination.
- No other tasks, requirements or certifications are included.

2. SITE ASSESSMENT

Second Party will coordinate and provide services required for the field investigation for the **Geotechnical, Phase 1 Environmental, Lead and Asbestos Survey**. If required, Ground Penetration Radar (GPR) can be provided to locate underground utilities that have not been identified in the Public Records Search and are not evident by above ground amenities, i.e. septic tank, drainfield, abandoned utilities, etc.

3. SITE PLAN

Prepare a Site Plan based the description in the Grant documents; ADA ramp, Walkway and Handicap parking space. The remainder of the site design will be addressed in Phase 2 of the project, under a separate agreement. The limit of work includes; Prepare applications and process to Delray Beach Site Plan Review & Appearance Board (SPRAB) and the Historic Preservation Board. This project would be considered Class II Site Plan Modification. Assist City with the review process. Adjacent Owner list and public noticing of site is not included.

2. Fees

2.1 For Second Party's Scope of Work described under Article 1, City shall pay Second Party as follows:

Payment to be as follows for the "Phase 1" portion of the project:

The proposed that the fee be prorated to the various deliverables as follows:

| | |
|--|-----------|
| 1. Historic Structure Report | \$ 38,000 |
| 2. Design phase 30% submittal | 21,340 |
| 3. Construction documents 60% submittal | 17,620 |
| 4. Construction documents 90% 0 100% submittal | 23,600 |
| 5. Board Meetings | 5,800 |
| 6. Construction Cost Estimate | 5,000 |
| 7. Grant Writing | 0 |
| 8. Bidding phase: | 7,510 |
| 9. Construction phase services | 24,920 |
| 10. Reimbursable Expenses | 4,900 |

Total Professional fees:.....\$ 148,690

Please note: Any modifications to the design documents after they has been approved that

would result in revisions to the plans will be invoiced at our standard hourly rates.

2.1.1 Hourly billing rates for services are set forth below. The rates shall be adjusted in accordance with the consultant's normal review practices.

Architecture Firm:

Principal \$200/hr; Project Manager \$150/hr; Intern Architect \$100/hr, Construction Estimator \$200/hr; Administration \$80/hr.

Structural Engineer:

Principal \$175/hr; Senior Project Engineer / Senior Project manager \$160/hr., Project Engineer / Project Manager \$130/hr, Engineer / CADD /BIM Technician \$95/hr; Administrative \$45/hr;

MEP Engineer:

Principal \$180/hr; Project Engineer \$110/hr; CADD Technician \$ 65/hr; Administration Staff \$75/hr

2.2 ADDITIONAL SERVICES:

2.2.1 Additional Services are not included in Basis Services but may be required for the Project. Such Additional Services may include budget analysis, financial feasibility studies, environmental studies, land surveying, civil engineering, land planning services, landscape design, telecommunications/data, security, measure drawings of existing conditions, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation, value analysis, quantity surveys, interior design, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning , environmentally responsible design beyond Basis Services, LEED® Certification, fast –track design services, obtaining liquor licenses, obtaining business licenses and any other services not otherwise include in this agreement.

2.2.2 Additional Services may be provided after execution of this agreement, without invalidating the Agreement. Any Additional Services provided in accordance with this Section shall entitle Second Party to compensation pursuant to Section 2.1.1.

2.2.3 Second Party shall review and evaluate Contractor's proposals, and if necessary, prepare Drawings and other documentation and data, and provide any other services made necessary by Change Orders and Construction Change Directives. These documents and data prepared by Second Party shall be an Additional Service.

EXHIBIT B
CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RFQ No. 2016-081C

Project Title _____

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

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

Dated _____, 20____

Contractor

By _____
(Signature)

By _____
(Name and Title)

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS
(Continued)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ 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 _____ day of _____, 20__.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

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

(Title or rank)

My commission expires:

(Serial number, if any)

EXHIBIT C
INSURANCE REQUIREMENTS

Second Party shall carry the following minimum types of insurance in accordance with Article 6 of this Agreement:

- Workers' Compensation Insurance: with the statutory limits.
- Comprehensive General Liability Insurance: with limits of not less than one million (\$1,000,000) dollars per occurrence and two million (\$2,000,000) in the aggregate for Bodily Injury and Property Damage.

The Comprehensive General Liability Insurance policy must include coverage that is not more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Offices, and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and Contractual Exclusions removed.

- Professional Liability Insurance shall be maintained to cover the "errors and omissions" of the Second Party, or any persons employed or acting on the Second Party's behalf, including but not limited to subcontractors, in an amount of at least \$1,000,000 per occurrence/\$2,000,000 annual aggregate, combined single limits, or the same limits on a claims made basis.

All insurance policies shall name the City of Delray Beach as an additional insured. The Second Party agrees to notify the City within (5) business days of coverage cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the Purchasing Department.