

AGREEMENT
BETWEEN
THE CITY OF DELRAY BEACH
AND
KEITH AND SCHNARS, P.A.
FOR
CONSTRUCTION ENGINEERING AND INSPECTION SERVICES FOR PHASE 1 OF
SEACREST BEAUTIFICATION

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

Keith and Schnars, P.A., a Florida corporation, hereinafter referred to as "Consultant," (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 11, the Exhibits, and documents that are expressly incorporated herein by reference.
- 1.2 **Commission** - 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 Consultant 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 Commission.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Commission.
- 1.6 **Project** - The Project consists of the services described in Exhibit A, Scope of Services.

ARTICLE 2 SCOPE OF SERVICES

- 2.1 Consultant shall perform all work identified in this Agreement, Exhibit A, Scope of Services. The Scope of Services is a description of Consultant'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 Consultant impractical.
- 2.2 Consultant acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify Exhibit A, Scope of Services to be provided under this Agreement.

ARTICLE 3 TERM AND TIME OF PERFORMANCE

- 3.1 All duties, obligations, and responsibilities of Consultant required by this Agreement shall be completed by December 31, 2019. Time shall be deemed to be of the essence Consultant in performing the duties, obligations, and responsibilities required by this Agreement.
- 3.2 In the event services are scheduled to end due to the expiration of this Agreement, the Consultant agrees that it shall continue service upon written request by the City. The Consultant 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 Consultant 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 Consultant, in the manner specified in Section 4.3, and in accordance with the rates set forth in Exhibit E, Fee Schedule, a total amount not-to-exceed One Hundred Eighty One Thousand, Four Dollars and 89/100 (\$181,004.89) for work actually performed and completed pursuant to this Agreement, which amount shall be accepted by Consultant as full compensation for all such work and expenses. Consultant acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Consultant for its services related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Consultant'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 Consultant 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. Consultant 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 any such payment has not been made. Invoices shall adhere to the format specified in Exhibit D, Sample Invoice.

4.2.2 City shall pay Consultant within thirty (30) calendar days of receipt of Consultant'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 Consultant to comply with a term, condition, or requirement of this Agreement.

4.2.3 Consultant shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from City for such subcontracted work or supplies. If Consultant 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 Consultant at:

Keith and Schnars, P.A.
6500 North Andrews Avenue
Fort Lauderdale, FL 33309

ARTICLE 5 INDEMNIFICATION

Consultant 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, Consultant, 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, Consultant 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 Consultant 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 Consultant 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. Consultant 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, Consultant 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 Consultant 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 Consultant uses a subconsultant or subcontractor, Consultant 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, Consultant'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 Consultant 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 Consultant 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, Consultant shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Consultant acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Consultant, 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 Consultant 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 Consultant 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.

Consultant 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.

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

By execution of this Agreement, Consultant 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 Consultant 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, Consultant 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 Consultant, whether finished or unfinished, shall become

the property of City and shall be delivered by Consultant to the Contract Administrator within eight (8) days of termination of this Agreement by either party. Any compensation due to Consultant shall be withheld until all documents are received as provided herein.

9.2 PUBLIC RECORDS

9.2.1 IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS 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 Consultant shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Consultant does not transfer the records to the City.
- iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a

format that is compatible with the information technology systems of the City.

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

9.3 INSPECTOR GENERAL.

Consultant is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Consultant and its sub licensees and lower tier sub licensees. Consultant understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Consultant 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 Consultant and its subcontractors that are related to this Project. Consultant 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 Consultant 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.

Consultant 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.

Consultant 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

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

Consultant 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, Consultant 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 Consultant has been placed on the convicted vendor list.

9.7 INDEPENDENT CONTRACTOR

Consultant is an independent contractor under this Agreement. Services provided by Consultant pursuant to this Agreement shall be subject to the supervision of Consultant. In providing such services, neither Consultant 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

Consultant or Consultant's agents any authority of any kind to bind City in any respect whatsoever.

9.8 THIRD PARTY BENEFICIARIES

Neither Consultant 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 of Delray Beach
ATTN: City Manager
100 N.W. 1st Avenue
Delray Beach, Florida 33444

With Copy To:

City of Delray Beach
ATTN: City Attorney
200 N.W. 1st Ave.
Delray Beach, FL 33444

For Consultant:

Keith and Schnars, P.A.
ATTN: Senior Vice President of Engineering
6500 North Andrews Avenue
Fort Lauderdale, FL 33309

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, Consultant 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 Consultant of this Agreement or any right or interest herein without City's written consent.

Consultant 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.

Consultant shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Consultant'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 Consultant nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Consultant's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

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

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

Consultant 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 Consultant 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 11 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, CONSULTANT 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 Consultant 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 Consultant 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.

9.24 MULTIPLE ORIGINALS

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

ARTICLE 10 E-VERIFY CERTIFICATION

The State of Florida, Office of the Governor, Executive Order Number 11-116 (Verification of Employment Status), and any projects with Florida Department of Transportation (FDOT) funding as part of a Joint Participation Agreement between FDOT and the Authority, require, as a condition of all contracts for the provision of goods or services, an express requirement that contractors utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor during the term of the contract, and an express requirement that contractors include in subcontracts the requirement that subcontractors performing work or providing services pursuant to the contract utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

ARTICLE 11 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:

- i. Terms and conditions as contained in this Agreement;
- ii. RFQ No. 2016-139-2, Construction Engineering and Inspection Services Seacrest Beautification (925-33); Phase 1, dated November 18, 2016, and all its addenda;
- iii. Consultant's response to RFQ No. 2016-139-2, Construction Engineering and Inspection Services Seacrest Beautification (925-33); Phase 1, and any subsequent information submitted by Consultant during the evaluation and negotiation process.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: City through its Commission, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Commission action on the _____ day of _____, 2017, and Consultant, signing by and through its _____, duly authorized to execute same.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

Katerri Johnson, City Clerk

By _____
Cary D. Glickstein, Mayor

_____ day of _____, 2017.

APPROVED AS TO FORM:

R. Max Lohman, City Attorney

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA

AND

KEITH AND SCHNARS, P.A.

WITNESS:

Rebecca Schoenfeld
(Signature)

Rebecca Schoenfeld
(Printed name)

WITNESS:

[Signature]
(Signature)

ANTHONY HINNARD
(Printed name)

CONSULTANT

By

[Signature]
(Signature)

JOE (JOE) L. GOMEZ, SR. VICE PRES.
(Printed name, Title)

25TH day of MAY, 2017

(SEAL)

EXHIBIT A

SCOPE OF SERVICES

1. Consultant will perform a preliminary pre-construction site review for preparation of the requested proposal. Consultant will perform and document a pre-construction conference.
2. Consultant estimates the construction duration for the construction operations to be 240 days' total (30 days for start-up, 180 days to substantial completion with an additional 30 days to final completion). This duration will be finalized once the Construction Contract is awarded to ensure that Contractor days bid is consistent with the Construction Engineering and Inspection's (CEI's) estimate.
3. It shall be Consultant's responsibility to administer, monitor, and inspect the construction such that the project is constructed in reasonable conformity with the plans, specifications and special provisions for the construction contract. Consultant will observe the Contractor's work to determine progress and quality of work.
4. Consultant shall identify deficiencies, report significant deficiencies and direct the Contractor to correct them. Consultant shall monitor the Contractor's on-site construction activities and inspect materials entering into the work in accordance to contract documents. Consultant shall maintain detailed accurate records of the Contractor's daily operations and of any significant events that affect the work.
5. Qualified Consultant employees shall monitor and inspect Contractor's Work Zone Traffic Control Plan and any modifications to the plan.
6. Consultant shall perform sampling and field testing of component materials and completed work in accordance with construction contract documents, as required. Consultant shall provide daily surveillance of the Contractor's Quality Control activities and perform sampling and laboratory testing of materials and completed work items for verification and acceptance. Documentation and record keeping on sampling and testing shall be submitted to the City.
7. Consultant shall verify the Contractor is conducting inspections, preparing reports and monitoring all storm water pollution prevention measures associated with the project.
8. Consultant shall analyze the Contractor's Schedule, revisions and updates for compliance with the contract documents, construction phasing and Maintenance of Traffic (MOT) sequences.
9. Consultant shall coordinate with all other public, private and/or governmental agencies activities involved in the completion of the construction project.
10. Consultant shall analyze problems that arise on the project and any proposals submitted by Contractor. Work to find resolutions to these issues and process the necessary documentation.
11. Consultant shall monitor, inspect and document utility construction for conformance with Utility Agency's Standards.
12. Consultant shall facilitate coordination and communication between utility

- agency's representatives, City Officials and the Contractor.
13. Consultant shall ensure and monitor Construction Contract compliance with Equal Employment Opportunity (EEO), Disadvantage Business Enterprises (DBE) and Wage Rate special provisions, policies and procedures.
 14. For close out of this project, Consultant will prepare a notebook and Compact Disc (CD) with all the records on each project(s) and submit to the City within 30 days of project(s) date of final acceptance.
 15. Consultant shall perform Warranty Inspections at 6 months and 12 months after final completion of construction and provide the City with a report on the findings of said inspections. Warranty Inspections will include all items covered by the Contractor's Warranty.

DESCRIPTION OF CEI POSITIONS

1. **CEI SENIOR PROJECT ENGINEER** - A Civil Engineering degree and registered in the State of Florida as a Professional Engineer (or if registered in another state, the ability to obtain registration in the State of Florida within six months) and six (6) years of engineering experience [(two (2) years of which are in major road or bridge construction)] or [(five (5) of which are in major bridge construction) - for Complex Bridge Projects with the exception of Post Tension Slab (PTS) projects which require two (2) years of major bridge construction], or for non-degreed personnel the aforementioned registration and ten (10) years of engineering experience (two (2) years of which are in major road or bridge construction). Qualifications include the ability to communicate effectively in English (verbally and in writing); direct highly complex and specialized construction engineering administration and inspection program; plans and organizes the work of subordinate and staff members; develops and/or reviews policies, methods, practices, and procedures; and reviews programs for conformance with Department standards. Also, must have the following:
 - i. **QUALIFICATIONS:**
 - Attend the Construction Training Qualification Program (CTQP) Quality Control Manager course and pass the examination.
 - ii. **CERTIFICATIONS:**
 - Florida Department of Transportation (FDOT) Advanced MOT
 - iii. **OTHER:**
 - A Master's Degree in Engineering may be substituted for one (1) year engineering experience.
2. **CEI ASSISTANT PROJECT ADMINISTRATOR/PROJECT ENGINEER** – A Civil Engineering degree plus one (1) year of engineering experience in construction of major road or bridge structures, or for non-degreed personnel six (6) years of

responsible and related engineering experience, two (2) years of which involved construction of major road or bridge structures with the exception of Complex Category 2 (CC2) bridge structures.

i. **QUALIFICATIONS:**

- CTQP Final Estimates Level II

ii. **CERTIFICATIONS:**

- FDOT Intermediate MOT

3. **CEI CONTRACT SUPPORT SPECIALIST** - A High School diploma or equivalent and four (4) years of road & bridge construction engineering inspection experience having performed/assisted in project related duties (i.e., Material Accountability and Control (MAC), progress and final estimates, EEO compliance, processing Construction Contract changes, etc.) or a Civil Engineering Degree. Should exercise independent judgment in planning work details and making technical decisions related to the office aspects of the project. Should be familiar with the Department's Procedures covering the project related duties as stated above and be proficient in the computer programs necessary to perform these duties. Shall become proficient in Multi-Line and Engineering Menu.
4. **CEI RESIDENT COMPLIANCE SPECIALIST** - Graduation from an accredited high school or equivalent with one (1) year of experience as a resident compliance officer on a construction project or two (2) years of assisting the compliance officer in monitoring the project. Should have prior experience in both State funded and Federal Aid funded construction projects with FDOT and knowledge of EEO/AA (Affirmative Action) laws and FDOT's DBE and OJT (On the Job Training) programs. Ability to analyze, collect, evaluate data, and take appropriate action when necessary. Must attend all training workshops or meetings for Resident Compliance Specialists as determined necessary.
5. **CEI INSPECTOR/ENGINEER INTERN** - High school graduate or equivalent plus two (2) years' experience in construction inspection, one (1) year of which shall have been in bridge and/or roadway construction inspection, or an Engineer Intern with a Civil Engineering degree (requires certificate) having the ability to earn the required qualifications and certifications within one year. Responsible for performing assignments in assisting Senior Inspector in the performance of their duties. Receive general supervision from the Senior Inspector who reviews work while in progress.
 - i. **QUALIFICATIONS:**
 - CTQP Concrete Field Inspector Level I
 - CTQP Asphalt Roadway Level I
 - CTQP Earthwork Construction Inspection Level I
 - CTQP Pile Driving Inspection

- CTQP Drilled Shaft Inspection (required for inspection of all drilled shafts including miscellaneous structures such as sign structures, lighting structures, and traffic signal structures)
 - International Municipal Sign Association (IMSA) Traffic Signal Inspector Level I
 - CTQP Final Estimates Level I
- ii. **CERTIFICATIONS:**
- FDOT Intermediate MOT
 - Nuclear Radiation Safety
 - IMSA Traffic Signal Inspector Level I
 - Florida Stormwater, Erosion, and Sedimentation Control Training and Certification Program for Inspectors and Contractors
6. **CEI INSPECTORS AIDE** - High School graduate or equivalent and able to perform basic mathematical calculation and follow simple technical instructions. Duties are to assist higher-level inspectors. Must obtain FDOT Intermediate MOT within the first six months of the assignment.

(Remainder of page intentionally left blank.)

EXHIBIT B
CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RFQ No. 2016-139-2

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

Consultant shall carry the following minimum types of insurance:

- A. Workers' Compensation Insurance: with the statutory limits.
- B. Employers' Liability insurance with a limit of not less than One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) for each disease, and Five Hundred Thousand Dollars (\$500,000) for aggregate disease.
- C. Comprehensive General Liability Insurance: with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$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.

- D. Automobile Liability Insurance: with limits of not less than One Million Dollars (\$1,000,000) per occurrence.
- E. Professional Liability Insurance: with limits of not less than One Million Dollars (\$1,000,000) per occurrence.

EXHIBIT D
SAMPLE INVOICE

CONSULTING SERVICES INVOICE FORMAT

<u>Bill To:</u>	City of Delray Beach 434 S. Swinton Ave. Delray Beach, FL 33444	Invoice # _____
		Invoice Date: _____
		Service Auth. # _____
<u>Remit To:</u>	_____	City Purchase Order # _____
	_____	City Project Number: _____

City Project Title: _____
For Professional Services for Period Ending: _____

Project Status Summary Paragraph (Description of Services Provided): _____

Insert Status Summary / Description of Services

LABOR

<u>Class</u>	<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Principal				\$0.00
Sr. Engineer				\$0.00
Engineer				\$0.00
Cadd Designer				\$0.00
Sr. Engineering Tech				\$0.00
Sr. Inspector				\$0.00
Clerical				\$0.00
Subtotal Labor				\$0.00

SUBCONSULTANTS (Must attach copies of backup invoices)

	<u>Amount</u>
Insert Name of Subconsultant	\$0.00
Insert Name of Subconsultant	\$0.00
Subtotal Subconsultants	\$0.00

REIMBURSABLE/OUT-OF-POCKET EXPENSES (Must attach copies of backup)

	<u>Amount</u>
Postage	\$0.00
Printing	\$0.00
Subtotal Expenses	\$0.00

TOTAL AMOUNT DUE THIS INVOICE:

\$0.00

Bill To:	City of Delray Beach 434 S. Swinton Ave. Delray Beach, FL 33444	Invoice # _____
		Invoice Date: _____
Remit To:	_____	Service Auth. # _____
	_____	City Purchase Order # _____
	_____	City Project Number: _____

City Project Title: _____
For Professional Services for Period Ending: _____

COST SUMMARY (Must match cost breakdown in Service Authorization)

<u>Phase or Task Number</u>	<u>Phase or Task Description</u>	<u>Amount</u>
Phase I or Task 1	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase II or Task 2	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase III or Task 3	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase IV or Task 4	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase V or Task 5	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00

Bill To:	City of Delray Beach 434 S. Swinton Ave. Delray Beach, FL 33444	Invoice # _____
		Invoice Date: _____
Remit To:	_____	Service Auth. # _____
	_____	City Purchase Order # _____
	_____	City Project Number: _____
City Project Title: _____		
For Professional Services for Period Ending: _____		

<u>Phase or Task Number</u>	<u>Phase or Task Description</u>	<u>Amount</u>
Phase VI or Task 6	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase VII or Task 7	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase VIII or Task 8	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
<u>TOTAL CONTRACT COSTS</u>		
	Total Contract Amount	\$0.00
	Total Amount Earned This Period	\$0.00
	Total Amount Previously Earned	\$0.00
	Total Amount Remaining	\$0.00

EXHIBIT E
FEE SCHEDULE AND STAFFING ESTIMATION

Fee Estimate
NE 2nd Ave/Seacrest Phase 1

TASK DESCRIPTION / ACTIVITY	CLASSIFICATION AND RATES									
Payroll	CEI Sr. Project	CEI Contract	CEI	CEI					Total	Total
Classification		Support Specialist/Assistant PA (K&S)								
Contract - Hourly Rates	Engineer (K&S)		Inspector (AEE)	Inspector (K&S)					Work	Labor Costs
	\$165.00	\$135.00	\$86.52	\$95.00					Hours	
PHASE 1 - START UP	16.50	33.00	0.00	0.00					49.50	\$7,177.50
PHASE 2 - CEI INSPECTION SERVICES	99.00	198.00	495.00	495.00					1287.00	\$132,917.40
PHASE 3 - PROJECT CLOSE OUT	16.50	33.00	0.00	82.50					132.00	\$15,015.00
PHASE 4- WARRANTY INSPECTIONS (6 Months & 12 Months Post Construction)		32.00		32.00					64.00	\$7,360.00
Total Workhours	132.00	296.00	495.00	609.50					1468.50	\$162,469.90
Sub-Total Dollars	\$21,780	\$39,960	\$42,827	\$57,903						\$162,469.90
Consultant - K&S										\$162,469.90
Subconsultant - Terracon (Materials Sampling and Testing)										\$1,580.00
Direct Expenses (Direct Reimbursables, Flyers, Door Hangers, etc.)										\$500.00
Total Dollars*										\$164,549.90

*Hours of work are estimated and may not represent the actual hours required to complete the project.

Estimated Staffing for CEI Services
NE 2nd Ave/Seacrest Phase 1

Note: Hours of work are estimated and may not represent the actual hours required to complete the project.

POSITION	2017												2018									2019						TOTALS	
	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sept*	Oct	Nov	Dec	Jan	Feb	Mar*	Months	Manhours
Senior Project Engineer (K&S)								0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10													0.80	132.00
Contract Support/Assistant PA (K&S)								0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20						0.10						0.10	1.79	295.98
Inspector (AEE)								0.00	0.50	0.50	0.50	0.50	0.50	0.50														3.00	495.00
Inspector (K&S)								0.00	0.50	0.50	0.50	0.50	0.50	0.50	0.50						0.10						0.10	3.69	609.48
Subtotal Staff-Months								0.30	1.30	1.30	1.30	1.30	1.30	1.30	0.80						0.19						0.19	9.29	1532.46

Estimated Start Date: Aug-17
Estimated Duration (Days): 240(30 days pre-construction, 180 days construction, 30 days closeout)
Estimated Duration (Months): 8 (1 month pre construction, 6 months construction, 1 month closeout)
Estimated Completion Date: Mar-18

* Indicates Warranty Inspection 8 Hours Field Review and 8 Hours Report Preparartion Post Construction Completion