

Agreement FOR GENERAL CONSULTING SERVICES

THIS Agreement, made and entered into this _____ day of _____, 20____, by and between the City of Delray Beach, Florida (hereinafter referred to as City), and, _____ a _____ company authorized to do business in the State of Florida (hereinafter referred to as Consultant), (collectively hereinafter referred to as the Parties). The Scope of Work is to be implemented as set forth by this Agreement and by Service Authorizations as may be added by the City which shall be attached hereto and made a part hereof.

WITNESSETH:

WHEREAS, the City has provided notice of the desired professional services and carried out the proper selection process pursuant to and in accordance with the Consultant's Competitive Negotiation Act; and,

WHEREAS, the City represents that it is a Florida municipal corporation with the authority to engage the Consultant and accept the obligation for payment for the services desired; and,

WHEREAS, the City desires to engage the Consultant to perform certain professional services pertinent to such work in accordance with this Agreement and with Service Authorizations to be issued at the time of or subsequent to execution of this Agreement; and

WHEREAS, this Agreement does not entitle the Consultant to any fees for any particular project without first receiving a Service Authorization; and

WHEREAS, the Consultant desires to provide such professional services in accordance with this Agreement and resulting Service Authorizations.

NOW, THEREFORE, in consideration of the premises and the mutual benefits which will accrue to the parties hereto in carrying out the terms of this Agreement, it is mutually understood and agreed as follows:

I. DEFINITIONS

- (1) **SERVICE AUTHORIZATION:** A Service Authorization is a form to be used to authorize work, projects, and services. A City purchase order number shall be identified on the form. A sample Service Authorization is attached as Exhibit A to this Agreement. The projects, work, and services to be performed by the Consultant, and time for completion of any Phase of the work by Consultant, shall be authorized by a Service Authorization.

The Service Authorization shall include the scope of work to be performed; the budget cost, complete with an itemization of man-hours, wage rates,

reimbursable expenses, and other related costs; schedule for completion and name of project manager. The Service Authorization shall be executed by the City and Consultant's authorized representatives. A City purchase order shall be issued with authorization identifying funds and amount of expenditures. The terms of this Agreement supersede the terms stated on the purchase order.

- (2) CONTRACTOR(S): Those firms who have been contracted by the City to perform construction work.
- (3) PHASE(S): An approach that divides the work of a Service Authorization into Phases may be utilized. The City and the Consultant shall have the right to negotiate the terms of each Phase within each Service Authorization.

The City has the right to reject the terms of a proposed Service Authorization or of a Phase within a Service Authorization, if the parties cannot reach agreement to the terms of the Service Authorization. In the event the parties cannot reach agreement, the City, at its sole discretion, may solicit proposals from other providers in order to complete the work.

This approach that Phases work shall not waive the City's right to terminate this Agreement during any Phase of work.

II. GENERAL REQUIREMENTS

- (1) The relationship of the Consultant to the City will be that of a contracted Consultant. The Consultant will provide the professional and technical services required under this Agreement in accordance with generally accepted professional practices and ethical standards. No employer/employee relationships shall be deemed to be established and the Consultant, its agents, subcontractors, and employees shall be independent contractors at all times.
- (2) It shall be the responsibility of the Consultant to work with the City and apprise it of solutions to problems and the approach or technique to be used towards accomplishment of City objectives as set forth in Service Authorizations, which will be made a part of this Agreement upon execution by both parties.
- (3) The scope of services to be provided shall be covered in detail in Service Authorizations.
- (4) The Consultant and its sub-consultants shall have no responsibility for the discovery, presence, handling, removal, disposal of, or exposure of persons to hazardous materials in any form existing prior to construction at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or any other toxic substances.
- (5) The Consultant designates _____, as its representative to act as liaison with the City. This representative shall manage and coordinate City projects and is hereby authorized to act on

behalf of the Consultant to negotiate and approve Service Authorizations and act on any other related matter with respect to performance of services for the City in accordance with this Agreement. Any change to name another person as Consultant's representative shall be requested in writing to the City, and must be pre- approved by the City.

- (6) A specified or as defined in each Service Authorization, Consultant shall attend meetings of the City Commission or other City approval Board where the project is discussed, unless the City otherwise informs Consultant that such attendance and participation is not required. In addition, the Consultant shall attend all additional meetings as may be required to facilitate the project.

III. DUTIES OF CONSULTANT

The following Duties of Consultant are separated into phases of the project, which if approved via Service Authorizations shall be performed by the Consultant. The City may require Service Authorizations, which contain additional requirements applicable to the project. The City must authorize through service authorizations, the commencement of each phase of the work.

(1) Phase I – Study and Report Phase.

If the Study and Report Phase is authorized, the following requirements shall apply.

- A. The Consultant shall consult with the City to clarify and define the City's requirements for the Project and review available data.
- B. The Consultant shall advise the City as to the necessity of the City's providing or obtaining from others, data or services.
- C. The Consultant shall identify and analyze permit and approval requirements of all governmental authorities having jurisdiction to approve either the design of the Project and participate in consultations with such authorities.
- D. The Consultant shall provide analyses of the City's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.
- E. The Consultant shall provide a general economic analysis of Owner's requirements applicable to various alternatives.
- F. The Consultant shall prepare a Report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved (including applicable requirements of governmental authorities having jurisdiction as aforesaid) and the alternative solutions available to the City and setting forth Consultant's findings and recommendations. This Report will be accompanied by Consultant's pre-design estimate of probable costs for the Project, including, but not limited to the following, which will be separately itemized: Construction Cost, allowance for engineering costs and contingencies allowances for such other items, such as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, and for permit, review and/or approval fees by other governmental agencies, if required. The Consultant shall also provide a preliminary evaluation of the City's Project Schedule. The City's Project Schedule and probable construction costs shall

be evaluated and updated throughout subsequent phases of the work.

- G. The Consultant shall furnish the number of copies of the Study and Report documents as provided in the SERVICE AUTHORIZATION and review them with the City.

(2) Phase II – Preliminary Design Phase.

- A. The Consultant, in consultation with the City shall determine the general scope, extent and character of the Project.
- B. Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.
- C. Advise the City if additional data or services are necessary and assist the City in obtaining such data and services.
- D. Furnish the specified number of copies of the above Preliminary Design documents as contained within the SERVICE AUTHORIZATION and present and review them with the City.
- E. The Consultant shall submit to the City a preliminary estimate of construction costs based on current area, volume or other unit costs, which shall be updated throughout the design development phase.
- F. The Consultant shall prepare a development schedule, which shall include, but shall not be limited to, the review and approval times by all governmental agencies as may be required.
- G. The Consultant shall make available all design calculations and associated Data, and participate in meetings in which Value Engineering Analysis of the project takes place, at such times and places as shall be determined by the City.

(3) Phase III. Final Design Phase.

- A. The Consultant shall prepare construction documents which shall include but not be limited to drawings and technical specifications, general and supplementary conditions, bid forms, invitations to bid, instructions to bidders, with technical criteria, descriptions and design data necessary for permitting by governmental authorities, and shall include any further adjustments in the scope or quality of the project or in the construction budget authorized by the City.
- B. The Consultant shall, in the preparation of construction documents, technical criteria, written descriptions and design data, take into account all currently prevailing codes and regulations governing construction in the City of Delray Beach, Florida, and shall meet the requirements of all other agencies or governmental authorities having jurisdiction over the project.
- C. The Consultant shall provide the required documents and attend meetings as necessary, for the approval of governmental boards, agencies or authorities having jurisdiction over the project.
- D. The Consultant shall use bid documents provided by the City including bidding forms, conditions of the contract, and form of Agreement between the City and Contractor.
- E. The Consultant shall prepare all documents including design and plan revisions required for the approval of governmental authorities having jurisdiction over the project. Said approvals are required prior to the public notice for the Invitation to Bid and submission of applications, therefore are the responsibility of the Consultant.

- F. The Consultant shall provide the City the number of copies of contract documents as specified in the service authorization.

(4) Phase IV – Bidding/Negotiation Phase.

If the bidding phase is authorized, the following requirements shall apply:

- A. The Consultant shall assist the City in obtaining the bids or negotiated proposals, assist in awarding and preparing contracts for construction, attend pre-bid conferences, prepare addenda, provide written recommendation of award, assist in the compilation/preparation of contract documents, and after the award assist the City in securing the required bonds and certificates of insurance, and in the review of the contract documents for completeness.
- B. The Consultant shall attend the bid opening, prepare bid tabulation sheets and assist the City in evaluating Bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.
- C. The Consultant shall issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.
- D. The Consultant shall consult with and advise the City as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called CONTRACTOR(S) for those portions of the work as to which such acceptability is required by the Bidding Documents.
- E. Consult with the City concerning and determine the acceptability of substitute materials and equipment prior to the award of contracts is allowed by the Bidding Documents.

(5) Phase V – Construction Phase.

If Contract Administration is authorized, the following requirements shall apply:

- A. The Consultant shall provide administration of the contract for construction as set forth herein and as contained within the general conditions of the contract for construction.
- B. The Consultant shall be a representative of and shall advise and consult with the City during construction and until final payment to the contractor is due. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Agreement and as provided in the contract for construction unless otherwise modified by written instrument.
- C. The Consultant shall visit the site at regular intervals appropriate to the stage of construction or as otherwise agreed to by the City and the Consultant, in writing, to become generally familiar with the progress and quality of the work completed and shall determine in general if the work is being performed in a manner indicating that the work when completed will be in accordance with the contract documents. The Consultant shall be required to make on-site observations to review the work. The Consultant shall keep the City informed of the progress and quality of the work and shall provide certification to the City of satisfactory completion of all phases of the work in compliance with the plans, specifications thereto.
- D. The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures of construction or for safety precautions and programs in connection with the work, since these are solely the Contractor's responsibility under the contract for construction. The Consultant shall make every reasonable effort to ensure that the Contractor completes the work in accordance with the current approved schedule and carries out the work in accordance with the

Contract documents.

- E. The Consultant based on observations and evaluations of Contractor's applications for payment shall review and certify the amounts due the Contractor.
- F. The Consultant's certification for payment shall constitute a representation to the City, based on the Consultant's observations at the site as provided herein and on the data comprising the Contractor's application for payment, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information, and belief, the quality and quantity of the work is the accordance with the contract documents. The foregoing representations are subject to an evaluation of the work for conformance with the contract documents upon substantial completion, to results of subsequent tests and inspections, to minor deviations from the contract documents, correctable prior to completion and to specific qualifications expressed by the Consultant. The issuance of the certificate of payment shall further constitute a representation that the Consultant has made observations to review the quality or quantity of the work.
- G. The Consultant shall recommend disapproval or rejection of Contractor's work to the City, which does not conform to the contract documents. The Consultant will have authority to require additional inspection or testing of the work in accordance with the provisions of the contract documents, whether or not work is fabricated, installed or completed.
- H. The Consultant shall review and approve or take other appropriate action upon Contractor's submittals, such as shop drawings, product data, and samples for the purpose of checking for conformance with information given and the design concept expressed in the contract documents. The Consultant shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor.
- I. The Consultant shall prepare change orders and construction change directives with supporting documentation and data if deemed necessary by the Consultant, for the City's approval and execution in accordance with the contract documents, and may authorized minor changes in the work not involving an adjustment in the contract time, which is consistent with the intent of the contract documents.
- J. The Consultant shall conduct inspections to determine the date or dates of substantial completion and the date of final completion, shall receive and forward to the City for the City's review and records, written warranties and related documents required by the contract documents and assembled by the Contractor and shall issue a final certificate for payment upon compliance with the requirements of the contract documents.
- K. The Consultant shall interpret matters concerning performance of the City and Contractor under the requirements of the contract documents on written request of either the City or Contractor. The Consultant's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.
- L. Interpretations of the Consultant shall be consistent with the intent of and reasonably inferable from the contract documents and shall be in writing or in the form of drawings. When making such interpretations, the Consultant shall endeavor to secure faithful performance by both the City and the Contractor.
- M. The City shall be the final arbiter on matters relating to aesthetics.
- N. The Consultant shall render written interpretations within a reasonable time on

all internal disputes between the City and Contractor relating to the execution of the progress of the work as provided in the contract documents.

- O. The Consultant's interpretations on internal disputes are not binding on the City and Contractor relating to the execution of the progress of the work as provided in the contract documents.
- P. The Consultant shall provide the number of sets of the construction documents to the Contractor as specified in the Service Authorization.
- Q. Upon completion of construction the Consultant shall provide to the City, three sets of record drawings, signed and sealed, plus one set of drawings on polyester film or plastic sheets such as Dupont Mylar[®] incorporating as built conditions and other data furnished by contractor(s) to Consultant.
- R. In company with the City, the Consultant shall visit the Project to observe any apparent defects in the completed construction, assist the City in consultations and discussions with CONTRACTOR(S) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defection work.
- S. If Contract Administration is authorized, the following requirements shall apply:
 - (1) The Consultant shall provide administration of the contract for construction as set forth herein and as contained within the general conditions of the contract for construction and as contained within Exhibit A.
 - (2) The Consultant shall be a representative of and shall advise and consult with the City during construction until final payment to the contractor is due. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Agreement and as provided in the contract for construction unless otherwise modified by written instrument.
 - (3) The Consultant shall visit the site at regular intervals appropriate to the stage of construction or as otherwise agreed to by the City and the Consultant in writing to make observations and review the work. Consultant shall use the site visit to become familiar with the progress and quality of the work completed and shall determine if the work is being performed in a manner indicating that the work, when completed, will be in accordance with the contract documents. The Consultant shall keep the City informed of the progress and quality of the work and shall provide certification to the City of satisfactory completion of all phases of the work in compliance with the plans and specifications thereto.
 - (4) The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures of construction or for safety precautions and programs in connection with the work. These are solely the Contractor's responsibility under the contract for construction.
 - (5) The Consultant shall make every reasonable effort to ensure that the Contractor completes the work in accordance with the current approved schedule and carries out the work in accordance with the Contract documents.

- (6) The Consultant shall review, and based on observations and evaluations of Contractor's applications for payment, certify the amounts due the Contractor.
- T. Consultant's certification for contractor payment shall constitute a representation to the City, based on the Consultant's observations at the site as provided herein and on the data comprising the Contractor's application for payment, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information, and belief, the quality and quantity of the work is the accordance with the contract documents. The foregoing representations are subject to an evaluation of the work for conformance with the contract documents upon substantial completion, to results of subsequent tests and inspections, to minor deviations from the contract documents, correctable prior to completion and to specific qualifications expressed by the Consultant. The issuance of the certificate of payment shall further constitute a representation that the Consultant has made observations to review the quality or quantity of the work.
- U. The Consultant shall recommend disapproval or rejection to the City of Contractor's work which does not conform to the contract documents. The Consultant will have authority to require additional inspection or testing of the work in accordance with the provisions of the contract documents, whether or not work is fabricated, installed or completed.
- V. The Consultant shall review and approve or take other appropriate action upon Contractor's submittals, such as shop drawings, product data, and samples for the purpose of checking for conformance with information given and the design concept expressed in the contract documents. The Consultant shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor.
- W. If deemed necessary by the Consultant, the Consultant shall prepare change orders and construction change directives with supporting documentation and data in accordance with the contract documents for City approval and execution. Consultant may authorize minor changes in the work not involving an adjustment in the contract time, which is consistent with the intent of the contract documents.
- X. The Consultant shall conduct inspections to determine the date or dates of substantial completion and the date of final completion shall receive and forward to the City for the City's review and records, all written warranties and related documents required by the contract documents and assembled by the Contractor. Consultant shall issue a final certificate for payment upon compliance with the requirements of the contract documents.
- Y. Upon written request of the City or Contractor, the Consultant shall interpret matters concerning performance of the City and Contractor under the requirements of the contract documents. The Consultant's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.
- Z. Interpretations of the Consultant shall be consistent with the intent of and reasonably inferable from the contract documents and shall be in writing or in the form of drawings. When making such interpretations, the Consultant shall endeavor to secure faithful performance by both the City and the Contractor.
- AA. The City shall be the final arbiter on matters relating to aesthetics.
- BB. The Consultant shall review the plans and specifications. The Consultant shall continuously provide feedback to the City on any potential constructability issues and provide solution recommendations, to ensure the design minimizes

construction and long term maintenance costs throughout the entire course of construction.

- CC. Within a reasonable time, the Consultant shall render written interpretations on all internal disputes between the City and Contractor relating to the execution of the progress of the work as provided in the contract documents.
- DD. The Consultant's interpretations on internal disputes are not binding on the City and Contractor relating to the execution of the progress of the work as provided in the contract documents.
- EE. Upon completion of construction the Consultant shall provide to the City, three sets of record drawings, signed and sealed, plus one set of drawings on polyester film or plastic sheets such as Dupont Mylar®, incorporating as built conditions and other data furnished to Consultant by contractor(s).
- FF. In company with the City, the Consultant shall visit the Project to observe any apparent defects in the completed construction, assist the City in consultations and discussions with Contractor(s) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective work.

6. Phase VI – Resident Project Representative Services Phase

If the Resident Project Representative Services Phase is authorized the following requirements shall apply:

- A. A Resident Project Representative will be assigned to assist Consultant in carrying out his responsibilities to City at the site. Resident Project Representative is Consultant's agent at site, will act as directed by and under the supervision of Consultant, and will confer with Consultant regarding Resident Representative's actions. Resident Representative's dealing in matters pertaining to the on-site work shall in general be with Consultant and Contractor keeping the City advised as necessary. Resident Project Representative's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. Resident Project Representative shall generally communicate with the City with the knowledge of and under the direction of Consultant.
- B. Resident Project Representative shall where applicable:
- C. Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with Consultant concerning its general acceptability.
- D. Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- E. Working principally through Contractor's superintendent, assist Consultant in serving as the City's liaison with Contractor, when Contractor's operations affect the City's on-site operations.
- F. Assist in obtaining from the City additional details or information, when required for proper execution of the Work.
- G. Record date of receipt of Shop Drawings and samples.
- H. Receive samples, which are furnished at the site by Contractor, and notify the Consultant of availability of samples for examination.
- I. Advise the Consultant and Contractor of the commencement of any Work requiring a Shop Drawing, if the submittal has not been approved by the Consultant.
- J. Conduct on-site observations of the Work in progress to assist the Consultant in determining if the Work is, in general, proceeding in accordance with the Contract Documents.

- K. Report to the Consultant whenever Residential Project Representative believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents; or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made. Advise the Consultant of Work that Resident Project Representative believes should be uncovered for observation, or requires special testing, inspection or approval. Nothing herein shall relieve the Contractor or the Consultant from the duties imposed by the contract.
- L. Verify that tests, equipment and systems startups, and operating and maintenance training are conducted in the presence of appropriate personnel and that Contractor maintains adequate records thereof; and observe, record and report to the Consultant appropriate details relative to the test procedures and startups.
- M. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the Consultant.
- N. Report to Consultant when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by the Consultant.
- O. Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with Resident Project Representative's recommendations to the Consultant. Transmit to Contractor decisions as issued by the Consultant.
- P. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents, including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, Consultant's clarifications and interpretations of the Contract Documents, progress reports, and other Project related document.
- Q. Keep a diary or log book, recording Contractor hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to the Consultant.
- R. Record all names, addresses and telephone numbers of the Contractor, all subcontractors and major suppliers of material and equipment.
- S. Furnish the Consultant periodic reports as required of progress of the Work of the Contractor's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
- T. Consult with the Consultant in advance of schedule major tests, inspections or start of important phases of the Work.
- U. Draft proposed Change Orders and Work Directive Changes, obtaining backup materials from Contractor and recommend to the Consultant, Change Orders, Work Directive Changes, and Field Orders.
- V. Report immediately to the Consultant and the City upon the occurrence of any accident.
- W. Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to the Consultant noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site, but not incorporated in the Work.
- X. During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract

- Documents, and have this material delivered to the Consultant for review and forwarding to City prior to final payment for the Work.\
- Y. Before the Consultant issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
 - Z. Conduct final inspection in the company of the Consultant, the City and the Contractor and prepare a final list of items to be completed or corrected.
 - AA. Observe that all items on final list have been completed or corrected and make recommendations to the Consultant concerning acceptance.
 - BB. The Resident Project Representative shall not:
 - i. Authorize any deviation from the Contract Documents or substitution of materials or equipment.
 - ii. Exceed limitations of the Consultant's authority as set forth in the Contract Documents.
 - iii. Undertake any of the responsibilities of Contractor, subcontractors, or Contractor's superintendent.
 - iv. Advise on, issue directions regarding or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
 - v. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
 - vi. Accept Shop Drawing or sample submittals, from anyone other than Contractor.
 - vii. Authorize the City to occupy the Project in whole or in part.
 - viii. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the Consultant.

IV. DATA AND SERVICES TO BE PROVIDED BY THE City

The City shall provide the following:

- (1) Furnish or cause to be furnished such reports, studies, instruments, documents, and other information as the Consultant and City mutually deem necessary and which are under control of the City.
- (2) Other data and services to be agreed upon in subsequent Service Authorizations.
- (3) Pay for all legal advertisements incidental to obtaining bids or proposals from contractors.
- (4) The City Manager or his designee shall act as the City's representative with respect to the work to be performed under this Agreement. The City Manager or his designee shall have the authority to the extent authorized by the City Charter and Code of Ordinances to exercise the rights and responsibilities of the City provided in this contract. Said authority may include but is not limited to: transmit instructions, stop work, receive information, interpret City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the services covered by this Agreement.
- (5) Pay all permit application filing fees.

(6) Provide access to City facilities.

V. TIME OF PERFORMANCE

- (1) The Consultant will begin work promptly after issuance of a Notice to Proceed.
- (2) The Consultant's services called for under this Agreement shall be completed in accordance with the schedule contained in each Service Authorization. If the Consultant's services are unreasonably delayed by the City in excess of 180 days, the time of performance and compensation shall be renegotiated, provided; however, the Consultant as a condition precedent to renegotiations shall notify the City within fifteen (15) calendar days at the end of the delay of Consultant's proposed additional costs incurred by reason of said delay.

VI. AGREEMENT PERIOD

This Agreement shall be for the duration of ____ years from ____ to ____ with two, one-year options to renew. Renewal will be at the City's discretion. However, this Agreement shall extend until construction for any active Service Authorization is complete. The Service Authorization Agreement shall delineate a time for completion of the services to be rendered.

VII. COMPENSATION

(1) METHOD I – LUMP SUM PAYMENT

The City will compensate the Consultant for the services performed on each Service Authorization in accordance with a negotiated lump sum;

OR

(2) METHOD II - TIMES CHARGES/ NOT TO EXCEED BUDGETED AMOUNT

The City will compensate the Consultant for the services performed on a not to exceed budgeted amount based on time charges which are based upon hourly rates, plus reimbursable expenses and other related costs as are specified in the Service Authorization

When a service is to be compensated for on a time charge/not to exceed basis, the Consultant will submit a not to exceed budget cost to the City for prior approval based on actual time charges which shall not exceed established hourly rates as shown in Exhibit D attached hereto, plus reimbursable expenses and other related costs. The City shall not be obligated to reimburse the Consultant for costs incurred in excess of the not to exceed cost amount.

- a. The City agrees to pay the Consultant compensation for services rendered based upon the established raw hourly salary rates as shown in Exhibit B for services rendered on City projects multiplied by an overhead factor not

to exceed 3.0, which includes profit not to exceed ten percent (10%) and may be subject to audit. The Schedule of hourly rates as set forth in Exhibit D will not be adjusted.

b. In addition, the City shall pay for reimbursable expenses invoiced at the actual cost of expenditures incurred by the Consultant if provided in the Service Authorization as follows:

- (1) Actual expense of transportation and lodging in accordance with City policy in effect at the time of travel when traveling in connection with each Service Authorization, express courier charges, and permit fees paid for securing approval of authorities having jurisdiction over the project.
 - (2) Actual expense of reproductions, of Drawings and Specifications including duplicate sets of the completion of each Service Authorization for the City's review and approval.
 - (3) Actual expenses of testing, laboratory services, and field equipment. By consultants.
 - (4) Actual expense of overtime work requiring higher than regular rates, when authorized by the City.
 - (5) Actual expense of Auto Travel at the established City rate per mile for travel outside Palm Beach County.
- (3) Service shall be invoiced at the actual fees paid by the Consultant, plus an additional ten percent (10%) of the cost of these services to compensate Consultant, for the procuring and management of the sub-consultant, and for the other financial and administrative costs. services shall be approved by the City in writing prior to performance of the work.
- (4) Total Compensation (including, but not limited to compensation for sub-consultants) for all services and expenses shall not exceed the budget cost listed upon each Service Authorization, without written approval.
- (5) If the City determines that any price for services, however calculated provided by the Consultant, including profit, negotiated in connection with this Agreement or any cost reimbursable under this Agreement was increased by any significant sums because the Consultant or any subcontractor furnished incomplete or inaccurate costs or pricing data, then such price or cost or profit shall be reduced accordingly and the Service Authorization shall be reduced accordingly and the Service Authorization shall be modified in writing to reflect such reduction.

VIII. PAYMENT

The City agrees that it will use its best effort to pay the Consultant within thirty (30) calendar days from presentation of the Consultant's itemized report and invoice and

approval of the City representative, unless additional time for processing is required for payments for basic services, services, and reimbursable expenses as defined in Section VII. The Consultant shall submit monthly invoices, as required in the Service Authorization, which shall include a report of work completed during the respective invoice period. Invoices shall be in a format consistent with those shown in Exhibit C. The report shall be adequate in detail to describe work progress (% complete for each task) and written summaries of work completed. No payment request shall exceed the value of work and services performed by the Consultant under the Service Authorization. Payment to the Consultant will be based on the percent of construction completed.

IX. E-VERIFY

In accordance with the State of Florida, Office of the Governor, Executive Order Number 11- 116 (Verification of Employment Status), all agencies under the direction of the Governor are to include as a condition of all state contracts for the provision of goods or services to the state in excess of nominal value, 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 contract term, and an express requirement that contractors include in such subcontracts the requirement that subcontractors performing work or providing services pursuant to the state contract utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. Any projects with Florida Department of Transportation (FDOT) funding will contain this assurance as a condition for any new Joint Participation Contracts dated after January 4, 2011. The Consultant will verify all of their new employees and will require that their subcontractors verify all of their new employees in accordance with the E-Verify requirements set out above.

X. MISCELLANEOUS PROVISIONS

(1) Copies of Documents:

The Consultant shall prepare sufficient copies of all documents necessary to obtain approval through the City's processes, as well as other governmental authorities.. The City acknowledges that data provided in connection with this Agreement which are provided by the Consultant are not intended for use in connection with any project other than the project for which such materials are prepared. Any use by the City of such materials in connection with a project other than that for which such materials were prepared without prior written consent and adaptation by the Consultant shall be at the City's sole risk, and the Consultant shall have no responsibility or liability therefore.

(2) Insurance:

Without limiting any of the other obligations or liabilities of the Consultant, the Consultant shall, at his own expense, provide and maintain in force, until all of its services to be performed under this Agreement have been completed and accepted by the City (or for such duration as it otherwise specified

hereinafter), the following insurance coverages:

- (1) Worker's Compensation Insurance to apply to all of the Consultant's employees in compliance with the "Worker's Compensation Law" of the State of Florida and all applicable Federal Laws.
 - A. Employer's Liability with limits of \$100,000 per person, \$500,000 per occurrence and \$100,000 per each disease.
- (2) Comprehensive General Liability with minimum limits of one million dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements other than ISO Endorsement GL 21 06 (Engineers, Architects, or Surveyors Professional Liability exclusion), as Filed by the Insurance Services Office and must include:
 - a. Premises and/or Operations
 - b. Independent Contractors
 - c. Products and Completed Operations - Consultant shall maintain in force until at least three years after completion of all services required under this Agreement, coverage for Products and Completed Operations, including Broad Form Property Damage.
 - d. Broad Form Property Damage
 - e. Contractual Coverage applicable to this specific Agreement.
 - f. Personal Injury Coverage with minimum limits of coverage equal to those required for Bodily Injury Liability.
- (3) Business Automobile Liability with minimum limits of three hundred thousand dollars (\$300,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:
 - a. Owned Vehicles
 - b. Hired and Non-Owned Vehicles
 - c. Employers' Non-Ownership
- (4) Professional Liability Insurance with minimum limits per occurrence applicable to City projects as follows:

	Construction Cost Range	Limit
a.	0 - 99,000	\$250,000
b.	100,000 - 299,000	\$500,000
c.	300,000 - 499,000	\$750,000
d.	500,000 - Above	\$1,000,000

Coverage shall be afforded on a form acceptable to the City. Consultant

shall maintain such professional liability insurance until at least one year after a Certificate of Occupancy is issued. Consultant shall insure that sub-consultants used for any portion of the project, maintain adequate levels of Professional Liability Insurance.

Coverage shall be afforded on a form acceptable to the City. Consultant shall maintain such professional liability insurance until at least one year after a Certificate of Occupancy is issued. Consultant shall insure that sub-consultants used for any portion of the project, maintain adequate levels of Professional Liability Insurance.

Prior to commencement of services, the Consultant shall provide to the City Certificates of Insurance evidencing the insurance coverage specified above. All policies shall be endorsed to provide the City with thirty (30) days' notice of cancellation and/or restriction. The City shall be named as an additional insured as to Consultant's general liability and automobile liability insurance policies. The required Certificates of Insurance shall not only name the types of policies provided, but also shall refer specifically to this Agreement and section and to the above paragraphs in accordance with which insurance is being furnished, and shall state that such insurance is as required by such paragraphs of this Agreement. The Consultant shall also make available to the City a certified copy of the professional liability insurance policy required by paragraph 4 above for the City's review. Upon request, the Consultant shall provide copies of all other insurance policies.

If the initial insurance policies required by this Agreement expire prior to the completion of the services, renewal Certificates of Insurance of policies shall be furnished thirty (30) days prior to the date of their expiration. For Notice of Cancellation and/or Restriction; the policies must be endorsed to provide the City with thirty (30) days' notice of cancellation and/or restriction.

The Consultant's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis.

(5) Litigation Services:

It is understood and agreed that Consultant's services include reasonable participation in litigation or dispute resolution arising from this Agreement. Consultant's participation shall include up to 30 hours of services related to litigation or dispute resolution. Any such services in excess of 30 hours shall be an extra service.

(6) 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 subcontractors and lower tier subcontractors. Consultant understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Consultant or its subcontractor or lower tier

subcontractors 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.

(7) Public Records:

IF THE SUCCESSFUL CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUCCESSFUL PROPOSER'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'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT PUBLICRECORDSREQUEST@MYDELRAYBEACH.COM.

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 Successful Proposer or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- v. If the Consultant does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

(8) Authority to Contract:

The City represents that it is a Florida Municipal Corporation with the authority to engage the Consultant for professional services described in the Service Authorizations and to accept the obligation for payment for the services described in the Service Authorizations.

(9) Assignment:

The City and the Consultant each binds itself and its successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives, and assigns of such other party, in respect to all covenants of this Agreement subject to budget considerations and requirements of law; and, neither the City nor the Consultant will assign or transfer their interest in this Agreement without the written consent of the other.

(10) Confidential Information:

During all times that the Consultant is employed on behalf of the City and at all times subsequent to the date of this contract, all discussions between the City and the Consultant and all information developed or work products produced by the Consultant during its employment and all matters relevant to the business of the City not otherwise being a matter of public record shall be deemed to be confidential. All such information and work product shall be protected by the Consultant and shall not be revealed to other persons without the express written permission of the City, unless mandated by order of the court.

(11) Non-Exclusive Contract:

The City reserves the right to award projects to other firms pursuant to the Florida Statutes Consultant's Competitive Negotiations Act during the period of service of the Consultant. The Consultant agrees to cooperate with the City and other firms in accomplishing work that may require joint efforts to accomplish the City's goals. This cooperation, when requested by the City, will include but not be limited to:

1. Sharing technical information developed under contract with the City.
2. Joint meetings for project coordination.
3. Establish lines of communication.

(12) Sub consultants:

In the event the Consultant, during the course of the work under this Agreement requires the services of any subcontractors or other professional associates in connection with services covered by this Agreement, Consultant must secure the prior written approval of the City.

(13) Notices:

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt

requested, addressed to the party for whom it is intended at the place last written, as the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places of giving of notice to wit:

City of Delray Beach
City of Delray Beach, Florida
100 NW 1st Avenue
Delray Beach, Florida 33444
ATTN: City Manager

(14) Attachments:

Request for Proposals is hereby incorporated within and made an integral part of this Agreement.

(15) Truth-In-Negotiation Certificate:

Signature of this Agreement by Consultant shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

(16) Records:

Records of all expenses relative to each Service Authorization shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representative at mutually convenient times.

(17) Personnel:

The Consultant represents that it has or will secure, at its own expense, qualified personnel required in performing the services under this Agreement. All work shall be performed under the direction of a professional, registered under the State of Florida in the field for which he is responsible for performing such services.

The project manager shall be approved by the City under each Service Authorization. Key project personnel will be identified for each project and expected to perform the work assignment as can reasonably be expected.

(18) Equal Opportunity Employment:

Consultant agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment advertising;

lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth this non-discrimination clause. This provision applies to all of Consultant's subcontractors and it is the responsibility of Consultant to ensure subcontractor's compliance.

(19) Prohibition Against Contingent Fees:

The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

(20) Termination:

This Agreement may be terminated by either party by seven (7) calendar day's prior written notice, in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. The City shall have the right to terminate this Agreement for convenience at any time by thirty (30) calendar day's written notice to the consultant. In the event the project described in any Service Authorization, or the services of the Consultant called for under any Service Authorization, is or are suspended, canceled, or abandoned by the City, the Consultant shall be given five days prior written notice of such action and shall be compensated for the professional services provided and reimbursable expenses incurred up to the date of suspension, cancellation or abandonment. The Consultant agrees to provide all documents to the City. Further, prior to the Consultant's destruction of any of the above referenced documents, the City shall be notified and allowed a reasonable period to gain access to and make copies of any such documents. Upon any termination of this Agreement, the Consultant agrees that it shall use its best efforts to work harmoniously with any successor who enters an Agreement to provide services for the City in order to provide for a smooth transition period.

(21) Indemnification:

In consideration of Ten Dollars (\$10.00) in hand paid and other valuable consideration, receipt of which is hereby acknowledged, Contractor agrees to defend, indemnify and hold harmless the City, their agents and employees in accordance with paragraph 7.28 of the General Conditions which is incorporated herein and made a part hereof as if fully set forth herein. It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statutes 725.06, as amended. It is further the specific intent and agreement of said parties that all of the Contract Documents on this Project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.

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

(22) Interest of the Consultant:

The Consultant covenants that it, nor its employees, presently has no interest and shall not acquire any interest, direct or indirect, in any Project to which this Agreement pertains or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed.

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 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 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.

(23) Compliance with Laws:

- a. The Consultant shall comply with the applicable requirements of State and applicable County laws and all Codes and Ordinances of the City Of Delray Beach as amended from time to time, and that exist at the time of building permit issuance.
- b. For Service Authorizations involving work under Federal or State Grantors or Approving Agencies, the City and the Consultant shall review and approve the applicable required provisions or any other supplemental provisions as may be included in each Service Authorizations.

(24) Jurisdiction; Venue:

The Consultant hereby covenants, consents and yields to the jurisdiction of the

State Civil Courts of Palm Beach County, Florida. Any dispute between Consultant and the City shall be governed by the laws of Florida with venue in Palm Beach County.

(25) Internal Dispute Between Owner and Consultant:

The City Manager shall be the final decision maker regarding internal disputes between City and Consultant.

(26) Extent of Agreement:

This Agreement represents the entire integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations or Agreements, written or oral. This Agreement does not entitle the Consultant to receive any fee unless first being issued a Service Authorization. This Agreement does not provide that a Consultant is entitled to receive any Service Authorization. This Agreement may not be amended, changed, modified, or otherwise altered in any way, at any time after the execution hereof, except by approval of the City Commission.

(27) 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. 2017-048, Continuing Engineering, Surveying, and Landscaping Architectural Consulting Services, dated _____, and all its addenda;
- C. Consultant's response to RFQ No. 2017-048, Continuing Engineering, Surveying, and Landscaping Architectural Consulting Services and any subsequent information submitted by Consultant during the evaluation process.

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

Kimberly Wynn, Acting 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

SECOND PARTY

By _____

(Signature)

(Printed name, Title)

____ day of _____, 20____

WITNESS:

(Signature)

(Printed name)

WITNESS:

(Signature)

(Printed name)

(SEAL)

ACKNOWLEDGEMENT IF CORPORATION

State of Florida

ss

County of Palm
Beach

BEFORE ME, the foregoing instrument, this _____ day of _____
_____, 2016, was acknowledged by
_____, on behalf of the
Corporation and said person executed the same freely and voluntarily for the purpose therein
expressed.

WITNESS my hand and seal in the County and State aforesaid this _____ day of _____
_____ 2016.

Notary Public:

My Commission Expires:

(SEAL)

ACKNOWLEDGEMENT IF AN INDIVIDUAL

State of Florida

ss

County of Palm Beach

I HEREBY CERTIFY that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, personally appeared and is personally known to me to be the person in and who executed the foregoing instrument, and acknowledged before me that he/she executed the same.

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20____.

Notary Public:

My Commission Expires:

(SEAL)

ACKNOWLEDGEMENT IF A PARTNERSHIP

State of Florida

ss

County of Palm Beach

I HEREBY CERTIFY that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, personally appeared and is known to me to be the person in and who executed the foregoing instrument as a partner of _____, a partnership. He/She acknowledged before that he/she executed the same as the act and deed of said partnership for the uses and purposes therein mentioned.

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20__.

Notary Public:

My Commission Expires:

(SEAL)