

MASTER CONTRACTOR/SERVICES AGREEMENT

THIS AGREEMENT is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1st Avenue, Delray Beach, FL 33444 and Mercury Associates, Inc., a Maryland Corporation, (hereinafter referred to as "Contractor"), authorized to do business in Florida, whose address is 7361 Calhoun Place, Suite 680, Rockville, Maryland 20855, this _____ day of _____, 2018.

WHEREAS, the City desires to procure certain services from Contractor, utilizing existing contract prices provided to the City of Boynton Beach, pursuant to its solicitation number RFP 017-2510-18/IT for Comprehensive Analysis – Fleet Operations; and

WHEREAS, in accordance with solicitation number RFP 017-2510-18/IT, the City of Boynton Beach entered into an agreement with Contractor for services effective upon contract execution (the "Boynton Beach Agreement," attached hereto as Exhibit A) and will remain in effect until completion of project; and

WHEREAS, the City desires to purchase services from Contractor with both parties hereto being bound to the same terms, conditions, and pricing provided in the Boynton Beach Agreement as if "the City" in the Boynton Beach Agreement were referring to the City of Delray Beach, subject to any modifying terms and conditions of this Agreement, the City's Purchasing Policies and Procedures as referenced in the Code of Ordinances, and Florida law, including the City's opting herein to obtain and pay for those optional project components 2 and 3 set forth in Contractor's Proposal that resulted in the Boynton Beach Agreement (such Contractor Proposal attached hereto as Exhibit B); and

WHEREAS, the Contractor agrees to extend the terms, conditions, and pricing contained in the Boynton Beach Agreement to the City, subject to any modifying terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

1. The above recitals are true and correct and are incorporated herein by reference.
2. Except as otherwise specifically modified herein, the Contractor shall provide to the City the services identified in the attached Exhibits A and B, in accordance with and pursuant to the same terms, conditions, and pricing set forth therein.
3. The City, at its sole discretion, reserves the right to terminate this Agreement with or without cause with ten (10) days advance written notice to Contractor. Upon termination, the Contractor shall not incur any additional costs under the Agreement for

services performed by Contractor after the termination date. The City shall be liable only for, and will promptly pay to Contractor, Contractor's fees and costs for services provided pursuant to this Agreement prior to the date of termination.

4. The Contractor certifies that the price and rate represents the lowest price and rate for the products and services of any contract between the Contractor and any other governmental entity within the State of Florida.

5. Paragraph 8 of Exhibit A is revised, with respect to its applicability to the parties hereto, to read as follows:

"Contractor shall indemnify, defend and hold harmless the City, its offices, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, including fees and costs, arising from 1) injury or death to persons, including injuries, sickness, disease or death to Contractor's own employees; 2) damage to property occasioned by a negligence act, omission or failure of the Professional or 3) arising out of, relating to, or resulting from the performance of the agreement by the Contractor or its employees, agents, servants, partners, principals, or subcontractors."

6. Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For CITY:
City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

For CONTRACTOR:
Mercury Associates, Inc.
7361 Calhoun Place, Suite 680
Rockville, Maryland 20855
Attn: Tony Yankovich, Senior Manager

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

8. This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances, the laws of the State of Florida and any applicable federal laws.

Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.

9. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'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 CITYCLERK@MYDELRAYBEACH.COM.

Contractor 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 Contractor 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 Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor 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 Contractor 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.

10. Contractor 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 Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or

its subcontractors and 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.

11. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

12. The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. Terms and Conditions of the Boynton Beach Agreement (Exhibit A) substituting City of Boynton Beach with City of Delray Beach throughout.
- c. Contractor's response to solicitation number RFP 017-2510-18/IT as well as the terms and pricing relating to optional project components 2 and 3 set forth in Exhibit B.

[Remainder of page intentionally left blank]

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

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

R. Max Lohman, City Attorney

CONTRACTOR

By: _____

Print Name: _____

Title: _____

(SEAL)

STATE OF <STATE>
COUNTY OF <COUNTY>

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ (name of officer or agent, title of officer or agent), of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He / She is personally known to me or has produced _____ (type of identification) as identification.

Notary Public – State of <state>

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