

RESOLUTION NO. 04-01-21

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, APPROVING A SITE PLAN AUTHORIZING THE DEVELOPMENT OF A PUBLIC PARKING LOT ON THREE PARCELS OWNED BY THE LAKE PARK COMMUNITY REDEVELOPMENT AGENCY (CRA); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, West Construction, (the Applicant) acting as the agent for the Town of Lake Park's (the Town) CRA submitted an application to the Town for the development of public parking lot (the Application) to be located on three parcels on the northeast corner of Foresteria Drive and 8th Street, as legally described in Exhibit "A" (the Site); and

WHEREAS, the Application contemplates the development of 91 new public parking spaces, including of four spaces that are restricted for persons having disabilities; and

WHEREAS, the Application also involves paving, grading, drainage, lighting, landscaping, and pedestrian connections; and

WHEREAS, the Site has a future land use designation of "Public Buildings and Grounds"; and

WHEREAS, Site is located with a zoning district of "Public(P) District"; and

WHEREAS, public parking lots are a permitted use within the Public(P)Zoning District; and

WHEREAS, the Town's Planning and Zoning Board has reviewed the Application and has recommended to the Town Commission that it approve the Application with certain conditions; and

WHEREAS, the Town Commission has conducted a quasi-judicial hearing to consider the Application; and

WHEREAS, at this hearing, the Town Council considered the evidence presented by the Town's Community Development Department, the Applicant, and other interested parties and members of the public, regarding whether the Application is consistent with the Town's Comprehensive Plan and meets its Land Development Regulations.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1: The whereas clauses are incorporated herein as the findings of fact and conclusions of law of the Town Commission.

Section 2. The Town Commission hereby approves a Site Plan for the Site, subject to the following conditions:

1. The Applicant shall develop the Site consistent with the following Plans:

Name	Sheet	Sign and Seal	Received on
Architecture Plan			
Survey	LB #8180	07/02/2020	01/08/2021
Site Plan	L1	01/04/2021	01/08/2021
Landscape/Planting Plan	L2	01/04/2021	01/08/2021
Landscape/Planting Plan Details	L3	01/04/2021	01/08/2021
Irrigation Plan	L4	12/16/2020	01/08/2021
Drainage Plans	Sheet 1	12/15/2020	01/08/2021
Drainage Plans	Sheet 2	12/04/2020	01/08/2021
Photometric (Lighting) Plan & Light Pole Installations		01/07/2021	01/22/2021

2. High-definition surveillance Security Cameras that have clear facial recognition shall be installed and shall be considered separately by the Town’s Public Works Department, in coordination with PBSO, and permitted and installed prior to project completion.
3. In partnership with PBSO, the installation of signage to prevent trespassing or illegal activity shall be coordinated and installed prior to project completion. In addition, landscaping must be maintained at a height that provides clear visibility for crime prevention, in coordination with PBSO.
4. Traffic calming elements within the site shall be considered and incorporated as needed and made part of the permit submittal plans. These may include raised elements or the use of a different paver material where pedestrian crossovers are depicted in the Site Plan.
5. The hours of operation and towing enforcement provisions for the public parking lot shall be clearly marked by adequate signage throughout the Site.
6. A signed and sealed photometric plan and calculations, dated 01/22/2021, shall be submitted to the Community Development Department no later than 01/25/2021.
7. Wind load calculations for the light pole installations, signed and sealed by a Florida licensed Professional Engineer, shall be submitted to the Community Development Department prior to the issuance of the first development permit.

Section 3. This Resolution shall become effective upon execution.

Exhibit “A”

Legal Descriptions

LEGAL DESCRIPTION (O.R.B. 29554, PAGE 1073)

LOT(S) 47 AND 48, BLOCK 10, PLAT OF KELSEY CITY, (NOW KNOWN AS LAKE PARK), ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, PAGE 27, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD AND TAXES FOR THE YEAR 2017 AND THEREAFTER.

TOGETHER, WITH ALL TENEMENTS, HEREDITAMENTS AND APPURTENANCES THERETO BELOGING OR IN ANYWISE APPERTAINING.

LEGAL DESCRIPTION (O.R.B. 23050, PAGE 348)

LOT(S) 44, 45 AND 46, BLOCK 10, LAKE PARK (FORMERLY KELSEY CITY), FLORIDA ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, IN PLAT BOOK 8, PAGE 27.

SUBJECT TO ZONING, RESTRICTIONS, PROHIBITIONS AND OTHER REQUIREMENTS IMPOSED BY GOBERMENTAL AUTHORITY; RESTRICTIONS AND MATTERS APPEARING ON THE PLAT OR OTHERWISE COMMON TO THE SUBDIVISION; PUBLIC AND UTILITY EASEMENTS OF RECORD; AND TAXES FOR THE YEAR 2009 AND SUBSEQUENT YEARS.

LEGAL DESCRIPTION (O.R.B. 23120, PAGE 582)

LOTS 25 THROUGH 28, BLOCK 10, LAKE PARL, (FORMERLY KELSEY CITY), ACCORDING TO THE PLAT THEREOF ON THE FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, RECORDED IN PLAT BOOK 8, PAGE 15.

LEGAL DESCRIPTION (O.R.B. 22898, PAGE 1108)

LOTS 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 AND 43, BLOCK 10, OF KELSEY CITY (NOW LAKE PARK) ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGES 15 AND 27, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER, WITH ALL TENEMENTS, HEREDITAMENTS AND APPURTENANCES THERETO BELOGING OR IN ANYWISE APPERTAINING.

The foregoing Resolution was offered by Commissioner Michaud, who moved its adoption. The motion was seconded by Commissioner Linden and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u> / </u>	<u> </u>
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u> / </u>	<u> </u>
COMMISSIONER ERIN FLAHERTY	<u> / </u>	<u> </u>
COMMISSIONER JOHN LINDEN	<u> / </u>	<u> </u>
COMMISSIONER ROGER MICHAUD	<u> / </u>	<u> </u>

The Town Commission thereupon declared the foregoing Resolution No. 04-01-21 duly passed and adopted this 20 day of January, 2021.

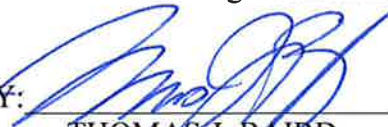
TOWN OF LAKE PARK, FLORIDA

BY: 
MICHAEL O'ROURKE
MAYOR

ATTEST:


VIVIAN MENDEZ
TOWN CLERK

Approved as to form and legal sufficiency:

BY: 
THOMAS J. BAIRD
TOWN ATTORNEY





**West Construction
Site Plan Approval
Justification Statement
December 29, 2020**

Description and location of subject property:

The subject property is located on approximate 1.32 acre located along Foresteria Drive behind the 700 block of Park Ave.

General Description of proposed use and the request:

This request for site plan approval of new surface public parking lot design composed of (91) parking spaces incorporating parking lot lighting , drainage and adding surrounding landscaping with corresponding irrigation. Meeting all state and local code requirements, CPTED standards and ADA compliance while incorporating Green infrastructure features such as a bio-swale.

This will provide needed parking to the area businesses.

This site plan is consistent with the standards outlined in the Design/ Build Criteria Package.

West Construction, Inc.

820 North 4th Street / Lantana, Florida 33462 / Phone: 561-588-2027 / Fax: 561-582-9419
License No. CBC057038 / CGC1516626

www.westconstructioninc.net

RESOLUTION NO. __-01-21

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, APPROVING A SITE PLAN AUTHORIZING THE DEVELOPMENT OF A PUBLIC PARKING LOT ON THREE PARCELS OWNED BY THE LAKE PARK COMMUNITY REDEVELOPMENT AGENCY (CRA); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, West Construction, (the Applicant) acting as the agent for the Town of Lake Park's (the Town) CRA submitted an application to the Town for the development of public parking lot (the Application) to be located on three parcels on the northeast corner of Foresteria Drive and 8th Street, as legally described in Exhibit "A" (the Site); and

WHEREAS, the Application contemplates the development of 91 new public parking spaces, including of four spaces that are restricted for persons having disabilities; and

WHEREAS, the Application also involves paving, grading, drainage, lighting, landscaping, and pedestrian connections; and

WHEREAS, the Site has a future land use designation of "Public Buildings and Grounds"; and

WHEREAS, Site is located with a zoning district of "Public(P) District"; and

WHEREAS, public parking lots are a permitted use within the Public(P)Zoning District; and

WHEREAS, the Town's Planning and Zoning Board has reviewed the Application and has recommended to the Town Commission that it approve the Application with certain conditions; and

WHEREAS, the Town Commission has conducted a quasi-judicial hearing to consider the Application; and

WHEREAS, at this hearing, the Town Council considered the evidence presented by the Town's Community Development Department, the Applicant, and other interested parties and members of the public, regarding whether the Application is consistent with the Town's Comprehensive Plan and meets its Land Development Regulations.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1: The whereas clauses are incorporated herein as the findings of fact and conclusions of law of the Town Commission.

Section 2. The Town Commission hereby approves a Site Plan for the Site, subject to the following conditions:

1. The Applicant shall develop the Site consistent with the following Plans:

Name	Sheet	Sign and Seal	Received on
Architecture Plan			
Survey	LB #8180	07/02/2020	01/08/2021
Site Plan	L1	01/04/2021	01/08/2021
Landscape/Planting Plan	L2	01/04/2021	01/08/2021
Landscape/Planting Plan Details	L3	01/04/2021	01/08/2021
Irrigation Plan	L4	12/16/2020	01/08/2021
Drainage Plans	Sheet 1	12/15/2020	01/08/2021
Drainage Plans	Sheet 2	12/04/2020	01/08/2021
Photometric (Lighting) Plan & Light Pole Installations		01/07/2021	01/22/2021

2. High-definition surveillance Security Cameras that have clear facial recognition shall be installed and shall be considered separately by the Town's Public Works Department, in coordination with PBSO, and permitted and installed prior to project completion.
3. In partnership with PBSO, the installation of signage to prevent trespassing or illegal activity shall be coordinated and installed prior to project completion. In addition, landscaping must be maintained at a height that provides clear visibility for crime prevention, in coordination with PBSO.
4. Traffic calming elements within the site shall be considered and incorporated as needed and made part of the permit submittal plans. These may include raised elements or the use of a different paver material where pedestrian crossovers are depicted in the Site Plan.
5. The hours of operation and towing enforcement provisions for the public parking lot shall be clearly marked by adequate signage throughout the Site.
6. A signed and sealed photometric plan and calculations, dated 01/22/2021, shall be submitted to the Community Development Department no later than 01/25/2021.
7. Wind load calculations for the light pole installations, signed and sealed by a Florida licensed Professional Engineer, shall be submitted to the Community Development Department prior to the issuance of the first development permit.

Section 3. This Resolution shall become effective upon execution.

Exhibit "A"

Legal Descriptions

LEGAL DESCRIPTION (O.R.B. 29554, PAGE 1073)

LOT(S) 47 AND 48, BLOCK 10, PLAT OF KELSEY CITY, (NOW KNOWN AS LAKE PARK), ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, PAGE 27, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD AND TAXES FOR THE YEAR 2017 AND THEREAFTER.

TOGETHER, WITH ALL TENEMENTS, HEREDITAMENTS AND APPURTENANCES THERETO BELONGING OR IN ANYWISE APPERTAINING.

LEGAL DESCRIPTION (O.R.B. 23050, PAGE 348)

LOT(S) 44, 45 AND 46, BLOCK 10, LAKE PARK (FORMERLY KELSEY CITY), FLORIDA ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, IN PLAT BOOK 8, PAGE 27.

SUBJECT TO ZONING, RESTRICTIONS, PROHIBITIONS AND OTHER REQUIREMENTS IMPOSED BY GOBERMENTAL AUTHORITY; RESTRICTIONS AND MATTERS APPEARING ON THE PLAT OR OTHERWISE COMMON TO THE SUBDIVISION; PUBLIC AND UTILITY EASEMENTS OF RECORD; AND TAXES FOR THE YEAR 2009 AND SUBSEQUENT YEARS.

LEGAL DESCRIPTION (O.R.B. 23120, PAGE 582)

LOTS 25 THROUGH 28, BLOCK 10, LAKE PARL, (FORMERLY KELSEY CITY), ACCORDING TO THE PLAT THEREOF ON THE FILE IN THE OFFICE OF THE CLERK OF THE CIRQUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, RECORDED IN PLAT BOOK 8, PAGE 15.

LEGAL DESCRIPTION (O.R.B. 22898, PAGE 1108)

LOTS 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 AND 43, BLOCK 10, OF KELSEY CITY (NOW LAKE PARK) ACCORDING TO THE PLAT THERREOF RECORDED IN PLAT BOOK 8, PAGES 15 AND 27, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER, WITH ALL TENEMENTS, HEREDITAMENTS AND APPURTENANCES THERETO BELONGING OR IN ANYWISE APPERTAINING.

RESOLUTION NO. 74-10- 2020

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH WEST CONSTRUCTION, INC. FOR THE DESIGN AND CONSTRUCTION OF A NEW SURFACE PUBLIC PARKING LOT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town of Lake Park, Florida (hereinafter “Town”) is a municipal corporation of the state of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, The Town is empowered to enter into contractual arrangements with public agencies, private corporations or other persons; and

WHEREAS, the Town Commission has determined that it requires the services of a qualified and experienced General Contractor to design and construct a new surface parking lot on the Town Community Redevelopment Agency (CRA)’s property, located off Foresteria Drive, behind the 700 block of Park Avenue.

WHEREAS, the Town has budgeted funds in its current fiscal year budget that are available for the funding of this Agreement.

WHEREAS, Town Manager has recommended to the Town Commission of Lake Park that it is in the best interest of the Town to enter into a design/build agreement with West Construction.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AS FOLLOWS:

Section 1. The whereas clauses are true and correct and are incorporated herein.

Section 2. The Town Commission hereby authorizes and directs the Mayor to execute an agreement with West Construction for the design and construction of a surface parking lot on its CRA owned property located along Foresteria Drive, behind the 700 block of Park Avenue. A copy of the agreement is attached hereto and incorporated in the Agenda.


Section 3. This Resolution shall become effective immediately upon execution.

The foregoing Resolution was offered by Commissioner Michaud, who moved its adoption. The motion was seconded by Commissioner Linden and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>/</u>	<u> </u>
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	<u> </u>
COMMISSIONER ERIN FLAHERTY	<u>/</u>	<u> </u>
COMMISSIONER JOHN LINDEN	<u>/</u>	<u> </u>
COMMISSIONER ROGER MICHAUD	<u>/</u>	<u> </u>

The Town Commission thereupon declared the foregoing Resolution No. 74-10-20 duly passed and adopted this 21 day of October, 2020.

TOWN OF LAKE PARK, FLORIDA

BY: 
MICHAEL O'ROURKE
MAYOR

ATTEST:


VIVIAN MENDEZ
TOWN CLERK

Approved as to form and legal sufficiency:

BY: 
THOMAS J. BAIRD
TOWN ATTORNEY



DESIGN BUILD AGREEMENT FOR THE CRA PARKING LOT PROJECT

This Agreement for the design and construction of a new surface public parking lot (Agreement) is made by and between the **TOWN OF LAKE PARK**, with an address of 535 Park Avenue, Lake Park, Florida, 33403 (the "Town") and **WEST CONSTRUCTION, INC** (the "Firm"), with a principal address of 820 N. 4th Street, Lantana, FL, 33462.

SECTION 1 - SCOPE OF SERVICES FOR CRA PARKING LOT PROJECT

The Firm shall perform all services regarding the engineering design, permitting, and construction of the property owned by the Town of Lake Park's Community Redevelopment Agency (CRA) into a surface parking lot (the Project) as more fully described below.

The Firm shall design and construct the Project, on an approximate 1.32 acre site owned by the Town, located along Foresteria Drive south of the 700 Block of Park Avenue. The parking lot design is more fully described in the Design Criteria Bid Package, which is incorporated herein by reference. The intent of the Project is to maximize the number of available parking spaces while also incorporating parking lot lighting, and drainage. The drainage plan shall wholly or in part integrate green Infrastructure, such as bio-swales, pervious pavement, etc., and any other elements recommended by the Town for the Project. A conceptual schematic of the parking lot layout is attached hereto and incorporated herein as Exhibit A..

The Firm shall complete all necessary engineering, architectural, or other design work reasonably necessary to effectuate the construction of a surface parking lot, including but not limited to all necessary permitting, site plan approvals, surveying, land clearing, geotechnical, utility coordination, and complete construction. The Firm shall deliver to the Town a "turn-key" surface parking lot that is constructed in accordance with all applicable local, state, and federal regulations, and which provides a completely finished product that will be immediately available for public use

Section 2 - GUARANTEED MAXIMUM COST OF THE PROJECT

The Firm guarantees a maximum cost (GMC) for this Project of an amount not to exceed \$724,285.00 to design and construct the Downtown CRA Parking Lot in accordance with the Scope of Work described in Section 1. The GMC includes all necessary engineering, architectural, or other design services reasonably expected to be needed to effectuate the construction of a surface parking lot, including but not limited to all necessary permitting, drawings, plans, site plan approvals, surveying, land clearing, geotechnical, utility coordination, and the complete construction of the Project.

Section 3- ASSUMPTIONS:

The work described herein (the Work) for the Project is based upon the assumptions listed below. If conditions differ from the assumptions herein in a manner that affects the schedule for the completion of the Work, the Firm shall provide the Town with written notice of the any adjustment it is believes to be necessary at least two weeks in advance of making any adjustments. The adjustment shall not result in an adjustment in the GMC of the Project. Any changes in the completion schedule shall be subject to the approval of the Town. Other related key assumptions include:

1. The Town shall provide the Firm with the Town's available record drawings of the existing facilities which are the basis of design in the Project within 14 calendar days of the Notice to Proceed (NTP). The drawings to be provided shall include any site and drainage plans the Town has for those adjacent developed properties.

2. The Town shall provide for the firm the Town's Contract documents in electronic format.
3. The Town shall prepare the Contract Documents} as a single contract. No pre-purchase of materials and/or equipment is presumed.
4. The Project design shall comply with all federal, state and local codes and standards in effect from the beginning and through the end of the Project. Revisions required for compliance with any subsequent changes to those regulations are not included in the Scope of Work and shall be considered an Additional Services Item only if approved by the Town.
5. The Town shall be responsible for the cost of any published notices required for the Project.
6. The Firm shall apply, pay for and obtain all permits which are required for the Project.

SECTION 4- COMPLETION SCHEDULE

Project Schedule

SEE REVISED SCHEDULE ATTACHED

The Firm shall complete the Project and provide the indicated deliverables in accordance with the following schedule:

SEE REVISED SCHEDULE
ATTACHED

SEE REVISED SCHEDULE
ATTACHED

5. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE SERVICES

Time is of the essence, and the Firm shall timely perform the Scope of Services in compliance with the Project schedule, unless amended by a writing executed by both parties. If the Firm is delayed by any act, failure to act or neglect of the Town, or any separate consultant or contractor hired directly by the Town, or by occurrences beyond the control and without any fault or negligence of the Firm, the firm shall provide a written notice of the reasons for the delay to the Town, within five working days of the date the delay began. Provided the Firm has timely notified the Town of such delay, and the Town determines the delay was reasonable, the Parties shall execute a written amendment to the schedule. This extension of time shall be Firm's sole and exclusive remedy which it shall have against the Town for any delay the Firm attributes to the Town, or any consultant or contractor directly hired by the Town.

The Firm acknowledges responsibility for any delay damages suffered by the Town as a result of the Firm's negligence, or reckless or intentional wrongful actions or inactions. In the event that the Town suffers or reasonably believes that it will suffer any delay damages due to the foregoing, the Town, in its sole reasonable discretion, shall have the right to terminate this Agreement upon five day's written notice. Such termination shall not be construed to constitute a breach of this Agreement by the Town. In the event of delay, the Firm shall be subject to the payment of liquidated damages in amount of \$1,200.00 for each

day of delay of a deliverable beyond the date for completion as set forth in the Completion Schedule as set forth in Section 4.

SECTION 6 - PROFESSIONAL SERVICES FEE & ADMINISTRATIVE EXPENSES

6.1. Professional Services Fee Schedule.

The fee for all professional services charged by the Firm (Fee) shall not exceed that which is set forth in the Scope of Work in Section 1 for the Project, and shall not exceed the Fee Schedule established herein. Any fees for any additional work that is not included in the original scope of work set forth in Sections 1 and 4 must be approved by the Town after its receipt and review of a proposed scope of work for additional professional services to be provided by the Firm.

6.2 Invoices.

6.2.1 All invoices must identify the Town PO number. Invoices shall be submitted directly to:

Town of Lake Park
Finance Department
Accounts Payable
535 Park Avenue
Lake Park, FL 33403

6.2.2 Invoices shall show the actual hours worked, person performing services, services performed and/or deliverable provided, hourly rate, and dates(s) of service. Invoices requesting reimbursement of expenses shall include written documentation of the expenses, and shall be subject to the approval of the Town.

6.2.3 Invoices for lump sum type work shall be accompanied by a status report describing the activities and the services performed. The payment request amount shall be related to the percentage of the total services completed.

6.2.4 Invoices received from the Firm pursuant to this Agreement shall be subject to the prior approval of the Town to confirm that the services were rendered in conformity with the Agreement.

6.3 Payment.

6.3.1 The Fee shall be paid within 30 days of the Town's receipt of deliverables which are satisfactory to the Town and the receipt of a proper invoice from the Firm.

6.3.2 Payment of Fees shall be made in accordance with the Prompt Payment Act, Section 218.70, Florida Statutes, as amended.

6.3.3 The Town has the right to hold or partially pay the Firm, if for any reason the Firm failed to deliver the proper service and scope of work in a timely fashion based on the scope of work and schedule submitted and agreed on as a part of this Agreement.

6.3.4 No payment made under this Agreement shall be conclusive evidence of the performance of this Agreement by the Firm, either wholly or in part, and

no payment shall be construed to be an acceptance of, or to relieve Firm of liability for the defective, faulty or incomplete rendition of the Professional Services.

SECTION 7 - TERM

- 7.1 This Agreement shall commence as of the date of full execution of this Agreement by the parties. The term of this Agreement shall continue in force until completion of the Professional Services related to the Project as set forth in this Agreement, unless terminated by either party pursuant to the termination provisions in this Agreement, or by the mutual consent of the parties.
- 7.2 It is agreed that the indemnity provisions, insurance provisions, the right to audit and all covenants, agreements, representations and warranties made in this Agreement or otherwise made in writing by the Firm, including but not limited to any representations made relating to disclosure or ownership of documents, shall survive the expiration or termination of this Agreement.

SECTION 8 - ESTIMATED CONSTRUCTION COSTS OF DESIGN

The Estimated Construction Cost of the Project are based upon the design services set forth hereinabove and the complete construction, and itemization of each of the following:

- a. Cost to construct, including all labor, materials and equipment required; including but not limited to, an estimated statement of proposed hourly rates and labor costs by job classification; general conditions, bonds and insurance, etc.;
- b. Allowance for construction cost contingencies;
- c. Allowance for other necessary services, such as materials testing, to be provided by others for the Town;
- d. Traffic Control;
- e. Hard and soft copies of the final approved plans
- f. Video Taping Inspections, when applicable;
- g. Mobilization and demobilization

SECTION 9 - REPRESENTATIONS OF THE CONSULTANT

- 9.1 **Authority.**
The Firm hereby represents and warrants to the Town that it has full power and authority to enter into and fully perform its obligations under this Agreement without the need for any further corporate or governmental consents or approvals and that the persons executing this Agreement are authorized to execute and deliver it.
- 9.2 **Duly Licensed.**
The firm represents that it is duly licensed to perform the Professional Services under this Agreement and that it will continue to maintain all licenses and approvals required to conduct its business.
- 9.3 **No Solicitation.**
The Firm warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person,

company, corporation, individual, or firm, other than a bona fide employee working solely for the Firm, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach or violation of this provision by the Firm, the Town shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the Fee, or otherwise recover, the full amount of such Fee, commission, percentage, gift, or consideration.

9.4 Public Entity Crimes Act.

The Firm represents that by its execution of this Agreement it has not violated the Public Entity Crimes Act (Section 287.133, Florida Statutes), and certifies that neither the firm nor any of its parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives, or sub-consultants have been, or are presently debarred, proposed for debarment or declared ineligible to bid or participate in any federal, state or local government agency projects and are not listed on the Florida convicted Consultant list. Violation of this section may result in termination of this Agreement and recovery of all monies paid by the Town to the Firm, and may result in debarment from Town's competitive procurement activities.

9.5 Standard of Care.

The standard of care for all Professional Services performed or furnished by the Firm under this Agreement shall be the care and skill ordinarily used by members of the Firm or the professionals retained by the Firm under similar circumstances.

9.6 Warranty of Design and Constructability

The Firm hereby represents to Town that where the Professional Services include the development of Construction Drawings, Technical Specifications and Supplemental Conditions, pertaining and the construction of to the Project, to the best of firm's knowledge, information and belief, the Professional Services: (i) are and shall have been prepared and designed in accordance with generally accepted architectural and engineering, FDOT design standards, as applicable, and generally accepted industry standards; and (ii) that the Project is constructible pursuant to these Construction Drawings, Technical Specifications and Supplemental Conditions. Without waiver of Town's other rights and remedies, the Firm warrants that the Town may require it to perform again, at the Firm's sole cost and expense, any design services which were not performed in accordance with the design and constructability standards set forth in this Agreement.

The Firm hereby waives any claims which it may have or assert against the Town with respect to this section, except and unless any failure of the Firm to perform, in whole or in part, is due to the action or inaction of the Town. Without limiting any other remedy available to Town, the Firm shall furnish at its own expense any redesign or revisions to the Construction Documents, Technical Specifications and Supplemental Conditions necessary to correct any negligent or material errors, omissions, failures or deficiencies in such documents, and shall, at its sole cost and expense, correct any work performed in accordance with deficient documents. The Town's review or approval of, or payment for, any Professional Services or deliverables under this Agreement and resulting work authorizations shall not be construed as a waiver of any rights under this Agreement or any cause of action arising out of performance under this Agreement. This section shall survive the expiration or termination of this Agreement.

9.7 Ethics Provisions; No Conflicts of Interest.

The Firm represents that it has not given or accepted a kickback in relation to this Agreement and has not solicited this Agreement by payment or acceptance of a gratuity or offer of employment.

The Firm represents that it has not solicited this Agreement by payment of a gift or gratuity or offer of employment to any official, employee of the Town or any Town employee or selection committee.

The Firm represents that it does not employ, directly or indirectly, the Mayor, members of the Town Commission or any appointed Town official, department director, employee, or member of any Town board, committee or of the Town's CRA.

The Firm represents that it does not employ, directly or indirectly, the Mayor, members of the Commission, or any appointed Town official, department director, employee or member of any board, committee or of the Town CRA who, alone or together with his household members, own at least 5% of the total assets and/or common stock of the firm.

The Firm represents that it has not knowingly given, directly or indirectly, any gift with a value greater than \$100 in the aggregate in any calendar year to the Mayor, members of the Town Commission, any appointed Town official, department director, employee, or any member of a board that provides regulation, oversight, the management or policy-setting recommendations regarding the Firm or its business.

The Firm represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance under this Agreement. The Firm further represents that no person having any such interest shall be employed or engaged by it to provide Professional Services.

The Firm, its officers, personnel, subsidiaries, and subcontractors shall not have or hold any continuing or frequently recurring employment, contractual relationship, business association, or other circumstance which may influence or appear to influence Firm's exercise of judgment or quality of the Professional Services being provided under this Agreement. The Firm, its officers, personnel, subsidiaries and subcontractors shall not perform consulting work for any third party that would in any way be in conflict with the Professional Services to be provided to the Town under this Agreement.

The Firm, its officers, personnel, subsidiaries, and subcontractors shall not, during the term of this Agreement, serve as an expert witness against Town in any legal or administrative proceeding unless compelled by the court process. Further, the Firm agrees that 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 Town or in connection with any pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

The Firm shall promptly notify the Town in writing by certified mail of all potential conflicts of interest or any event described in this Section. Said notification shall

identify the prospective business interest or circumstance and the nature of work that the Firm intends to undertake and shall request the opinion of the Town as to whether such association, interest or circumstance would, in the opinion of the Town, constitute a conflict of interest if entered into by the firm. The Town agrees to notify the Firm by certified mail of its opinion within 30 calendar days of receipt of the said notification and request for opinion. If, in the opinion of the Town, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Firm, the Town shall so state in its opinion and the Firm may, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the Town by the firm under this Agreement.

In the event the Firm is permitted to utilize subcontractors to perform any services required by this Agreement, the Firm agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

9.8 Lobbying Certification.

The Firm certifies to the best of its knowledge and belief that no federal or state grant funds or other resources received in connection with this Agreement will be used directly or indirectly to influence legislation or any other official action by a member of Congress, a member of the Florida Legislature or any state agency.

9.9 Truth in Negotiation Statement

Signature of this Agreement by the authorized representative of the Firm serves as the execution of a truth-in-negotiation certificate certifying that the compensation and hourly rates and other expenses or costs to be compensated under this Agreement are accurate, complete and current at the time of contracting. The Fee and expenses payable under the Agreement shall be adjusted to exclude any significant sums should the Town determine that the Fee, expenses, or costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to sub-consultants or sub-contractors. Any such agreement adjustments shall be made within one year following the expiration or termination of this Agreement.

9.10 Financial Capability

The Firm certifies that it has not filed for bankruptcy in the past five years and is financially able to provide Professional Services under this Agreement. The Firm further warrants and represents that it has no obligation or indebtedness that would impair its ability to meet the completion dates or schedules to be established by the Project Schedule and this Agreement.

9.11 No Felony or Fraud

The Firm certifies that neither it, nor any of its principals have been convicted of a felony or fraud.

SECTION 10 - RESPONSIBILITIES OF THE TOWN

10.1 Designation of Representative

The Town agrees to designate an individual to act as the Town's representative with respect to the Professional Services and construction to be rendered under this Agreement and any specific work authorization(s), provided that such representative shall not have the authority to amend or modify this Agreement. Such person shall have only the authority to transmit instructions, receive information and interpret and define the policies and decisions of the Town concerning the Firm's Professional Services.

10.2 Specification of Town Requirements

The Town agrees to provide information as to the Town's requirements for the task or assignment under a work authorization, including design objectives and constraints, space, Town and performance requirements, flexibility and expendability and budgetary limitations.

10.3 Items to be furnished upon the Firm's Request

The designated representative of the Town shall use reasonable efforts to provide to the Firm, upon the Firm's request, the following information, along with previous reports or studies and any other data relative to the design or construction of a Project. The Town makes no representation that any such data or documents provided by the Town are accurate or reliable.

1. Data prepared by others relevant to the Project;
2. Appropriate professional interpretations of data prepared by others relevant to the Project;
3. Environmental assessment and impact statements;
4. Property, boundary, easement, right-of-way, topographic and utility surveys;
5. Property descriptions; and
6. Zoning, deed and other land-use restrictions

10.4 Access to Property

The Town agrees to arrange for access to and make all provisions for Firm to enter Town property as required for Firm to perform the Professional Services of this Agreement.

10.5 Attendance at Meetings

Upon request, a Town representative shall attend regularly scheduled Project progress meetings at the Town's local office, as well as substantial completion inspections and final inspections. The Firm's Project Manager, shall attend all regularly scheduled Project progress meetings at the dates and times established.

SECTION 11 - DOCUMENTS

11.1 Ownership of Documents.

All plans, drawings, calculation, construction documents, technical specifications, sketches, photographs, videos, illustrations, tracings, presentations of any kind, specifications, maps, computer files and/or studies or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, regardless of form or format, will be considered works made for hire and will become the exclusive property of the Town without restriction or limitation on their use and will be made available, upon request, to the Town at any time during the performance of the Professional Services and/or upon completion or termination of this Agreement. Upon delivery to the Town of said document(s), the Town shall be the custodian thereof in accordance with Chapter 119, Florida Statutes. The Firm shall not copyright any material and products or patent any invention developed under this Agreement. The consultant waives explicitly and releases all rights which the Firm may have in the materials, products or invention pursuant to 17 U.S.C. §§106A and 113(d). The Firm acknowledges and affirms that pursuant to 17 U.S.C. §106A(e) such waiver and release shall be effective as to any and all uses foreseeable and unforeseeable for which such materials, products or invention might be subject. The Firm waives and assigns to Town all copyrights under 17 U.S.C. §101, et seq., and all other rights in the materials, products, invention and any work

produced. Any reuse of the Firm's prepared documents by the Town, except for the specific purpose intended under this Agreement, shall be at Town's sole risk and without liability or legal exposure to Firm or its sub-consultants.

11.2 Obligation to Furnish Documents to the Town

The Firm shall deliver to the Town for approval and acceptance, and before being eligible for final payment of any amounts due under this Agreement, all documents and materials prepared for the Town in connection with this Agreement, such as but not limited to (Asbuilts, Final Invoice, Final release of liens from the Firm and Subcontractors.....etc)

SECTION 12 - STANDARD TERMS AND CONDITIONS

12.1 Consultants Competitive Negotiation Act

The parties confirm that the procurement of the Professional Services under this Agreement was the subject of the competitive selection and negotiation processes mandated by Section 287.055, Florida Statutes, unless specifically exempted therefrom.

12.2 Personnel; Staffing; Sub-consultants

Independent Contractor Relationship. All persons employed by the Firm and engaged in any of the work or Professional Services performed by the Firm pursuant to this Agreement shall at all times be subject to the Firm's sole direction, supervision, and control. The Firm shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Firm's relationship and the relationship of its employees to the Town shall be that of an independent contractor and not as employees or agents of the Town. The Firm does not have the power or authority to bind the Town in any promise, agreement or representation other than as may be specifically provided for in this Agreement. The Firm shall be responsible to the Town for all Professional Services or work performed by the Firm or any person or Firm engaged as a sub-consultant or subcontractor to perform work in fulfillment of this Agreement.

Personnel. The Firm represents that its project manager and all staff identified in the Firm's Proposal shall remain assigned to the Project, unless specifically released by the Town. All personnel engaged in performing the Professional Services shall be fully qualified and, if required, licensed or permitted under all applicable federal, state and local laws and regulations to perform such services. The Firm specifically acknowledges that its employees are not be covered by the Town's workers' compensation insurance and the Firm shall be solely and exclusively responsible for payment of all federal and state income, social security, unemployment and disability taxes due in respect of all compensation and/or other consideration paid by the Town to the Firm under this Agreement.

Non-Discrimination by Consultant. The Firm warrants and represents that all of its employees and applicants for employment are and have been treated equally without regard to race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation, and that in providing services, The Firm does not discriminate with regard to any of the aforementioned factors.

Unauthorized Aliens/Patriot's Act. The knowing employment by the Firm or its sub- contractors of any alien not authorized to work by the immigration laws or the Attorney General of the United States is prohibited and shall constitute a

default of this Agreement which may result in its unilateral termination by the Town. In the event that the Firm is notified or becomes aware of such default, the Firm shall take steps as are necessary to terminate said employment with 24 hours of notification or actual knowledge that an alien is being employed. The Firm's failure to take such steps as are necessary to terminate the employment of any said alien within 24 hours of notification or actual knowledge that an alien is being employed shall be grounds for immediate termination of this Agreement and unilateral termination. The Firm shall take all commercially reasonable precautions to ensure that it and its sub-consultants do not employ persons who are not authorized to work by the immigration laws or the Attorney General of the United States. Consultant further represents that it is not in violation of any laws relating to terrorism or money laundering, including the Executive Order No. 13224 on Terrorist Financing and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56., the "Patriot Act").

Selection of Sub-Contractors. The Firm shall obtain the prior written approval of the Town as to each proposed sub-Contractor and the Town reserves the right to reject the selection of a particular sub-consultant or Sub-Contractors and to inspect all facilities of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Agreement. If it becomes necessary to replace a particular sub-consultant to complete its part of the services, the Firm shall promptly do so, subject to the prior written approval and acceptance of the new sub-consultant by the Town, which approval shall not be unreasonably withheld.

12.3 Compliance with Laws.

In the conduct of Professional Services under this Agreement, the Firm shall comply in all material respects with all applicable federal and state laws and regulations and all applicable County and Town ordinances and regulations.

12.4 State Taxes.

The Firm understands that in performing the Professional Services for the Town, Firm is not exempt from paying sales tax to the Firm's suppliers for materials required for the Firm to perform under this Agreement. The Firm shall not be authorized to use the Town's tax exemption number for purchasing supplies or materials.

12.5 Availability of Funds

This Agreement is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of the Town. If funding for this Agreement is in multiple fiscal years, funds must be appropriated each year prior to costs being incurred. Nothing in this paragraph shall prevent the making of agreements with a term of more than one year, but any agreement so made shall be executory only for the value of the Professional Services to be rendered or paid for in succeeding fiscal years. In the event funds to finance this Agreement become unavailable, the Town may terminate this Agreement upon no less than 24 hours' notice to the Firm. The Town Commission shall be the sole and final authority as to the availability of funds.

12.6 Right to Audit.

The Firm shall maintain adequate records for the Professional Services performed under this Agreement, including (a) timesheets kept in a clear and orderly fashion used to substantiate the monthly invoices in accordance with generally accepted accounting principles, and (b) adequate records to justify all charges, expenses

and costs in performing the Professional Services; and (c) copies of communications regarding the performance of its obligations under this Agreement, for five years following completion of the Services, or conclusion of any litigation regarding this Agreement. The Town shall have the right to audit the Firm's books and records, at the Town's expense, upon prior notice, with regard to the Services provided to the Town under this Agreement. The Firm shall allow the Town or its representative to interview all current or former employees to discuss matters pertinent to this Agreement. If an audit inspection in accordance with this section discloses overpricing or overcharges (of any nature) by the Firm to the Town in excess of one-half of one percent (.5%) of the total contract billings, (1) the reasonable costs of the Town's Internal Audit department shall be reimbursed to the Town by the Firm and (2) a 15% penalty of the overpricing or overcharges shall be assessed. Any adjustments and/or payments which must be made as a result of the audit inspection, including any interest, audit costs and penalties shall be made by the Firm within 45 days from presentation of Town's findings to the Firm. Failure by the Firm to permit such audit shall be grounds for termination of this Agreement by the Town, in case of such an event, the Town shall be entitled to select another Consultant Firm and charge back the Firm under this agreement for any additional differences in cost to complete the project.

12.7 Public Records Law

With respect to public records, the Contactor/ Vendor is required to:

#.1 Keep and maintain public records required by the Town to perform the service.

#.2 Upon the request of the Town's custodian of public records, provided the town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.

#.3 Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the term of this Agreement, and following completion of this Agreement if the Contactor/Vendor does not transfer the records which are part of this Agreement to the Town.

#.4 Upon the completion of the term of the Agreement, transfer, at no cost, to the Town all public records in possession of the Contactor/Vendor; or keep and maintain the public records associated with the services provided for in the Agreement. If the Contactor/Vendor transfers all public records to the Town upon completion of the term of the Agreement, the Consultant/Vendor shall destroy any duplicate public records that are exempt or confidential from public records disclosure. If the Contractor/Vendor keeps and maintains public records upon completion of the term of the Agreement, the Contractor/Vendor shall meet all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

#.5 IF THE CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTACTOR/VENDOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: TOWN CLERK, 535 Park Avenue, Lake Park, Florida 33403, 561-881-3311, townclerk@lakeparkflorida.gov

12.8 **Confidentiality**

The Firm agrees that it will make no statements, press releases or Town releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Town and securing its written consent.

12.9 **No Pledge**

The Firm shall not pledge the Town's credit or attempt to make the Town a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any other form of indebtedness.

12.10 **Insurance.**

The Firm shall purchase from and maintain, in a company or companies lawfully authorized to do business in Florida, such insurance as will protect the Town from claims set forth below which may arise out of or result from performance under this Agreement by the Firm, or by a subcontractor of the Firm, or by anyone directly or indirectly employed by the Firm, or by anyone for whose acts the Firm may be liable.

Coverage shall be maintained without interruption from the effective date of this Agreement until date of final payment and termination of any coverage required to be maintained after final payment. Any liability coverage on claims made basis shall remain effective for five years after final payment. If any of the required insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted along with the application for final payment.

The Town shall be provided a minimum of 30 days prior written notice of any adverse material change, including any reduction, non-renewal or cancellation of Contractor's required insurance coverage, or any increase in the Firm's self-insurance retention.

Evidence of insurance, being a current ACORD certificate of insurance or its equivalent, executed by the insurer, or its agent or broker, evidencing that a policy of insurance and any required endorsements have been issued by the agent/broker shall be delivered to Town prior to execution of this Agreement. The Certificate of Insurance shall be dated and show the name of the insured, the specific Project or work authorization by name, the name of the insurer, the number of the policy, its effective date, and its termination date.

Additional Insureds. All required insurance (except Worker's Compensation and Professional Liability) shall include an Additional Insured endorsement identifying the Town, its elected commissioners, appointed officers, employees and agents, as Additional Insureds. No costs shall be paid by the Town for an additional insured endorsement.

Required Coverage: The Firm shall maintain the following liability coverage at all times during the term of this agreement, in the limits specified below:

Comprehensive General Liability: Not less than \$1,000,000.00 Combined Single Limit per each occurrence and \$2,000,000 aggregate. May not be subject to self-insured retention or deductible exceeding \$25,000.

Automobile Liability: Not less than \$1,000,000.00 Combined Single Limit per occurrence for bodily injury and property damage. May not be subject to a self-

insured retention or deductible exceeding \$10,000.

Worker's Compensation: Worker's Compensation and Employer's Liability Insurance with limits of Employer's Liability Insurance not less than \$500,000 "each accident," \$500,000 "disease policy limit," and \$500,000 "disease each employee."

Professional Liability or Errors and Omissions: Not less than \$2,000,000 per claim, including appropriate prior acts coverage for the period of time the Consultant provided services to the Town. Self-insured retentions or deductibles should not exceed \$50,000.00 for written agreements or contracts with the Town with a value of less than \$1,000,000; and \$100,000 for contracts with a value of \$1,000,000 or more..

Insurance of Sub consultants. The Firm shall contractually require and verify that its sub- consultants will maintain during the term of their agreement, the above types of insurance, in coverage amounts acceptable to the Town.

Anything to the contrary notwithstanding, the liabilities of the Firm and any sub-consultants under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages.

- 12.11 Firm agrees to indemnify and hold harmless the Town, its elected and appointed officials, officers, agents and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Firm and any other persons, sub-consultants; Sub-Contractors employed or utilized by the Firm in provision of the Professional Services under this Agreement. To the extent considered necessary by the Town, any sums due to the Firm under this Agreement may be retained by Town until all of Town's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by Town. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This paragraph shall not be construed to require Firm to indemnify the Town for its own negligence, or intentional acts of the Town, their agents or employees. PURSUANT TO F.S. SEC. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD LIABLE FOR NEGLIGENCE.

Nothing in this Agreement shall be deemed to be a waiver of the Town's sovereign immunity under Section 768.28, Florida Statutes. This clause shall survive the expiration or termination of this Agreement.

12.12 **Force Majeure**

Any deadline provided for in this Agreement may be extended, as provided in this paragraph, if the deadline is not met because of one of the following conditions occurring with respect to that particular project or parcel: fire, strike, explosion, power blackout, earthquake, volcanic action, flood, war, civil disturbances, terrorist acts, hurricanes and acts of God. When one of the foregoing conditions interferes with agreement performance, then the party affected may be excused from performance on a day-for-day basis to the extent such party's obligations relate to the performance so interfered with;

provided, the party so affected shall use reasonable efforts to remedy or remove such causes of non-performance. The party so affected shall not be entitled to any additional compensation by reason of any day-for-day extension hereunder.

12.13 Termination

Either party may terminate this Agreement for cause in the event that: (1) the other party violates any material provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of its obligations hereunder, upon advance written notice to said defaulting party five calendar days prior to termination. As a condition precedent to termination for cause, the defaulting party shall have the right to cure within 30 days unless another time frame is otherwise agreed to by the parties.

In the event this Agreement is terminated by the Town for cause, the Town may take over the Professional Services and complete them by contracting with another firm(s) or otherwise, and in such event, the Firm shall be liable to the Town for any additional cost incurred by the Town due to such termination. "Additional Cost" is defined as the difference between the actual cost of completion of such incomplete Professional Services and the cost of completion of such Professional Services which would have resulted from payments to the Consultant had this Agreement not been terminated.

The Town shall have the right to terminate this Agreement, in whole or in part, without cause, and for its convenience, upon five days written notice to the Firm. The Firm shall have no right to terminate this Agreement for convenience.

Upon termination, the Firm shall immediately assemble and deliver all documents, drawings, signed and sealed drawings, Construction Documents, Technical Specifications, GADD files, calculations, specifications, correspondence, testing and materials information, warranties, manuals, written information, electronic data and all other materials in its possession concerning the Professional Services under this Agreement and Town projects to the Town.

In the event of termination, the Firm, upon receipt of the notice of such termination, shall:

(1) stop the performance of the Professional Services on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts except as may be necessary for completion of any portion(s) of the Professional Services not terminated and as authorized by the written notice; (3) terminate all orders and subcontracts to the extent that they relate to the performance of the Professional Services terminated by the notice of termination; (4) release any liens or notices which may have been recorded against the property to the Town and deliver title according to the manner, at the times, and to the extent directed by the Town, all property purchased under this Agreement and reimbursed as direct items of cost and not required for completion of the services not terminated; (5) promptly assemble and deliver as provided above all documents related to this Agreement; (6) promptly complete performance of any Professional Services not terminated by the notice of termination and/or cooperate in transition of its consulting duties to appropriate parties at the direction of the Town.

In the event of termination, the Town shall compensate the Firm for all authorized Professional Services satisfactorily performed through the termination date, under the payment terms contained in this Agreement. In the event of Termination for Cause, no payments to the Firm shall be made (1) for

Professional Services not satisfactorily performed and (2) for assembly of and submittal of documents as required under this Agreement. In no event shall Town be obligated to compensate the Firm for lost profits, or any resulting or consequential damages.

Upon termination, this Agreement shall have no further force or effect and the parties shall be relieved of all further liability under this Agreement, except that the provisions of this section and the provisions regarding termination, the right to audit, property rights, insurance, indemnification, governing law and litigation shall survive termination of this Agreement and remain in full force and effect.

12.14 Communications and Notice

All written notices, demands and other communications required or provided for under this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, in the case of mailing, or by overnight or same day courier, or by electronic transmission producing a written record, or hand delivered to the appropriate parties.

12.15 Governing Law; Venue; Attorney Fees

This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with the laws of Florida without regard to conflicts of law provisions. The Town and the Firm agree that proper venue for any suit concerning this Agreement shall be Palm Beach County, Florida, or, if a federal court claim in the United States District Court, Southern District of Florida. The Firm agrees to waive all defenses to any suit filed in Florida based upon improper venue or forum of no convenience. In the event of litigation regarding the Agreement, the prevailing party shall be entitled to its reasonable costs and attorney fees.

12.16 Remedies

No remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy granted by this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy shall preclude any other or further exercise thereof.

12.17 Inspector General.

The Firm 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 Agreement, and may demand and obtain records and testimony from the Firm and its subcontractors and lower tier subcontractors. The Firm understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the Firm or its subcontractor or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the Town to be a material breach of this Agreement justifying its termination.

12.18 Waiver.

Any waiver by either party of any one or more of the covenants, conditions, or provisions of this Agreement, shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Agreement.

Nothing in this Agreement shall be interpreted to constitute a release of the

responsibility and liability of the Firm, its employees, sub-contractors, agents and sub-consultants for the accuracy and competency of their designs, working drawings, Construction Documents, Technical Specifications, Supplemental Conditions or other documents and works, nor shall any approval by the Town be deemed to be an assumption of such responsibility by the Town for a defect or omission in designs, Construction Documents, Technical Specifications, Supplemental Conditions or other documents prepared by the Consultant, its employees, agents or sub-consultants.

12.19 Headings.

The headings contained in this Agreement are provided for convenience only and shall not be considered in construing, interpreting or enforcing this Agreement.

20.20 Counterparts; Digital Signatures.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same instrument. The parties to this Agreement may agree to execute this Agreement, and all subsequent amendment or modifications to it, by electronic means.

20.21 Severability of Provisions.

In the event that any term or provision of this Agreement shall to any extent be held invalid or unenforceable, it is agreed that the remainder of this Agreement, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the maximum extent permitted by law.

12.22 Assignment.

This Agreement may not be assigned by the Firm without the written authorization of the Town after Town's determination of the ability of the assignee to perform the Professional Services.

12.23 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

12.24 Entire Agreement; Controlling Provisions; Amendment

The Firm submitted its Proposal dated July 15, 2020 (the "Proposal") in response to the Request for Qualifications No. 107-2020 issued by the Town (the "RFP").

This Agreement, and the Firm's Proposal are incorporated into this Agreement in their entirety, and embody the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter.

Except as otherwise specifically provided in this Agreement, in the event of any conflict between the specific provisions of this Agreement and the requirements

or provisions of the RFP and/or Proposal, the provisions shall be given precedence in the following order:

- (1) This Agreement,
- (2) The RFP; and
- (3) The Proposal. Wherever possible, the provisions of the documents shall be construed in such manner as to avoid conflicts between provisions of the various documents.

This Agreement may only be modified by written amendment executed by the Town and the Firm. Any amendments to this Agreement: (1) shall be subject to the mutual written agreement of the parties; (2) shall be in the form of numbered amendments; (3) shall be executed by both parties; and, (4) shall become part of the public records of the Town. It is expressly understood, moreover, that no oral discussions, assents or representations shall constitute an enforceable amendment to this Agreement unless it is reduced to writing in accordance with this paragraph.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have made and execute this Agreement as of the day and year last execute below.

ATTEST:

By: *Vivian Mendez* TOWN OF LAKE PARK
Vivian Mendez, Town Clerk By: *Michael O'Rourke*
Michael O'Rourke, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

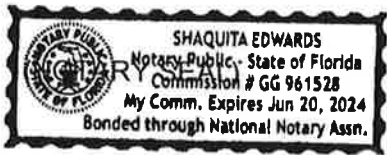
By: Thomas J. Baird, Town Attorney

Thomas J. Baird
FLORIDA

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this 12th day of October 2020 by Michael O'Rourke, Mayor of the Town of Lake Park, and who is personally known to me.



Shaquita Edwards
Notary Public, State of Florida

WITNESSES:

By: *Aurora Vega*
Aurora Vega
Printed Name

WEST CONSTRUCTION, INC.

By: *Matthew F. West*
Matthew F. West
Printed Name

By: *Sandra Gutierrez*
SANDRA GUTIERREZ
Printed Name

See revised timeline

25-Sep-20

RFP No. 107-2020 Design and Build of Downtown Lake Park CRA Parking Lot Project

Activity ID	Activity Name	Original Duration	Start	Finish	2020	2021	2022
1	CRA Parking Lot Durations	1716	26-Oct-20	28-Jul-21			
2	0001 DESIGN PHASE DURATION (CALENDAR DAYS)	1546	26-Oct-20	30-Mar-21			
3	0002 OVERALL CONTRACT DURATION (CALENDAR DAYS)	2748	26-Oct-20	30-Mar-21			
4	0003 CONSTRUCTION PHASE DURATION (CALENDAR DAYS)	1204	31-Mar-21	28-Jul-21			
5	CRA Parking Lot Milestones	844	31-Mar-21	28-Jul-21			
6	0004 MILESTONE CONSTRUCTION START	04	31-Mar-21				
7	0005 MILESTONE SUBSTANTIAL COMPLETION	04		28-Jul-21			
8	CRA Parking Lot Design	1076	28-Oct-20	30-Mar-21			
9	0006 NOTICE OF AWARD (CALENDAR DAYS)	04	28-Oct-20	03-Feb-21			
10	0007 GEOTECHNICAL & SURVEY (CALENDAR DAYS)	148	29-Oct-20	24-Nov-20			
11	0008 OWNER REVIEW (50%) (CALENDAR DAYS)	74	09-Dec-20	05-Dec-20			
12	0009 CONSTRUCTION DOCUMENTS 50% (CALENDAR DAYS)	219	15-Dec-20	05-Jan-21			
13	0010 OWNER REVIEW (50%) (CALENDAR DAYS)	74	06-Jan-21	12-Jan-21			
14	0011 CONSTRUCTION DOCUMENTS 100% (CALENDAR DAYS)	74	13-Jan-21	14-Jan-21			
15	0012 OWNER REVIEW 100% (CALENDAR DAYS)	74	20-Jan-21	26-Jan-21			
16	0013 FINAL PERMIT SET (CALENDAR DAYS)	04	04-Feb-21	02-Feb-21			
17	0014 SUBMIT TO LAKE PARK BUILDING DEPARTMENT (CALENDAR DAYS)	749	09-Dec-20	13-Jan-21			
18	0015 SUBMIT TO DRG (CALENDAR DAYS)	04	08-Dec-20	08-Dec-20			
19	0016 COMMUNITY DEVELOPMENT REVIEW (CALENDAR DAYS)	214	08-Dec-20	29-Dec-20			
20	0017 SUBMIT TO COUNTY FOR PAVING/GRADING/IRRIIGATION APPROVAL (CALENDAR DAYS)	304	16-Dec-20	14-Jan-21			
21	0018 ADDRESS COMMUNITY DEVELOPMENT REVIEW #1 (CALENDAR DAYS)	144	30-Dec-20	13-Jan-21			
22	0019 ADDRESS COMMUNITY DEVELOPMENT REVIEW #2 (CALENDAR DAYS)	74	27-Jan-21	26-Jan-21			
23	0020 ADDRESS COMMUNITY DEVELOPMENT REVIEW #3 (CALENDAR DAYS)	564	03-Feb-21	07-Mar-21			
24	0021 ADDRESS COMMUNITY DEVELOPMENT REVIEW #4 (CALENDAR DAYS)	284	08-Feb-21	07-Mar-21			
25	0022 PLANNING & ZONING APPROVAL (CALENDAR DAYS)	284	17-Feb-21	16-Mar-21			
26	0023 TOWN COMMISSION	04		30-Mar-21			
27	0024 BUILDING DEPARTMENT APPROVAL (CALENDAR DAYS)	304	03-Feb-21	04-Mar-21			
28	0025 SHOP DRAWINGS & SUBMITTALS TO CITY	844	31-Mar-21	28-Jul-21			
29	0026 UTILITY LOCATES	94	31-Mar-21	12-Apr-21			
30	0027 SURVEY BOUNDARY LAYOUT	24	02-Apr-21	01-Apr-21			
31	0028 SILT FENCE & CATCH-BASIN PROTECTION	24	06-Apr-21	05-Apr-21			
32	0029 OFFICE TRAILER	11	07-Apr-21	07-Apr-21			
33	0030 WASH-OUT AREA	14	08-Apr-21	08-Apr-21			
34	0031 TREE PROTECTION (As Needed)	14	08-Apr-21	08-Apr-21			
35	0032 TEMPORARY TRAILERS (As Needed)	24	08-Apr-21	08-Apr-21			
36	0033 MGT SETUP/TEMP TRAILER & ADARAMP	24	08-Apr-21	12-Apr-21			
37	0034						

ALL ACTIVITIES IN WORK DAYS EXCEPT WHERE NOTED

Date Date: 28-Oct-20
Final Completion Date: 28-Jul-21

West Architecture + Design, LLC
West Construction, Inc.

Actual Level of Effort
Level of Effort
Actual Work
Remaining Work
Critical Remaining Work
Milestone
Summary

OLD
see revised
timeline

OLD
see revised
time line

25-Sep-20

RFP No. 107-2020 Design and Build of Downtown Lake Park CRA Parking Lot Project

# Activity ID	Agency Name	Original Duration	Start	Finish	2021	2022
					Oct	Nov
46	0035	2d	09-Apr-21	13-Apr-21		
47	0036	2d	13-Apr-21	17-Apr-21		
48	0037	5d	13-Apr-21	19-Apr-21		
49	0038	5d	20-Apr-21	26-Apr-21		
50	0039	2d	20-Apr-21	22-Apr-21		
51	0040	15d	27-Apr-21	12-May-21		
52	0041	4d	14-May-21	18-May-21		
53	0042	5d	11-May-21	16-May-21		
54	0043	5d	13-May-21	18-May-21		
55	0044	5d	17-May-21	22-May-21		
56	0045	10d	18-May-21	03-Jun-21		
57	0046	10d	21-May-21	06-Jun-21		
58	0047	5d	07-Jun-21	11-Jun-21		
59	0048	5d	14-Jun-21	19-Jun-21		
60	0049	10d	14-Jun-21	25-Jun-21		
61	0050	10d	21-Jun-21	02-Jul-21		
62	0051	5d	28-Jun-21	03-Jul-21		
63	0052	5d	05-Jul-21	10-Jul-21		
64	0053	7d	13-Jul-21	20-Jul-21		
65	0054	3d	20-Jul-21	23-Jul-21		
66	0055	3d	27-Jul-21	30-Jul-21		

West Architecture + Design, LLC
 West Construction, Inc.

Data Date: 28-Oct-20
 Final Completion Date: 28-Jul-21

ALL ACTIVITIES IN WORK DAYS EXCEPT WHERE NOTED

OLD
see revised
time line