

RESOLUTION NO. 78-11-18

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH SIMMONS AND WHITE, INC. FOR CONTINUING PROFESSIONAL ENGINEERING SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida (“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, pursuant to Florida Statutes; and

WHEREAS, in the course of providing service to its residents, the Town requires the services of professional engineering consultants on an as-needed basis; and

WHEREAS, pursuant to the Consultants Competitive Negotiation Act (CCNA) the Town issued a Request for Qualifications (RFQ) to solicit professional consulting firms to provide continuing engineering services; and

WHEREAS, on August 23, 2018, the Town received nine responses to its RFQ; and

WHEREAS, in its RFQ, the Town established five separate professional work categories; and

WHEREAS, on September 18, 2018, a Town Evaluation Committee ranked the nine responses for each of the five work categories, and Simmons and White, Inc. was a top ranked firm for Category B (Civil, Structural and Mechanical Systems Engineering; Surveying and Mapping Services) and Category C (Transportation Engineering); and

WHEREAS, Simmons and White, Inc. is qualified and able to provide the services described in Categories B and C; and

WHEREAS, the parties have agreed to a five year agreement with Simmons and White, Inc. for services to the Towns; and

WHEREAS, the 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 contract with Simmons and White, Inc.

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 Commission hereby authorizes and directs the Mayor to execute an agreement with Simmons and White, Inc. to provide Continuing Professional Engineering Services on an as-needed basis. The Mayor is hereby authorized and directed to execute the agreement between the Town and Simmons and White, Inc., a copy of which is attached hereto and incorporated herein as Exhibit "A".

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

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

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>Abstain</u>	_____
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	_____
COMMISSIONER ERIN FLAHERTY	<u>Abstain</u>	_____
COMMISSIONER ANNE LYNCH	<u>/</u>	_____
COMMISSIONER ROGER MICHAUD	<u>/</u>	_____

The Town Commission thereupon declared the foregoing Resolution NO. 78-11-18 duly passed and adopted this 7 day of November, 2018.

TOWN OF LAKE PARK, FLORIDA

BY: Kimberly Glas-Castro
~~MICHAEL O'ROURKE~~ Kimberly Glas-Castro
Vice-MAYOR

ATTEST:

Vivian Mendez
VIVIAN MENDEZ
TOWN CLERK



Approved as to form and legal sufficiency:

BY: Thomas L. Baird
THOMAS L. BAIRD
TOWN ATTORNEY

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Michael O'Rourke, hereby disclose that on November 7th, 20 18:

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, Connor O'Rourke, son;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

My son works for Simmons and White and I therefore advise of a voting conflict potential.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

11/7/18

Date Filed



Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONTINUING PROFESSIONAL SERVICES**

This Professional Services Agreement (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 **SIMMONS AND WHITE, INC.** (the "Consultant"), a Florida Corporation with a principal address of 2581 Metrocentre Boulevard West, Suite 3, West Palm Beach, Florida, 33407.

SECTION 1 - SCOPE OF SERVICES FOR CONTINUING PROFESSIONAL SERVICES

- 1.1 The Town has selected the Consultant to perform engineering, design, permitting, and bidding assistance services ("Engineering Services") on a continuing, as-needed basis throughout the term of the contract.

The Consultant shall provide Engineering Services for the following work categories:

- Civil Engineering
- Transportation Engineering

- 1.2 The Town will request services from the Consultant as-needed, and will define the nature of each work request. The Consultant will prepare a work authorization proposal for each request, which will summarize the scope to be covered, provide an estimate of the hours to be worked for each person performing the services, and provide a timeline with deadline for the completion of each work request.

SECTION 2 - PROFESSIONAL SERVICES FEE & ADMINISTRATIVE EXPENSES

- 2.1 Professional Services Fee Schedule.

The Fees for all Professional Services (Fees) provided by the Consultant is set forth in the Fee Schedule below. The Consultant's hourly rates:

- Principal - \$175.00/hour
- Traffic Principal - \$195.00/hour
- Expert Testimony - \$250.00/hour
- Senior Traffic Engineer - \$160.00/hour
- Senior Engineer - \$150.00/hour
- Engineer - \$125.00/hour
- Senior Technician - \$115.00/hour
- Technician - \$100.00/hour
- Clerical - \$60.00/hour

- 2.2 Adjustment to the Professional Service Fees.

The Professional Service Fee may be adjusted, if necessary, by a written amendment to this Agreement, duly approved and executed by Consultant and Town.

- 2.3 Administrative, Subconsultant and Travel Expenses.

Mileage reimbursement shall be at IRS standard mileage rates. Subconsultant costs shall be billed not to exceed a 10% markup.

- 2.4 Invoices.

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

Town of Lak
Accounts Payable
535 Park Avenue
Lake Park, FL 33403

b.) 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.

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

d.) Invoices received from the Consultant 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.

2.5 Payment.

a.) The Fee shall be paid in accordance with Section 3.1 and upon acceptance of deliverables satisfactory to the Town and the receipt of a proper invoice from Consultant.

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

c.) No payment made under this Agreement shall be conclusive evidence of the performance of this Agreement by Consultant, either wholly or in part, and no payment shall be construed to be an acceptance of, or to relieve Consultant of liability for the defective, faulty or incomplete rendition of the Professional Services

SECTION 3 – TERM

3.1 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 for a period of five years, unless terminated by either party pursuant to the termination provisions in this Agreement, or by the mutual consent of the parties.

3.2 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 Consultant, 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 4 - REPRESENTATIONS OF THE CONSULTANT

a.) Authority.

The Consultant 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.

b.) Duly Licensed

The Consultant 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.

c.) No Solicitation

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, 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 Consultant, 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 Consultant, 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.

d.) Public Entity Crimes Act

The Consultant 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 Consultant 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 Consultant, and may result in debarment from Town's competitive procurement activities.

e.) Standard of Care

The standard of care for all Professional Services performed or furnished by Consultant under this Agreement shall be the care and skill ordinarily used by members of Consultant's profession practicing under similar circumstances

f.) Warrant of Design and Constructability

Consultant hereby represents to Town that where the Professional Services include the development of Construction Drawings, Technical Specifications and Supplemental Conditions, to the best of Consultant's knowledge, information and belief: (i) is and shall be designed in accordance with generally accepted architectural and engineering standards, as applicable, and generally accepted industry standards; and (ii) is constructible. Without waiver of Town's other rights and remedies, the Consultant warrants that the Town may require Consultant to perform again, at Consultant's sole cost and expense, any design services which were not performed in accordance with the standards set forth in this Agreement. Consultant hereby waives any claims which it may have or assert against the Town with respect to this section, except and unless any failure of Consultant 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 Consultant 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.

g.) Ethics Provisions; No Conflicts of Interest

- Consultant 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.
- Consultant 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 agency or selection committee.
- Consultant represents that it does not employ, directly or indirectly, the Mayor, members of the Town commission or any appointed Town official, department director, or member of any board, committee or redevelopment agency of the Town.
- Consultant represents that it does not employ, directly or indirectly, any employee or member of any board, committee or redevelopment agency of the Town who, alone or together with his household members, own at least five percent (5%) of the total assets and/or common stock of Consultant.
- Consultant 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 department director or head of the Town, any employee of the Town or any official of the Town's redevelopment agency, or any member of a board that provides regulation, oversight, management or policy-setting recommendations regarding the Consultant or its business.
- Consultant 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 Consultant further represents that no person having any such interest shall be employed or engaged by it to provide the Professional Services.
- Consultant, 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 Consultant's exercise of judgment or quality of the Professional Services being provided under this Agreement. Consultant, 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.
- Consultant, 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 court process. Further, Consultant 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.
- Consultant 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 Consultant 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 Consultant. The Town agrees to notify the Consultant by certified mail of its opinion within thirty (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 Consultant, the Town shall so state in its opinion and the Consultant 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 Consultant under this Agreement.

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

h.) Lobbying Certification

The Consultant 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.

i.) Truth in Negotiation Statement

Signature of this Agreement by the Consultant 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 fees and expenses payable under the agreement shall be adjusted to exclude any significant sums should the Town determine that the fees and 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 must be made within one year following the expiration or termination of this Agreement.

j.) Financial Capability

The Consultant certifies that it has not filed for bankruptcy in the past five (5) years and is financially able to provide Professional Services under this Agreement. The Consultant 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 any work requests.

k.) No Felony or Fraud

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

SECTION 5 - RESPONSIBILITIES OF THE TOWN

7.1 Designation of Representative

The Town agrees to designate an individual to act as the Town's representative with respect to the Professional Services 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 complete authority to transmit instructions, receive information and interpret and define the policies and decisions of the Town with respect to the Consultant's Professional Services.

7.2 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.

7.3 Items to be furnished upon the Consultant's Request

The designated representative of the Town shall use reasonable efforts to provide to the Consultant, upon the Consultant's request, the following information, along with previous reports or studies and any other data relative to 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 any work authorization.
2. Appropriate professional interpretations of data prepared by others relevant to any work authorization;
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

7.4 Access to Property

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

7.5 Attendance at Meetings

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

SECTION 8 - DOCUMENTS

8.1 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 Consultant shall not copyright any material and products or patent any invention developed under this Agreement. Consultant specifically waives and releases all rights which the Consultant may have in the materials, products or invention pursuant to 17 U.S.C. §§106A and 113(d). The Consultant 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 Consultant 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 Consultant'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 Consultant or its sub-consultants.

8.2 Obligation to Furnish Documents to the Town

The Consultant 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.

SECTION 9 - STANDARD TERMS AND CONDITIONS

9.1 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.

9.2 Personnel; Staffing; Sub-consultants

- Independent Contractor Relationship. All persons employed by the Consultant and engaged in any of the work or Professional Services performed by the Consultant pursuant to this Agreement shall at all times be subject to the Consultant's sole direction, supervision, and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant'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 Consultant 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 Consultant shall be responsible to the Town for all Professional Services or work performed by the Consultant or any person or firm engaged as a sub-consultant or subcontractor to perform work in fulfillment of this Agreement.
- Personnel. The Consultant represents that its project manager and all staff identified in the Consultant's Proposal shall remain assigned to the Project, unless otherwise 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 Consultant specifically acknowledges that its employees are not be covered by the Town's workers' compensation insurance and the Consultant 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 Consultant under this Agreement.
- Non-Discrimination by Consultant. The Consultant warrants and represents that all of its employees and applicants for employment are 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 Consultant does not discriminate with regard to any of the aforementioned factors.
- Unauthorized Aliens/Patriot's Act. The knowing employment by the Consultant or its sub-consultants of any alien not authorized to work by the immigration laws or the Attorney General of the United States is prohibited and shall be a default of

this Agreement which results in unilateral termination. In the event that the Consultant is notified or becomes aware of such default, the Consultant 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 Consultant'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 Consultant 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-Consultants. The Consultant shall obtain the prior written approval of the Town as to each proposed sub-consultant and the Town reserves the right to reject the selection of a particular sub-consultant 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 Consultant 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.

9.3 Compliance with Laws.

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

9.4 State Taxes.

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

9.5 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 Consultant. The Town shall be the sole and final authority as to the availability of funds.

9.6 Right to Audit.

The Consultant 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 (5) years following completion of the Services, or

conclusion of any litigation regarding this Agreement. The Town shall have the right to audit the Consultant'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 Consultant 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 Consultant 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 Consultant 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 Consultant within 45 days from presentation of Town's findings to the Consultant. Failure by the Consultant to permit such audit shall be grounds for termination of this Agreement by the Town.

9.7 Public Records Law

With respect to public records, the Consultant is required to:

- Keep and maintain public records required by the Town to perform the service.
- Upon the request of the Town's custodian of public records, provide 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.
- 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 Consultant does not transfer the records which are part of this Agreement to the Town.
- Upon the completion of the term of the Agreement, transfer, at no cost, to the Town all public records in possession of the Consultant; or keep and maintain the public records associated with the services provided for in the Agreement. If the Consultant transfers all public records to the Town upon completion of the term of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential from public records disclosure. If the Consultant keeps and maintains public records upon completion of the term of the Agreement, the Consultant 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.

9.8 Confidentiality

The Consultant 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.

9.9 No Pledge

The Consultant 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.

9.10 Insurance.

- The Consultant 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 Consultant, or by a subcontractor of the Consultant, or by anyone directly or indirectly employed by the Consultant, or by anyone for whose acts the Consultant 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 (5) 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 thirty (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 Consultant'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 Consultant shall maintain following liability coverage, in the limits specified:

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 a 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 Subconsultants. The Consultant 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 Consultant 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.

9.11 Indemnification.

The Consultant agrees to indemnify and hold harmless the Town, its elected and appointed officials, its 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 Consultant and any other persons employed or utilized by the Consultant in provision of the Professional Services under this Agreement. To the extent considered necessary by the Town, any sums due to the Consultant 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 Consultant 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.

9.12 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.

9.13 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 (5) 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 consultant (s) or otherwise, and in such event, the Consultant 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 (5) days written notice to the Consultant. The Consultant shall have no right to terminate this Agreement for convenience.
- Upon termination, the Consultant 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 Consultant, 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) transfer title to the Town (to the extent that title has not already been transferred) and deliver 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 Consultant 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 Consultant 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 Consultant 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.

9.14 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.

9.15 Litigation; Governing Law; Venue; Waiver of Jury Trial; 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 Consultant 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 Consultant agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*. In the event of litigation regarding the Agreement, the prevailing party shall be entitled to its reasonable costs and attorney fees.

9.16 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.

9.17 Inspector General.

The 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 Agreement, and may demand and obtain records and testimony from the Consultant and its subcontractors and lower tier subcontractors. The Consultant understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the Consultant 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.

9.18 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 Consultant, 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.

9.19 Headings.

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

9.20 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 will 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.

9.21 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.

9.22 Assignment.

This Agreement may not be assigned by the Consultant without the written authorization of the Town after Town's determination of the ability of the assignee to perform the Professional Services. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

9.24 Entire Agreement; Controlling Provisions; Amendment

- The Consultant submitted its Proposal dated May 29, 2018 (the "Proposal") in response to the Request for Qualifications No. 105-2018 issued by the Town (the "RFQ").
- This Agreement, including the RFQ, and the Consultant's response ("Proposal"), which are incorporated into this Agreement in their entirety, 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 RFQ and/or Proposal, the provisions shall be given precedence in the following order: (1) this Agreement, (2) the RFQ; 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 Consultant. 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.

9.25 Non Exclusivity

- This is a non-exclusive contract. The Town reserves the right, at its sole discretion, to utilize the services of other consultants, for all work categories identified in Section 1, at any time throughout the term of this contract.

(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.

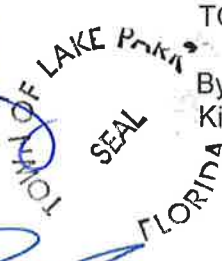
ATTEST:

By: *Vivian Mendez*
Vivian Mendez, Town Clerk

TOWN OF LAKE PARK
By: *Kim Glas-Castro*
Kim Glas-Castro, Vice-Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

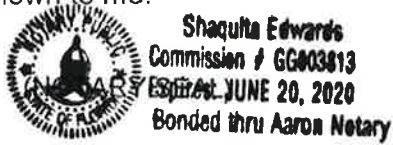
By: *Thomas J. Baird*
Thomas J. Baird, Town Attorney



STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this 14th day of November 2018 by Kim Glas-Castro, Vice-Mayor of the Town of Lake Park, and who is personally known to me.



Shaquita Edwards
Notary Public, State of Florida

WITNESSES:

By: *Sarah Abercrombie*
Sarah Abercrombie
Printed Name

Simmons and White, Inc.
By: *Robert F. Rennebaum*
Robert F. Rennebaum, President
Printed Name

By: *Robby Wyee*
ROBBY WYEE
Printed Name