

MASTER CONSULTING AGREEMENT

THIS AGREEMENT entered into this _____ day of _____ 2018, between The City of Lake Wales, subsequent to its approval by the City Commission to do so, situated at 201 W. Central Avenue, Lake Wales, Florida 33853, hereinafter referred to as CITY, and Straughn Trout Architects, LLC., a Florida corporation headquartered at 2005 East Edgewood Drive,, Lakeland, FL 33803, hereinafter referred to as CONSULTANT.

WHEREAS, CITY owns and operates a variety of public facilities and improvements; and,

WHEREAS, CITY requires certain professional services in connection with the planning, construction and operation of these facilities; and

WHEREAS, CITY has solicited these services in RFQ #17-440, included by reference as to the scope of services ("Services") contained therein; and

WHEREAS, CONSULTANT represents it is capable and prepared to provide such Services;

NOW, THEREFORE, in consideration of the premises contained herein, the parties hereto agree as follows:

1.0 Term

1.1 This Agreement shall take effect on the date of its execution by the CITY MANAGER of the CITY.

1.2 The term of this Agreement shall be for a five (5) year period, commencing upon the effective date, unless otherwise terminated as provided herein.

1.3 The CITY shall have the option of extending the Agreement for two (2) one (1) year terms, as approved by the CITY, at the same terms and conditions by giving the CONSULTANT written notice not less than thirty (30) days prior to the expiration of the initial term.

1.4 The City Manager, will approve and execute each extension of the Agreement at the end of any given term. Notice of termination may be provided by the City Manager.

2.0 Services to be performed by CONSULTANT

2.1 CONSULTANT shall perform the services as generally described in the Scope of Work Exhibit "A" and as may be further specifically designated and authorized by the CITY, in writing. Such authorization will be referred to as a Consultant Services Authorization (CSA) and all provisions of this Agreement apply to the CSA with full force and effect as if appearing in full within each CSA. Each CSA will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages and completion date, and shall become effective upon the due execution.

2.2 The CONSULTANT is not authorized to undertake any project without a duly executed CSA, which shall specify the work to be performed and the time to be completed. CONSULTANT recognizes that the CITY may employ several different consultants to perform the work described and that the CONSULTANT has not been employed as the exclusive agent to perform any such services.

2.3 When the CONSULTANT and the CITY enter into a Consultant Services Authorization (CSA) where the term of the CSA expires on a date that is later than the date that the Master Consulting Agreement (MCA) expires, the CONSULTANT and the CITY agree that the terms of the MCA and any amendments, attachments or provisions thereof are automatically extended **until** the expiration or full completion of the requirements of the CSA have been performed. Cancellation by the CITY of any remaining work prior to the full completion of the requirements of the CSA shall cause the terms of the MCA to terminate at the same time. This provision only applies when the expiration of the CSA extends beyond the expiration of the MCA. It does not apply when a CSA expires or is cancelled prior to the expiration of the MCA.

3.0 Compensation

3.1 General

3.1.1 Compensation may be negotiated as a not to exceed price on a per-project basis on each individual CSA.

3.1.2 Invoices must reference the applicable Consultant Services Authorization number, using an invoice form approved by the City's Finance Director.

3.1.3 Each individual invoice shall be due and payable forty-five (45)

calendar days after receipt by the CITY of correct, fully documented, invoice, in form and substance satisfactory to the CITY with all appropriate cost substantiations attached. All invoices shall be delivered to:

City of Lake Wales, Purchasing Division
201 West Central Avenue
Lake Wales, Florida 33853

3.1.4 In order for both parties herein to close their books and records, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT's final/last billing to the CITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONSULTANT.

3.1.5 Payment of the final invoice shall not constitute evidence of the CITY's acceptance of the work.

3.1.6 Invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Additional documents may be requested by CITY and, if so requested, shall be furnished by CONSULTANT to the City Finance Director's satisfaction. An acceptable alternative is to negotiate a flat fee, broken down into project phases and/or specific tasks and billed on % of completion.

3.1.7 Project manager or designated payroll officer shall, by affidavit, attest to the correctness and accuracy of time charges and requested reimbursements.

4.0 Insurance

4.1 General Provisions

4.1.1 CONSULTANT shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below and provide the CITY with a Certificate of Insurance and an

opportunity to inspect a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the CITY to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the CITY.

4.1.2 The CITY shall be named as an additional insured on all CONSULTANT policies related to the project, excluding professional liability and worker's compensation. The policies shall contain a waiver of subrogation in favor of The City of Lake Wales. All insurance coverage shall be written with an insurer having an A.M. Best rating of at least the "A" category and size category of VIII.

4.1.3 The CONSULTANT's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the CITY.

4.1.4 If there is any failure by the CONSULTANT to comply with the provisions of this section, the CITY may, at its option, on notice to the CONSULTANT, suspend the work for cause until there is full compliance.

4.1.5 In the event of a lapse of coverage, the CITY may, at its sole discretion, purchase such insurance at CONSULTANT's expense provided that the CITY shall have no obligation to do so and if the CITY shall do so, it shall not relieve CONSULTANT of its obligation to obtain insurance.

4.1.6 The CONSULTANT shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

4.1.7 All CONSULTANT's sub-contractors shall be required to include CITY and CONSULTANT as additional insured on their General Liability Insurance policies.

4.1.8 In the event that sub consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the sub consultants' insurance coverage.

4.1.9 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such

insurance has been approved by the CITY.

4.2 Comprehensive Automobile Liability Insurance. \$300,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

4.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

4.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

4.4 Umbrella (Excess) Liability Insurance. Umbrella Liability with limits of not less than \$1,000,000.00, exclusive of defense costs, to be in excess of all other coverages. Such coverage shall be at least as broad as the primary coverages above, with any excess umbrella layers written on a strict following form basis over the primary coverage. All such policies shall be endorsed to provide defense coverage obligations.

4.5 Professional Liability Insurance. \$1,000,000.00 for design errors and omissions, exclusive of defense costs. CONSULTANT shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed. Insurance requirements may vary depending on projects as determined by the City Director of Risk Management and Insurance. The CITY may require the CONSULTANT to provide a higher level of coverage for a specific project and time frame.

4.6 Performance, Payment and Other Bonds. CONSULTANT is not required to furnish Performance and Payment Bonds.

4.7 Worker's Compensation. The CONSULTANT shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or

subcontractors as required by Florida Statutes.

5.0 Standard of Care

5.1 CONSULTANT has represented to the CITY that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

5.2 CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

5.3 CONSULTANT shall, at no additional cost to CITY, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirements of this Agreement.

5.4 The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the professional standards in the field.

6.0 Indemnification

6.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, CITY and CONSULTANT agree to allocate such liabilities in accordance with this Section.

6.2 Indemnification.

6.2.1 CONSULTANT, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to CITY) protect and hold CITY, its elected and appointed officials, employees and agents, free and harmless from and against any and all , including, but not limited to, any claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses and expenses (including, without limitation, attorney's fees and costs during negotiation, through litigation and all appeals therefrom), or death of or injury to any person or damage to any property whatsoever, arising out of or resulting from (i) the failure of CONSULTANT to comply with

applicable non-conflicting laws, rules or regulations, (ii) the breach by CONSULTANT of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of CONSULTANT's performance of this Agreement, or (iv) the negligent act, errors or omissions, or intentional or willful misconduct of CONSULTANT, its sub-consultants, agents, employees and invitees; provided, however, that CONSULTANT shall not be obligated to defend or indemnify the CITY with respect to any such claims or damages arising out of the CITY's negligence.

6.2.2 CITY'S review, comment and observation of the CONSULTANT's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

6.2.3 CONSULTANT agrees that it bears sole legal responsibility for its work and work product, and the work and work product of sub-consultants and their employees, and/or for CONSULTANT's performance of this Agreement and its work product(s).

6.2.4 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Agreement shall survive as if the Agreement were in full force and effect.

7.0 Independent Contractor

7.1 CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

7.2 CITY shall have no right to supervise the methods used, but CITY shall have the right to observe such performance.

7.3 .CONSULTANT shall work closely with CITY in performing Services under this Agreement.

7.4 The CONSULTANT shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in

any manner.

7.5 CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

8.0 Authority to Practice

8.1 The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

9.0 Compliance with Laws

9.1 In performance of the Services, CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

10.0 Subcontracting

10.1 The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

10.2 If a subcontractor fails to perform or make progress as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the CITY. Failure of a Sub-contractor to timely or properly perform its obligations shall not relieve CONSULTANT of its obligations hereunder.

11.0 Federal and State Taxes

11.1 The CITY is exempt from Federal Tax and State Sales and Use Taxes.

Upon request, the CITY will provide an exemption certificate to CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations

with the CITY, nor shall the CONSULTANT be authorized to use the CITY's Tax Exemption Number in securing such materials.

12.0 Public Entity Crimes

12.1 The CONSULTANT understands and acknowledges that this Agreement with the CITY will be void, in the event the conditions under Section 287.133, Florida Statutes apply to the CONSULTANT, relating to conviction for a public entity crime.

13.0 CITY's Responsibilities

13.1 CITY shall be responsible for providing access to all CITY project sites, and providing information in the CITY's possession that may reasonably be required by CONSULTANT, including; existing reports, studies, financial information, drawings for existing facilities, property surveys, and other project relevant engineering data and other required data that are available in the files of the CITY.

14 Termination of Agreement

14.1 This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Agreement through no fault of the CONSULTANT.

14.2 This Agreement may be terminated by the CITY with or without cause immediately upon written notice to the CONSULTANT.

14.3 Unless the CONSULTANT is in breach of this Agreement, the CONSULTANT shall be paid for services rendered to the CITY's satisfaction through the date of termination.

14.4 After receipt of a Termination Notice and except as otherwise directed by the CITY, the CONSULTANT shall:

14.4.1 Stop work on the date and to the extent specified.

14.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work

14.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the CITY.

14.4.4 Continue and complete all parts of the work that have not been terminated.

14.5 The CONSULTANT shall be paid for services actually rendered to the date of termination.

15.0 Uncontrollable Forces (Force Majeure)

15.1 Neither the CITY nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

15.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

15.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

16.0 Governing Law and Venue

16.1 This Agreement shall be governed in all respects by the laws of the State

of Florida and any litigation with respect thereto shall be brought only in the courts of Polk County, Florida or the United States District Court, Middle District of Florida located in Hillsborough County, Florida.

17.0 Non-Discrimination

17.1 The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

18.0 Waiver

18.1 A waiver by either CITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

19.0 Severability

19.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

19.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

19.3 The provisions of this section shall not prevent the entire

Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

20.0 Entirety of Agreement

20.1 The CITY and the CONSULTANT agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein.

20.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and CONSULTANT pertaining to the Services, whether written or oral.

20.3 None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

21.0 Modification

21.1 The Agreement may not be modified unless such modifications are evidenced in writing signed by both CITY and CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both parties.

22.0 Successors and Assigns

22.1 CITY and CONSULTANT each binds itself and its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.

22.2 CONSULTANT shall not assign this Agreement without the express written approval of the CITY via executed amendment.

23.0 Contingent Fees

23.1 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision the city shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

23.2 Any person, company, corporation, firm or individual, other than a bona fide employee working solely for the CONSULTANT who offers, agrees or contracts to solicit or secure city contracts for professional services for any other person, company, corporation, firm or individual and is paid, or is to be paid any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of a contract with the city for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.

23.3 Any CONSULTANT who offers to pay, or pays any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of a contract with the city for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor, punishable as provided in s. 775.085 or 775.083 F.S.

23.3.1 Any elected or appointed officeholder, employee or consultant or any other person receiving compensation from the city who offers, agrees or contracts to solicit or secure city contracts for professional services for any other person, company, corporation, firm or individual and is paid, or is to be paid any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of a contract with the city for professional services shall, upon conviction in a competent court of this state, be found guilty

of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.

24.0 Truth-In-Negotiation Certificate

24.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

24.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

25.0 Ownership of Documents

25.1 CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY. CONSULTANT is not liable for any damages, injury or costs associated with the CITY's use or distribution of these documents for purposes other than those originally intended by CONSULTANT.

26.0 Access and Audits

26.1 CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the CONSULTANT's place of business.

26.2 Misrepresentations of billable time or reimbursable expenses as

determined by the Auditor to the City of Lake Wales City Commission shall result in the recovery of any resulting overpayments. The CITY's cost of recovery shall be the sole expense of the CONSULTANT, including accounting and legal fees, court costs and administrative expenses.

26.3 Intentional misrepresentations of billable hours and reimbursable expenses will be criminally prosecuted to the fullest extent of the law.

26.4 All invoices submitted are subject to audit and demand for refund of over payment up to three (3) years following completion of all services related to this Agreement.

26.5 Public Records. Seller acknowledges that it is acting on behalf of a Public agency and that this Agreement is subject to the provisions of §119.0701, Florida Statutes, and that Seller must comply with the public records laws of the State of Florida. Seller shall:

26.5.1 Keep and maintain public records required by the public agency to perform the service.

26.5.2 Upon request from the public agency's custodian of public records, the Seller shall provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

26.5.3 The Seller shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

26.5.4 The Seller shall, upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Seller or keep and maintain

public records required by the public agency to perform the service. If the Seller transfers all public records to the public agency upon completion of the contract, the Seller shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Seller keeps and maintains public records upon completion of the contract, the Seller shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

26.5.5 A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Seller of the request, and the Seller must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

26.5.6 If Seller does not comply with a public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

26.5.7 A Seller who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

26.5.8 If a civil action is filed against a Seller to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Seller the reasonable costs of enforcement, including reasonable attorney fees, if:

- (a) The court determines that the Seller unlawfully refused to comply

with the public records request within a reasonable time; and

(b) At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Seller has not complied with the request, to the public agency and to the Seller.

26.5.9 A notice complies with subparagraph (8)b if it is sent to the public agency's custodian of public records and to the Seller at the Seller's address listed on its contract with the public agency or to the Seller's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

26.5.10 A Seller who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

IF THE SELLER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF

PUBLIC RECORDS AT:

City of Lake Wales

Attn: City Clerk

201 W. Central Ave

Lake Wales, FL 33853

843-678-4182 ext. 270

jnanek@cityoflakewales.com

27.0 Notice

27.1 Any notice, demand, communication, or request required or

Lake Wales, Florida 33853

As to Consultant: Attention: Timothy Hoeft
Straughn Trout Architects, LLC.
2005 East Edgewood Drive
Lakeland, FL 33803

29.0 Contract Administration

29.1 Services of CONSULTANT shall be under the general direction of Kenneth Fields, City Manager, or his successor or his/her appointee, who shall act as the CITY's representative during the term of the Agreement.

30.0 Key Personnel

30.1 CONSULTANT shall notify CITY in the event of key personnel changes, which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to changes. CONSULTANT at CITY's request shall remove without consequence to the CITY any Subcontractor or employee of the CONSULTANT and replace him/her with another employee having the required skill and experience. CITY has the right to reject proposed changes in key personnel.

31.0 Annual Appropriations

31.1 CONSULTANT acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a

period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this agreement is contingent upon annual appropriation.

32.0 Liquidated Damages

32.1 The parties hereto agree that liquidated damages will be assessed against the CONSULTANT for CONSULTANT's failure to meet the final deliverable date in the Performance Schedule in the Scope of Work, but only to the extent and in proportion to CONSULTANT's fault in causing the delay as compared to other causes, and to the extent the CONSULTANT is not delayed by reasons beyond CONSULTANT's reasonable control.

33.0 Unauthorized Alien(s)

33.1 The CONSULTANT agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this Agreement. The City shall consider the employment or utilization of unauthorized aliens a violation of Section 274A (e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the City. The form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" will be signed by the CONSULTANT and submitted as part of the Agreement.

33.2 Employers may avail themselves of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (OHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers:

33.3 If your company wishes to avail themselves of this program, you can register online for E-Verify at <https://vvvww.vis-dhs.com/EmployerRegistration>, which provides

instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you as the employer, the SSA, and OHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit www.dhs.gov/e-verify or contact USCIS at 1-888-464-4218.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

Firm

A _____ Corporation

By: _____

Title _____

City of Lake Wales

By: _____
Kenneth Fields

Title _____
City Manager

Attest

Title _____

Date _____

EXHIBIT A

Scope of Work

The successful firm(s) will be required to provide sufficient information to permit contractors to respond to the City's request for proposals and permit the City to enter construction contracts. The budget for each project and services requested shall be determined based upon each project's specific scope and requirements. The architectural services shall include all professional services and meetings required for the following:

1. Review of existing site conditions and information gathering.
2. Concept planning.
3. Preliminary design.
2. Preparation of scope of work statements and preliminary cost estimates.
3. Coordination and permitting with appropriate governmental agencies.
4. Design and construction drawings and specifications that incorporate the necessary sub consultant disciplines.
5. Assist in the bid process and evaluation of construction contracts.
6. Administrative review and observation during the construction phase, review of submittals and shop drawings, and review of the project closet out documents.