



***AGREEMENT FOR***

***CONSULTING SERVICES***

***Between***

***WELLINGTON***

***And***

## AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between VILLAGE OF WELLINGTON (hereinafter referred to as WELLINGTON), Florida and \_\_\_\_\_ (hereinafter referred to as CONSULTANT), located in\_\_\_\_\_.

**WHEREAS**, it is necessary for WELLINGTON to obtain the services from \_\_\_\_\_ for\_\_\_\_\_.

**WHEREAS**, CONSULTANT represents it is capable and prepared to provide such services.

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

### ARTICLE 1 EFFECTIVE DATE

The effective date of this Agreement shall be \_\_\_\_\_.

The term of this Agreement shall be for a period of three years beginning on the effective date of the agreement, subject to appropriation of funding, except that it may be terminated as provided herein. Wellington and Consultant may agree to renew the agreement for two additional one year terms. In the case where a specific project has begun, and the contract period has expired, the contracted firm will continue with the project until completion. Wellington will extend the contract period to cover the additional time required to complete the project.

### ARTICLE 2 SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT shall perform Engineering Services as specifically set forth in the proposal attached hereto as **Exhibit "A"** and incorporated herein by this reference, and as may be specifically designated and authorized by WELLINGTON (the "Services").

### ARTICLE 3 COMPENSATION

#### 3.1 GENERAL

As compensation for providing the Services, WELLINGTON shall pay CONSULTANT'S fees based on the rates stipulated in **EXHIBIT "B"**.

#### 3.2 DELAY

The CONSULTANT shall not be entitled to an increase in the agreed to sum or payment from WELLINGTON for any direct, indirect, consequential, impact or other costs, expenses or damages arising because of delay from any circumstances.

### ARTICLE 4 INSURANCE

During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance policies written by an insurance company authorized to do business in Florida:

**4.1 General Liability** Insurance with each occurrence limits of not less than Five Hundred Thousand Dollars (\$500,000), personal injury and advertising injury liability of not less than Five

Hundred Thousand Dollars (\$500,000), and general aggregate of not less than Five Hundred Thousand Dollars (\$500,000).

**4.2 Workers' Compensation** Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) for each accident, not less than One Hundred Thousand Dollars (\$100,000) for each disease, and not less than Five Hundred Thousand Dollars (\$500,000) aggregate.

**4.3 Professional Liability** Insurance with limits of not less than One Million Dollars (\$1,000,000) annual aggregate.

**4.4 Hired & Non Hired Vehicles** Insurance with limits of not less than One Million Dollars (\$1,000,000) annual aggregate.

The required insurance coverage is to be issued by an insurance company authorized and licensed to do business in the State of Florida, with a minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide.

Deductible amounts shall not exceed five percent (5%) of the total amount of required insurance in each category. Should any policy contain any unusual exclusion, said exclusions shall be so indicated on the certificate(s) of insurance.

CONSULTANT shall furnish WELLINGTON certificates of insurance which shall include a provision that policy cancellation, non-renewal, or reduction of coverage will not be effective until at least thirty (30) days written notice has been made to WELLINGTON. CONSULTANT shall include WELLINGTON as an additional insured on the General Liability Insurance policy required by the Agreement.

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 WELLINGTON.

## **ARTICLE 5 STANDARD OF CARE**

CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided by a comparable professional under similar circumstances, and CONSULTANT shall, at no additional cost to WELLINGTON, re-perform Services which fail to satisfy the foregoing standard of care. CONSULTANT warrants that all Services shall be performed by skilled and competent personnel to the highest professional standards in the field.

## **ARTICLE 6 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, WELLINGTON and CONSULTANT agree to allocate such liabilities in accordance with this Article 6.

### **6.2 INDEMNIFICATION**

The CONSULTANT agrees to protect, defend, indemnify, and hold harmless WELLINGTON, its officers and employees, from any and all claims, liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees and court costs, to the extent caused by negligence,

recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT arising out of or connected with this Agreement. Nothing contained herein shall be construed or interpreted as consent by WELLINGTON to be sued nor as a waiver of sovereign immunity beyond the waiver or monetary limits provided in section 768.28, Florida Statutes. The CONSULTANT acknowledges receipt of sufficient consideration for the indemnification provided herein.

### **6.3 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 Article shall survive.

### **ARTICLE 7 INDEPENDENT CONTRACTOR**

CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. WELLINGTON shall have no right to supervise the methods used, but WELLINGTON shall have the right to observe such performance. CONSULTANT shall work closely with WELLINGTON in performing Services under this Agreement.

### **ARTICLE 8 COMPLIANCE WITH LAWS**

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.

### **ARTICLE 9 SUBCONSULTING**

WELLINGTON reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant. If a subconsultant fails to perform or make progress as required by this Agreement and it is necessary to replace the subconsultant to complete the work in a timely fashion, CONSULTANT shall promptly do so, subject to acceptance of the new sub consultant by WELLINGTON.

### **ARTICLE 10 FEDERAL AND STATE TAXES**

WELLINGTON is exempt from Federal Tax and State Sales and Use Taxes. Upon request, WELLINGTON will provide an exemption certificate to CONSULTANT. CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with WELLINGTON, nor shall CONSULTANT be authorized to use WELLINGTON'S Tax Exemption Number in securing such materials.

### **ARTICLE 11 AVAILABILITY OF FUNDS**

The obligations of WELLINGTON under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Council of WELLINGTON. WELLINGTON reserves the right to fiscally fund out at any time without penalty.

### **ARTICLE 12 WELLINGTON'S RESPONSIBILITIES**

WELLINGTON shall be responsible for providing information on hand required by CONSULTANT, including existing reports, studies, planning information, and other required data that are available in the files of WELLINGTON.

#### **ARTICLE 13      TERMINATION OF AGREEMENT**

This Agreement may be terminated by CONSULTANT upon thirty (30) days' prior written notice to WELLINGTON in the event of substantial failure by WELLINGTON to perform in accordance with the terms of the Agreement through no fault of CONSULTANT. It may also be terminated by WELLINGTON, with or without cause, upon thirty (30) days' written notice to CONSULTANT. Unless CONSULTANT is in breach of this Agreement, CONSULTANT shall be paid for Services rendered to WELLINGTON'S satisfaction through the date of termination. After receipt of a Termination Notice, and except as otherwise directed by WELLINGTON, CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Transfer all work in process, completed work, and other material related to the terminated work to WELLINGTON.
- C. Continue and complete all parts of the work that have not been terminated.

CONSULTANT shall be paid for Services actually rendered to the date of termination.

#### **ARTICLE 14      UNCONTROLLABLE FORCES**

Neither WELLINGTON 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 nonperforming 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, earthquake, storm, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental action.

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. 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.

#### **ARTICLE 15      GOVERNING LAW AND VENUE**

The laws of the State of Florida shall govern this Agreement. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County, and the Agreement will be interpreted according to the laws of Florida.

#### **ARTICLE 16      NON-DISCRIMINATION**

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.

## **ARTICLE 17 WAIVER**

A waiver by either WELLINGTON 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.

## **ARTICLE 18 SEVERABILITY**

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. 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.

The provisions of this Article 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.

## **ARTICLE 19 ENTIRETY OF AGREEMENT**

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

## **ARTICLE 20 MODIFICATION**

This Agreement may be modified only by a written amendment executed by both parties.

## **ARTICLE 21 SUCCESSORS AND ASSIGNS**

WELLINGTON and CONSULTANT each binds itself and its partners, successors, assigns, and legal representatives to the other party to this Agreement and to its partners, successors, executors, administrators, assigns, and legal representatives. CONSULTANT shall not assign this Agreement without the express written approval of WELLINGTON via executed amendment.

## **ARTICLE 22 OWNERSHIP OF DOCUMENTS**

Any and all documents, records, disks, or other information shall become the property of WELLINGTON for its use and/or distribution as may be deemed appropriate by WELLINGTON.

## **ARTICLE 23 ACCESS AND AUDITS**

CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the Services for at least three (3) years after completion of this Agreement.

WELLINGTON shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal working business hours at CONSULTANT'S place of business.

#### **ARTICLE 24 NOTICE**

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

##### **As To WELLINGTON**

Village of Wellington  
12300 Forest Hill Blvd  
Wellington, Florida 33414

##### **As To CONSULTANT**

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received; however, facsimile transmissions received (i.e., printed) after 6:00 p.m. or on Fridays, weekends or holidays will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and WELLINGTON.

#### **ARTICLE 25 CONTRACT ADMINISTRATION**

Services of CONSULTANT shall be under the general direction of \_\_\_\_\_, who shall act as WELLINGTON's representative during the term of the Agreement.

#### **ARTICLE 26 KEY PERSONNEL**

CONSULTANT shall notify WELLINGTON in the event of key personnel changes which might affect this Agreement. Notification shall be made within ten (10) days of said changes. WELLINGTON has the right to reject proposed changes in key personnel.

#### **ARTICLE 27 CONFIDENTIALITY**

No reports, information, computer programs, documentation, and/or data given to or prepared or assembled by CONSULTANT under this Agreement shall be made available to any individual or organization by CONSULTANT without prior written approval of WELLINGTON.

#### **ARTICLE 28 CONFLICT OF INTEREST**

This Agreement is subject to any and all applicable conflict of interest provisions found in the policies or Code of Ordinances of Wellington, the Palm Beach County Code of Ethics and Ch. 112, Part III, Florida Statutes. The VENDOR's completed Conflict of Interest Statement shall be attached hereto as **Exhibit "B"** and incorporated herein by this reference. During the term of this Agreement and any renewals or extensions thereof, the VENDOR shall continue to disclose to WELLINGTON any possible conflicts of interests. The VENDOR's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of WELLINGTON.

**ARTICLE 29 PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL:**

In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT understands that any Contract that results from this agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

**ARTICLE 30 PUBLIC ENTITY CRIMES**

No consultant may be a person or affiliate identified on the Department of General Services "Convicted Vendor" list. This list is defined as consisting of persons and affiliates who are disqualified from the public contracting and purchasing process because they have been found guilty of a public entity crime. The CONSULTANT shall comply with section 287.133, Florida Statutes, as is amended from time to time.

**ARTICLE 31 TIME**

Time is of the essence in all respects under this Agreement.

**ARTICLE 32 PREPARATION OF AGREEMENT**

**ARTICLE 33 INCORPORATION OF RFQ**

The terms and conditions and specifications of this Agreement shall include and incorporate the terms, conditions and specifications set forth in Wellington Request for Qualifications # 011-15/ED and the Consultants response to the RFQ including all documentation required hereunder.

This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

**IN WITNESS WHEREOF**, WELLINGTON and CONSULTANT have executed this Agreement as of the day and year first above written.

**ATTEST**

**VILLAGE OF WELLINGTON**

By: \_\_\_\_\_  
Awilda Rodriguez, Wellington Clerk

By: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

**CONSULTANT**

By: \_\_\_\_\_

By: \_\_\_\_\_

(Corporate Seal)

**Exhibit "A" PROPOSAL**

DRAFT

**Exhibit "B" (Rates)**

DRAFT

**Exhibit "C"**

**CONFLICT OF INTEREST STATEMENT**

This Proposal/Agreement (whichever is applicable) is subject to the conflict of interest provisions of the policies and Code of Ordinances of WELLINGTON, the Palm Beach County Code of Ethics, and the Florida Statutes. During the term of this Agreement and any renewals or extensions thereof, the VENDOR shall disclose to WELLINGTON any possible conflicts of interests. The VENDOR's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of WELLINGTON. The terms below shall be defined in accordance with the policies and Code of Ordinances of WELLINGTON, the Palm Beach County Code of Ethics, and Ch. 112, Part III, Florida Statutes.

CHECK ALL THAT APPLY.

To the best of our knowledge, the undersigned business has no potential conflict of interest for this Agreement due to any other clients, contracts, or property interests.

To the best of our knowledge, the undersigned business has no employment or other contractual relationship with any WELLINGTON employee, elected official or appointed official.

To the best of our knowledge, the undersigned business has no officer, director, partner or proprietor that is a WELLINGTON purchasing agent, other employee, elected official or appointed official. The term "purchasing agent", "elected official" or "appointed official", as used in this paragraph, shall include the respective individual's spouse or child, as defined in Ch. 112, Part III, Florida Statutes.

To the best of our knowledge, no WELLINGTON employee, elected official or appointed official has a material or ownership interest (5% ownership) in our business. The term "employee", "elected official" and "appointed official", as used in this paragraph, shall include such respective individual's relatives and household members as described and defined in the Palm Beach County Code of Ethics.

To the best of our knowledge, the undersigned business has no current clients that are presently subject to the jurisdiction of WELLINGTON's Planning, Zoning and Building Department.

The undersigned business, by attachment to this form, submits information which may be a potential conflict of interest due to any of the above listed reasons or otherwise.

THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THE FAILURE TO CHECK THE APPROPRIATE BLOCKS ABOVE OR TO ATTACH THE DOCUMENTATION OF ANY POSSIBLE CONFLICTS OF INTEREST MAY RESULT IN DISQUALIFICATION OF YOUR BID/PROPOSAL OR IN THE IMMEDIATE CANCELLATION OF YOUR AGREEMENT, WHICHEVER IS APPLICABLE.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
NAME (PRINT OR TYPE)

\_\_\_\_\_  
TITLE