



AGREEMENT FOR
PROFESSIONAL CONSULTING SERVICES

Between

WELLINGTON

And

SAMPLE

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES ("Agreement") is made this ____ day of _____, 20__ by and between the VILLAGE OF WELLINGTON (hereinafter referred to as WELLINGTON), Florida and _____ (hereinafter referred to as CONSULTANT), located in _____, Florida.

WHEREAS, it is necessary for WELLINGTON to obtain the services from CONSULTANT to provide _____.

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 (3) years beginning on the effective date of the Agreement, subject to appropriation of funding, except that it may be terminated as provided herein. The Agreement shall remain effective through _____. Upon mutual agreement of the parties, the initial term may be extended for up to two (2) additional one (1) year terms. In no event shall the term of this Agreement exceed the duration of five (5) years from the effective date.

ARTICLE 2 SERVICES TO BE PERFORMED BY CONSULTANT

2.1 GENERAL

CONSULTANT shall perform the Services for WELLINGTON as an independent contractor, as specifically set forth in RFQ# _____ and incorporated herein by this reference, and as may be specifically designated and authorized by WELLINGTON (the "Services"). The Services herein shall include study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000 or designs of projects where the estimated construction cost for each individual project under the contract does not exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) or the maximum amount as amended pursuant to section 287.055, Florida Statutes. In the event of a conflict between the terms of the RFQ and this Agreement, the terms of this Agreement shall control.

2.2 ASSIGNMENTS

Such assignments will be in the form of a Work Authorization, Task Order, or Purchase Order. Each assignment will set forth a specific Scope of Services, amount of compensation, a completion date and shall be approved by WELLINGTON's Designee.

ARTICLE 3 COMPENSATION

3.1 GENERAL

As compensation for providing the Services, WELLINGTON shall pay CONSULTANT's fees based on the amount (hourly rates) stipulated in **EXHIBIT "A"** CONSULTANT represents and warrants that it shall notify WELLINGTON in writing prior to doing any further work pursuant to this Agreement if it will exceed the contract amount provided for herein

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 One Million Dollars (\$1,000,000), personal injury and advertising injury liability of not less than One Million Dollars (\$1,000,000), and general aggregate of not less than One Million Dollars (\$1,000,000).

Village of Wellington to be named additional insured on a primary and non-contributory basis.

4.2 Workers' Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident, not less than One Million Dollars (\$1,000,000) for disease each employee.

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

4.4 Automobile Liability Insurance to include Hired & Non Owned Vehicles with limits of not less than One Million Dollars (\$1,000,000) annual aggregate. Village of Wellington to be named as additional insured if vehicles are on site.

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 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

In consideration of the premises and the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CONSULTANT hereby agrees to 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 and exhibits cited herein 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, standards, emergency orders, and health guidelines.

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, pandemic, 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 generated in connection with this Agreement 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 5:00 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 representatives 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 CONSULTANT'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 CONSULTANT shall continue to disclose to WELLINGTON any possible conflicts of interests. The CONSULTANT'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

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

ARTICLE 33 PUBLIC RECORDS

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, CHEVELLE HALL AT 561-791-4000, CHALL@WELLINGTONFL.GOV, 12300 FOREST HILL BLVD. WELLINGTON, FL 33414.

ARTICLE 34 SCRUTINIZED COMPANIES

Pursuant to sections 215.4725 and 287.135 of the Florida Statutes, by entering into this Agreement, CONSULTANT certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform or benefit hereunder, are not on the Scrutinized Companies that Boycott Israel List and are not participating in a boycott of Israel. If this Agreement is valued greater than \$1 million, CONSULTANT further certifies pursuant to sections 215.473 and 287.135, Florida Statutes, that it, its affiliates, suppliers, subcontractors, and consultants who will perform or benefit hereunder, (a) have not been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List; and (b) do not have business operations in Cuba or Syria. Submitting a false certification shall be deemed a material breach of this Agreement. If the Village determines, using credible information available to the public, that CONSULTANT has submitted a false certification, or otherwise engaged in any of the activities prohibited by this paragraph of the applicable Florida Statutes, the Village may terminate this Agreement and pursue the remedies set forth in section 287.135, Florida Statutes, and any other available remedies.

ARTICLE 35 COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 36 E-VERIFY

Compliance with FS 448.095 - Wellington requires all consultants, contractors and subcontractors to register with the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of their newly hired employees. All contractors performing work for Wellington are required to provide proof of registration with the E-Verify System and must provide an affidavit stating that each subcontractor it hires does not employ, contract with, or subcontract with an unauthorized alien.

ARTICLE 37 NON-DISCRIMINATION

CONSULTANT shall not unlawfully discriminate against any person in its operation and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CONSULTANT shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by this Agreement, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the

following: employment, upgrading, demotion, transfer, recruitment or recruiting advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship) and accessibility.

CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, gender identity, gender expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

ARTICLE 38 UNITED STATES-PRODUCED IRON AND STEEL REQUIREMENT

Pursuant to section 255.0993, Florida Statutes, as may be amended from time to time, CONSULTANT acknowledges and agrees that any iron or steel product permanently incorporated into a public works project must be produced in the United States unless an exception applies.

ARTICLE 39 INCORPORATION OF RFQ

The terms, conditions, and specifications of this Agreement shall include and incorporate the terms, conditions and specifications set forth in Wellington Request for Qualifications # _____ and the CONSULTANT'S response to the RFQ including all documentation required here hereunder.

APPROVED AS TO FORM AND IN WITNESS WHEREOF, WELLINGTON and CONSULTANT have executed this Agreement as of the day and year first above written.

ATTEST

VILLAGE OF WELLINGTON

By: _____
Chevelle Hall, Village Clerk

By: _____
Michael Napoleone, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

CONSULTANT:

By: _____
Laurie Cohen, Village Attorney

By: _____
Printed Name/Title: _____

EXHIBIT A
[Hourly Rates]

SAMPLE

EXHIBIT B

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 CONSULTANT shall disclose to WELLINGTON any possible conflicts of interests. The CONSULTANT’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.

NO CONFLICT:

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. _____

POTENTIAL CONFLICT:

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