

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, entered into this 10th day of July, 2019 by and between **THE TOWN OF PALM BEACH**, a political subdivision of the State of Florida, hereinafter referred to as the “TOWN”, and **MOCK, ROOS & ASSOCIATES, INC.**, a Florida Corporation, hereinafter referred to as the “CONSULTANT”.

WITNESSETH

That the TOWN and the CONSULTANT, in consideration of their mutual covenants, herein agree with respect to the performance of civil engineering services by the CONSULTANT and the payment for those services by the TOWN as set forth below and in individual Work Orders. This agreement shall be referred to as the “MASTER AGREEMENT” under which future Purchase Orders will apply.

The CONSULTANT shall provide the TOWN with civil engineering services and such other related services as defined in specific Purchase Orders for each project. The CONSULTANT is retained by the TOWN to perform these services under this non-exclusive continuing contract with the TOWN.

SECTION I – PROJECT(S)

The project(s) anticipated deliverables shall be identified by the TOWN and communicated to the CONSULTANT. The CONSULTANT services required shall be identified within a proposed Scope of Services document to be prepared by the CONSULTANT and approved by the TOWN’s representative. Each Purchase Order issued by the TOWN upon approval of the proposed Scope of Services will be uniquely numbered and shall be subject to the TOWN’s adopted purchasing procedures.

Services required of the CONSULTANT for the project will be described in other appropriate sections of this Agreement and quantified in individual Purchase Orders.

The categories of the Civil Engineering Services that may be required are as follows:

1. Renovation to Existing Storm Sewer Pumping Stations
2. Design of New Storm Sewer Pumping Stations
3. Renovation of Existing Sanitary Sewer Pumping Stations
4. In-line Variable Speed Pump Station Design
5. Design of New Sanitary Sewer Pump Stations
6. Design of Sewage Force Mains
7. Design of Sewage Gravity Mains
8. Design of Storm Drainage Collection System
9. Design of Water Mains
10. Design of Roadways
11. Surveying
12. Permitting
13. Construction Administration
14. Project Management
15. Geotechnical Engineering and Materials Testing Services
16. Electrical Engineering
17. Pavement Assessments, Programming, and Management
18. Design of Seawalls and Bulkheads
19. Associated Design of Landscaping
20. Design of Structures/Facilities
21. Landfill Design/Permitting
22. Streetscape Projects
23. Traffic Engineering
24. Signalization/Mast Arm Design
25. GIS System Analysis, Design, Implementation, and Management
26. Other Civil Engineering Projects

SECTION II – SCOPE OF SERVICES

2.1 Basic Services

Upon notice to proceed from the Director of Public Works or his designee, the CONSULTANT agrees to provide complete professional civil engineering services for any portion or all of the Phases enumerated hereinafter. The CONSULTANT agrees to coordinate his effort with that of any other engineering, landscape architectural or architectural CONSULTANTS to assure a coordinated and complete WORK.

2.1.1 Phase I - Schematic Design and Programming

- A. The CONSULTANT shall confer with representatives of the Town to determine the full scope of the Project that will meet the program requirements within the allocated funds.
- B. The CONSULTANT shall use proper and adequate design control to provide an increased level of confidence to the TOWN that the Project may be constructed within the allocated funds.
- C. The CONSULTANT shall prepare a Design Concept and Schematic Report, comprising the Project Timetable (Master Schedule) Planning Summary (if requested), Schematic Design Studies (if requested) as defined below, and the Engineering Cost Estimate.
- D. The Proposed Project timetable shall consist of a schedule showing the proposed completion date on each Phase of the Project through design, bidding, construction, and proposed date of completion.
- E. The Planning Summary (if requested) shall consist of a vicinity plan and blow-up of the Site (if applicable) showing Project orientation, and a brief summary of all pertinent planning criteria used for the Project.

- F. The Schematic Design Studies (if requested) shall consist of all plans, elevations, sections, etc., as required to show the scale and relationship of the parts and the design concept of the whole. A simple perspective sketch, model or photograph thereof may be provided to further show the design concept.
- G. The CONSULTANT shall prepare a Project Management Plan (PMP) identifying project scope, schedule, team members, contact information, stakeholders, deliverables, etc.
- H. The CONSULTANT's Cost Estimate shall include estimated cost of the Project including hard and soft costs but not limited to fixed equipment, professional fees, contingencies (if any), escalation factors adjusted to the estimated bid date, movable estimate (if any), land cost (if applicable) and utility service extensions (if applicable). It is understood and agreed that CONSULTANT has no control or responsibility over market conditions, labor costs, material costs, tariffs or taxes, or other factors affecting the cost of the Work. Therefore, CONSULTANT cannot guarantee that the Contractors' will not exceed CONSULTANT's estimates of the cost of the Work.
- I. The CONSULTANT shall submit and present two (2) copies of all documents required under this Phase, for approval by the TOWN and shall not proceed with the next Phase until directed in writing by the TOWN.

2.1.2 Phase II - Design Development

- A. From the approved Schematic Design documents, the CONSULTANT shall prepare Design Development Documents, comprising the drawings, outline specifications and other documents to fix and describe the size and character of the entire Project as to construction and finish materials and other items incidental thereto as may be appropriate and applicable.
- B. The Design Development Documents shall comprise the Proposed Project Timetable (updated), Outline Specifications, Updated Statement of Engineering Cost Estimates, and

Design Development Drawings, etc., as required to clearly delineate the Project. These documents are to be submitted at 30% and 60%. If the updated Engineering Cost Estimate exceeds the allocated funds, appropriate cost or scope reduction must be included.

- C. Prior to submission of the 60% Design Development Documents, the CONSULTANT responsible for each project shall field walk the entire project area with the design drawings to ensure that the design is fully field checked with field conditions. Additional walk through should be made to ensure that the final drawings meet field conditions.
- D. The CONSULTANT shall submit and present, upon request, two (2) sets of all documents required under this Phase, for approval by the TOWN and shall not proceed with the next Phase until directed in writing by the TOWN.

2.1.3 Phase III - Construction Documents/Bidding

- A. Upon 95% completion of the Construction Documents, the CONSULTANT shall submit to the TOWN a final, updated Statement of Probable Construction Cost along with two (2) unbound copies each of Check Set drawings, specifications, reports, programs, etc., for a final review and comments or approvals. The CONSULTANT shall make final revisions to the plans.
- B. The CONSULTANT shall make submissions to appropriate authorities as necessary, to ascertain that the construction documents meet the necessary requirements to obtain all the necessary permits for construction.
- C. When all necessary approvals of the Construction Documents are obtained, upon approval by the TOWN of the latest engineering cost estimate, and upon revisions to the documents, the CONSULTANT shall furnish five (5) sets of drawings and specifications as indicated above for bidding, and assist the TOWN in obtaining bids and awarding and preparing construction contracts. If requested, the CONSULTANT shall be present

during the bid opening and as part of his assistance to the TOWN will tally, evaluate and issue a recommendation to the TOWN.

- D. If the lowest responsible Base Bid received exceeds the Total Allocated Funds the TOWN may:
1. Approve the increase in Project Cost and award a construction contract or,
 2. Reject all bids and rebid the Project within a reasonable time with no change in the Project, or
 3. Direct the CONSULTANT to revise the Project scope or quality, or both, as approved by the TOWN and rebid the Project, or
 4. Suspend or abandon the Project.
 5. Exercise all options under the TOWN Charter and Code of Ordinances and State Law.

Note: Under item (2) above, the CONSULTANT shall, after negotiating and receiving approval for additional compensation, assist the TOWN in obtaining re-bids, and awarding the re-bid of the project.

- E. The CONSULTANT shall provide three (3) sets of plans and specifications, signed and sealed, to the Town's Building Department to be used for permitting.

2.1.4 Phase IV - Construction Administration

- A. The CONSULTANT's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the earlier of the issuance to the TOWN of the final Certificate for

Payment or 60 days after the date of Substantial Completion of the Work, unless extended by mutual agreement.

- B. The CONSULTANT, as the representative of the TOWN during the Construction Phase, shall advise and consult with the TOWN and shall have authority to act on behalf of the TOWN to the extent provided in the General Conditions and as modified in the Supplementary Conditions of the Construction Contract.
- C. The CONSULTANT shall attend pre-construction meetings.
- D. The CONSULTANT shall at all times have access to the project wherever it is in preparation or progress, so he may perform as intended under this Agreement.
- E. The CONSULTANT shall visit the site at least weekly, and at all key construction events to ascertain the progress of the Project and to determine in general if the WORK is proceeding in accordance with the Contract Documents. On the basis of on-site observations, the CONSULTANT will use reasonable and customary care to guard the TOWN against defects and deficiencies in the WORK. On the basis of the on-site observations, the CONSULTANT will advise the TOWN as to the progress of and any observed defects and deficiencies in the WORK immediately in writing.
- F. The CONSULTANT shall furnish the TOWN with a written report of all observations of the WORK made by him during each visit to the WORK. CONSULTANT shall also note the general status and progress of the WORK, and shall submit same weekly. The CONSULTANT shall ascertain at least monthly that the Contractor is making timely, accurate, and complete notations on record drawings.
- G. The CONSULTANT shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The CONSULTANT shall not be responsible for the Contractor's schedules or failure to carry out the Work in

accordance with the Contract Documents. The CONSULTANT shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

H. Based on observations at the site and on the Contractor's Payment Certificate, the CONSULTANT shall determine the amount due the Contractor on account and shall recommend approval of the Certificate in such amounts. The recommendation of approval of a Payment Certificate shall constitute a representation by the CONSULTANT to the TOWN that CONSULTANT certifies to the TOWN that the WORK has progressed to the point indicated, and the quality of the WORK is in accordance with the Contract Documents subject to:

1. An evaluation of the WORK for conformance with the contract documents upon substantial completion.
2. The results of any subsequent tests required by the contract documents.
3. Minor deviations from the contract documents correctable prior to completion and acceptance of the project.

I. The issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the TOWN to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

J. With the TOWN'S prior approval, the CONSULTANT shall have affirmative duty to recommend rejection of WORK which does not conform to the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to insure

compliance with the Contract Documents, CONSULTANT will have authority to recommend special reviews or testing of any WORK deemed not to be in accordance with the Contract whether or not such WORK has been fabricated and delivered to the Project, or installed and completed.

- K. The CONSULTANT shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT's action shall be taken with such reasonable promptness as to cause no delay in the Work, while allowing sufficient time in the CONSULTANT's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The CONSULTANT's review shall not constitute approval of safety precautions, of construction means, methods, techniques, sequences or procedures. The CONSULTANT's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Changes or substitutions to the Contract Documents shall not be authorized without concurrence with the TOWN.
- L. The CONSULTANT shall review and recommend action on proposed change orders within the scope of the Project initiated by others, and initiate proposed change orders as required by his own observations.
- M. The CONSULTANT shall examine the WORK upon receipt of the Contractor's Certificate of Substantial Completion of the Project. A Punch list of any defects and discrepancies in the WORK required to be corrected by the Contractor shall be prepared by the CONSULTANT in conjunction with representatives of the TOWN and satisfactory performance obtained thereon before the CONSULTANT recommends execution of Certificate of Final Acceptance and final payment to the Contractor.

- N. The CONSULTANT shall furnish to the TOWN, reproducible (mylars) record drawings updated based on information furnished by the Contractor; such drawings shall become the property of the TOWN. The CONSULTANT shall be paid for this service on an hourly basis up to a not-to-exceed figure as agreed to in writing by the TOWN.

- O. If requested, the CONSULTANT shall assist the TOWN in the inspection of the WORK one month before the expiration of any guarantee period and report any defective WORK in the Project under terms of the guarantee/warranties for correction. CONSULTANT shall assist the TOWN with the administration of guarantee/warranties for correction of defective WORK that may be discovered during the said period. The CONSULTANT shall be paid by the TOWN for this service as an additional service.

2.3 ADDITIONAL PROFESSIONAL SERVICES

2.3.1 Additional Services

Additional Services as listed below are normally considered to be beyond the scope of the Basic Services for design and construction, as defined in this Agreement but which are additional services which may be authorized within the Scope of Work given the CONSULTANT.

- A. Financial feasibility, life cycle costing, or other special studies.

- B. Planning surveys, site evaluations, or comparative studies of prospective sites.

- C. Design services relative to future facilities, systems and equipment which are not intended to be constructed as part of a specific Project.

- D. Services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the TOWN.
- E. Professional detailed Estimates of Construction Cost consisting of quantity surveys itemizing all material, equipment and labor required for a Project.
- F. Consultation concerning replacement of any WORK damaged during construction, and furnishing professional services of the type set forth in Basic Services as may be required relative to replacement of such WORK, providing the cause is found by the TOWN to be other than by fault of the CONSULTANT.
- G. Professional services made necessary by the default of the Contractor or by major defects in the WORK under the Construction Contract, providing the cause is found by the TOWN to be other than by fault of the CONSULTANT.
- H. Making major revisions changing the Scope of a project, to drawings and specifications when such revisions are inconsistent with written approvals or instruction previously given by the TOWN and are due to causes beyond the control of the CONSULTANT. (Major revisions are defined as those changing the Scope and arrangement of spaces and/or scheme or any portion).
- I. Making revisions in Drawings, Specifications or other documents when such revisions are:
 - 1. Inconsistent with approvals or instructions previously given by the TOWN, including revisions made necessary by adjustments in the TOWN's program or Project budget;
 - 2. Required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or

3. Due to changes required as a result of the TOWN's failure to render decisions in a timely manner.
- J. Preparing to serve or serving as an expert witness in connection with any legal proceeding in connection with a Project.
- K. Professional services required after approval by the TOWN or the Contractor's Requisition for Final Payment, except as otherwise required under Basic Services.
- L. Preparing supporting data, drawings, and specifications as may be required for Change Orders affecting the scope of a Project provided the Changes are due to causes found by the TOWN, to be beyond the control of the CONSULTANT.

SECTION III – TOWN OBLIGATIONS

The TOWN agrees to provide the following material, data, or services as required in connection with the work to be performed under this Agreement:

- A. Provide the CONSULTANT with available data, drawings, surveys, right-of-way maps, reports, and other information in the possession of the TOWN that are pertinent to the project and allowed to be shared.
- B. The TOWN shall assist in making provisions for the CONSULTANT to enter upon public or private property as required for the CONSULTANT to perform his services.

SECTION IV – ALLOTMENT OF PROJECT WORKLOAD TO THE SELECTED CONTINUING CIVIL ENGINEERING AND PROJECT MANAGEMENT SERVICE FIRM

The TOWN, through its designated representative, shall, in its sole discretion, assign work to the Continuing Civil Engineering Consultant firm as appropriate. The “Master Agreement” in no way guarantees any future work. CONSULTANT shall have no right to appeal or challenge the TOWN’S decision regarding distribution of work.

SECTION V – PERFORMANCE OF WORK

The CONSULTANT agrees to perform all necessary professional civil engineering and project management services in connection with the assigned project(s) as required and as set forth in the following:

A. General

1. The CONSULTANT will endeavor not to duplicate any previous work done on any project. Before issuance of a Purchase Order and written authorization to proceed, the CONSULTANT shall consult with the TOWN to clarify and define the TOWN's requirements and deliverables for the project and review all available data. TOWN may request the CONSULTANT to prepare a written proposed Scope of Services as part of this process.
2. The CONSULTANT shall attend meetings with the TOWN and its representatives, upon request. Meetings not included in the Purchase Order shall be treated as additional services when such meetings are related to approved Purchase Orders.
3. In order to accomplish the work described under this Agreement under the time frames and conditions set forth in this Agreement, the CONSULTANT shall observe the following requirements:
 - a. The CONSULTANT will complete his work on the project within the time allowed by maintaining an adequate staff of registered engineers, project managers, surveyors, draftsmen, and other employees as may be required on the work at all times. Alternatively, the CONSULTANT may contract for such services in lieu of providing the same as employees of the CONSULTANT.
 - b. The CONSULTANT shall comply with all federal, state, and local laws applicable to this project(s). The CONSULTANT's

work product shall conform with all applicable federal, state and local laws applicable to this project(s).

- c. The CONSULTANT shall prepare or provide for all necessary sketches, drawings, and survey documents as necessary for each project.
 - d. The CONSULTANT shall reply in a timely manner to the TOWN's requests for additional information related to the CONSULTANT's work product. The CONSULTANT shall cooperate fully with the TOWN in order that all phases of the work may be properly scheduled and coordinated.
 - e. The CONSULTANT will contact all known utility companies having installations in the vicinity of the proposed work and coordinate locations of utilities, if necessary and included on the Purchase Order. The CONSULTANT shall provide the TOWN with all obtained information relative to any required utility locations and installations and shall show all known above and below ground utilities on all survey work products.
 - f. The CONSULTANT shall report project status to the TOWN'S Representative upon request and hold all drawings, calculations and related work open to the inspection of the TOWN'S Representative or his authorized agent at any time, upon reasonable request.
4. If sufficient funding has been provided for within the applicable Purchase Order the CONSULTANT shall furnish additional copies of reports, drawings, sketches, and survey documents as required by the TOWN, but may charge only for the actual cost of providing such copies where outsourced and rates included in this Agreement or in the Purchase Order do not apply. CONSULTANT will submit request for reimbursement in a format as directed by the TOWN's Representative. The CONSULTANT shall furnish to the TOWN the necessary number of sets of the drawings, sketches, survey documents and other pertinent items as set forth in

individual Purchase Orders. The cost of these sets of documents are not included in the basic compensation paid to the CONSULTANT but will be paid as a direct expense. All created documents, survey notes, field books, tracings, drawings, sketches, survey documents, and the like including all items furnished to the CONSULTANT by the TOWN pursuant to this Agreement, are and shall remain the property of the TOWN, and shall be delivered to the TOWN upon completion of the work if requested. All items prepared by the CONSULTANT shall be created, maintained, updated, and provided in the format as specified by the TOWN including but not limited to Print, CADD, PDF, EXCEL, etc. Unless noted otherwise on the Purchase Order, AutoCAD, Excel, Word, shall be understood to be standard formats for CAD, Spreadsheet, and word documents.

5. The CONSULTANT acknowledges that preparation of all applicable drawings, sketches, survey documents, and written or oral responses to all regulatory agencies' questions about the CONSULTANT's work product, are included within the scope of basic compensation in each particular Purchase Order. Any additional work required by regulatory agencies or entity which establish such regulations or need after the effective date of the particular Purchase Order, shall be an additional service, and the TOWN shall compensate the CONSULTANT in accordance with Section VII – "Additional Work," of this Agreement, and in accordance with the fee schedule in an approved Purchase Order.
6. Compensation to the CONSULTANT for basic services shall be in accordance with each Purchase Order, as mutually agreed upon by the CONSULTANT and the TOWN. Schedule of current hourly billing rates are included in "Exhibit A" incorporated herein by reference and attached hereto, and will be included as part of each Purchase Order when approved. CONSULTANT shall provide a resource plan, time to complete, and other information as needed relative to the Purchase Order to support the TOWN's effective management of the TOWN's business.

SECTION VI – TIME FOR COMPLETION

The time for completion of each project shall be defined in the Purchase Order.

SECTION VII – COMPENSATION

The TOWN agrees to pay, and the CONSULTANT agrees to accept, for services rendered pursuant to this Agreement, fees in accordance with the following:

A. Professional Services Fee:

The basic compensation shall be agreed upon prior to issuance of each Purchase Order and the work hours for each discipline and work schedule shall be included in the Purchase Order. All hourly rates, fees and charges shall be in accordance with the Schedule of Billing Rates, which is incorporated herein by reference and attached hereto as Exhibit A, and is to be completed by the CONSULTANT and submitted to the TOWN upon execution of this Agreement. The TOWN may accept or reject any resource, unit or rate contained therein prior to Agreement execution and will attempt to negotiate any rejected resource, rate or unit. Acceptance of the proposed Schedule of Billing Rates shall be in the TOWN's sole discretion. CONSULTANT may request an amendment to the resources, units or rates contained within the Schedule of Billing Rates, but may not do so any less often than annually following the execution of the Agreement or the approval of a revised Schedule of Billing Rates by both parties.

B. Direct Payment for Additional Services:

The TOWN agrees to pay on a direct basis for services or goods provided by others working in conjunction with the CONSULTANT, as follows:

1. Printing and Reproduction. The TOWN shall make direct payment to the CONSULTANT for the cost of printing project plan sheets required for project coordination. The maximum cost allowed per printed sheet utilized for this purpose shall be set forth in the schedule of billing rates.

2. All travel expenses must be agreed to in advance by Purchase Order and included therein. Travel is defined as a day trip or overnight stay(s) outside the confines of Broward, Martin or Palm Beach counties.
3. Mileage reimbursement shall be made based upon the adopted IRS mileage reimbursement rate allowed at the time of occurrence of the mileage, but only for approved work related travel within the confines of Broward, Martin and Palm Beach counties.
4. Surveying and other work as mutually agreed upon.

SECTION VIII – PAYMENTS

The TOWN shall make monthly partial payments to the CONSULTANT as provided for in the Purchase Order. Unless otherwise stated in the Purchase Order, the CONSULTANT shall submit duly certified invoices to the TOWN's Representative for review monthly. Invoices shall indicate the Purchase Order, and deliverables provided. The Purchase Order shall be divided into units of deliverables which may include, but not be limited to, electronic files, reports, findings, drawings, and drafts that must be received and accepted in writing by the TOWN's Representative prior to payment.

SECTION IX – RIGHT OF DECISIONS

All services shall be performed by the CONSULTANT to the satisfaction of the TOWN's Representative who shall decide all questions, difficulties, and disputes of whatever nature which may arise under or by reason of this Agreement, according to the prosecution and fulfillment of the service hereunder, and the character, quality, amount and value thereof. The TOWN's Representative's decision upon all claims, questions and disputes shall be final, conclusive and binding.

Adjustments of compensation and contract time because of any major changes in the work that might become necessary or be deemed desirable as the work progresses shall be reviewed and approved by the TOWN's Representative prior to the CONSULTANT beginning his work on such changes.

SECTION X – OWNERSHIP AND REUSE OF DOCUMENTS

A. Ownership and Copyright:

Unless agreed otherwise, ownership and copyright of all reports, tracings, plans, specifications, field books, survey information, maps, contract documents, data, and other deliverables developed by the CONSULTANT pursuant to this Agreement, shall be vested in the TOWN. Said materials shall be made available by the CONSULTANT at any time upon request of the TOWN. The CONSULTANT may retain a copy of said documents for its record purposes.

B. Reuse of Documents:

All documents, including but not limited to reports, drawings and specifications, prepared by the CONSULTANT pursuant to this Agreement, are related to the services described herein. They are not intended for reuse by the TOWN on any other project. The TOWN's reuse of any document or drawing shall be at the TOWN's own risk.

SECTION XI – NOTICES

Any notices, reports or other written communications from the CONSULTANT to the TOWN shall be considered delivered when posted by certified mail or delivered in person to the TOWN's Representative. Any notices, reports or other communications from the TOWN to the CONSULTANT shall be considered delivered when posted by certified mail to the CONSULTANT at the last address left on file with the TOWN or delivered in person to said CONSULTANT or his authorized representative. Unless TOWN is subsequently notified otherwise, the CONSULTANT's address shall be as shown in this Agreement.

SECTION XII– TERMINATION

Either party may terminate this Master Agreement for any reason upon thirty (30) days written notice to the other party, except that in the event the CONSULTANT terminates this agreement, such termination shall not be effective, absent the TOWN's consent, until the CONSULTANT's completion or partial completion, to the TOWN's satisfaction, of any Purchase Order in progress.

SECTION XIII – AUDIT RIGHTS

The TOWN reserves the right to audit the records of the CONSULTANT related to this Agreement at any time during the prosecution of the work included herein and for a period of three years after final payment is made.

SECTION XIV – SUBLETTING

The CONSULTANT shall not sublet, assign, or transfer any work under this Agreement without the written consent of the TOWN. When applicable and upon receipt of such consent in writing, the CONSULTANT shall cause the names of the firms responsible for the major portions of each separate specialty of the work to be inserted on the reports or other data, including a description of their respective contribution to the work product.

SECTION XV – WARRANTY

The CONSULTANT warrants that he 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 he has not paid or agreed to pay any company or person other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage fee, gifts or any other considerations, contingent upon or resulting from the award or making of this Agreement. For the CONSULTANT's breach of violation of this warranty, the TOWN shall have the right to terminate this Agreement without liability.

SECTION XVI – DURATION OF AGREEMENT

The Master Agreement shall remain in full force and effect for a period of three years after the date of, or until completion of all project phases of the then Work Orders in progress, or unless otherwise terminated by mutual consent of the parties hereto, or terminated pursuant to Section XI. By mutual agreement of both parties, this Agreement may be extended for a period of two additional years at the discretion of the TOWN.

SECTION XVII – INSURANCE

A.

The ENGINEER shall not commence work under this Agreement until all insurance required under this Agreement has been obtained and such insurance has been approved by the TOWN.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The CONSULTANT shall furnish Certificates of Insurance to the TOWN'S representative. The Certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this Agreement and that no material change or cancellation of the insurance shall be provide immediate written notice to the TOWN'S representative. Compliance with the foregoing requirements shall not relieve the CONSULTANT of their liability and obligations under this Agreement.

CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages, limits, including endorsements, as described herein. The requirements contained herein, as well as TOWN'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.

The CONSULTANT shall provide insurance coverage as follows:

1. **Professional Liability** - CONSULTANT shall agree to maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Per Occurrence. When a self-insured retention (SIR) or deductible exceeds **\$25,000** the TOWN reserves the right, but not the obligation, to review and request a copy of CONSULTANT'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONSULTANT warrants the Retroactive Date equals or precedes the effective date of this contract (*Certificate of Insurance shall specify: Retro date- Full prior acts coverage applies*). In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, CONSULTANT shall agree to purchase a SERP with a minimum reporting period not less than three (3) years. CONSULTANT shall agree this

coverage shall be provided on a primary basis. The Certificate of Insurance must indicate whether coverage is written on an occurrence or claims-made basis and must indicate the amount of any SIR or deductible.

2. **Commercial General Liability, Automobile Liability And Workers' Compensation -** CONSULTANT shall agree to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence.

CONSULTANT shall agree to maintain Business Automobile Liability at a limit of liability not less than **\$1,000,000** Each Occurrence for all owned, non-owned and hired automobiles. In the event CONSULTANT does not own any automobiles, the Business Auto Liability requirement shall be amended allowing CONSULTANT to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. CONSULTANT shall agree this coverage shall be provided on a primary basis. CONSULTANT shall agree to maintain during the life of this Agreement, Workers' Compensation Insurance and Employer's Liability in accordance with Florida Statute Chapter 440 or an exemption letter from the State of Florida. CONSULTANT shall agree this coverage shall be provided on a primary basis.

3. **Umbrella Or Excess Liability -** If necessary, CONSULTANT may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, or Employers Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest Each Occurrence limit for either Commercial General Liability, Business Auto Liability, or Employers Liability. The Town shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

4. **Additional Insured -** CONSULTANT shall agree to endorse the Town as an Additional Insured to the Commercial General Liability. The Additional Insured endorsement shall

read "Town of Palm Beach, Including Police Department, all Officers, Employees, Elected and Appointed Committees, and Commissions. CONSULTANT shall agree the Additional Insured endorsements provide coverage on a primary basis.

5. **Waiver Of Subrogation** - CONSULTANT shall agree, by entering into this Contract, to a Waiver of Subrogation for each required policy, other than Professional Liability. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, in which a condition to the policy specifically prohibits such an endorsement, or voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.

The CONSULTANT shall provide original certificates of such coverage prior to engaging in any activities under the contract. No work can be started until the certificates are submitted and approved by the Town.

SECTION XVIII – INDEMNIFICATION

To the fullest extent allowed by law the CONSULTANT shall protect, reimburse, indemnify and hold harmless the TOWN, and the TOWN's officers, agents, employees free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, attorneys or other professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, cause or causes of action of every kind and character to the extent caused by the negligent acts, errors or omissions of the CONSULTANT in the performance of this Contract and the Work performed hereunder. Without limiting the generality of the foregoing, CONSULTANT's indemnity shall include all claims, damages, losses, or expense arising out of or related to personal injury, death, damages to property, actual or alleged infringement of any patent, trademark, copyright, proprietary information, or applications of any thereof, or of any

other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or order of any court. Notwithstanding the foregoing, CONSULTANT's indemnity shall not extend to liability for damages to persons or property to the extent such damage was caused by any act, omission, or default of the TOWN, or by the TOWN's officers, agents and employees.

A DESIGN PROFESSIONAL EMPLOYED BY A BUSINESS ENTITY OR AN AGENT OF THE BUSINESS ENTITIY IS NOT INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF A PROFESSIONAL SERVICES CONTRACT. ANY DAMAGES ARE SOLEY ECONOMIC IN NATURE AND THE DAMAGES DO NOT EXTEND TO PERSONAL INJURIES OR PROPERTY NOT SUBJECT TO THE CONTRACT.

CONSULTANT acknowledges and agrees that TOWN would not enter into a contract without this indemnification of TOWN by CONSULTANT, and that TOWN'S entering into a contract shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of the Contract. Nothing in this Contract shall be construed to affect in any way the TOWN'S rights, privileges, and immunities as set forth in Florida Statutes 768.28.

SECTION XIX – SAFETY

In accordance with generally accepted practices, the CONSULTANT shall report any observed job site safety violations to the TOWN and to the Contractor's Representative.

Although the Consultant accepts this responsibility, it is acknowledged by the parties that the

Engineer does not have an expertise in job site safety, and the CONSULTANT has no other obligation than to report any job safety violations to the TOWN.

SECTION XX-CONTRACTUAL AGREEMENT:

RFQ No. 2019-13– Civil Engineering Consultants

Consultant is included and incorporated herewith in its entirety as Exhibit B. The order of contractual precedence will be this Agreement document, original Terms and conditions, and CONSULTANT’s response.

SECTION XXI-PUBLIC RECORDS:

Upon award recommendation or ten (10) days after opening, whichever occurs first, proposals become “public records” and shall be subject to public disclosure consistent with Chapter 119 Florida Statutes. Proposers must invoke the exemptions to disclosure provided by law in the response to the RFQ, and must identify the data or other materials to be protected, and must state the reasons why such exclusion from public disclosure is necessary. Document files may be examined, during normal working hours.

SECTION XXII-NEWS RELEASES:

The CONSULTANT shall obtain the prior approval of the Town Manager’s Office or the prior approval of the office of the Director of Public Works of all news releases or other publicity pertaining to Purchase orders for each project.

SECTION XXIII-FAMILIARITY WITH LAWS: The CONSULTANT is assumed to be familiar with all federal, state and local laws, ordinances, rules and regulations that may in any manner affect the work. The failure to familiarize himself with applicable laws will in no way relieve him from responsibility.

SECTION XXIV-PERMITS, TAXES, LICENSES: The CONSULTANT shall at his own expense obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under the contract. Proposers, both corporate and individual must be fully licensed and certified in the State of Florida at the time of this Agreement.

SECTION XXV – CHOICE OF LAW AND VENUE

This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Palm Beach County, Florida, or in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

SECTION XXVI – ENTIRETY OF AGREEMENT

This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other Agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.

SECTION XXVII - SEVERABILITY

In the event any provision, section or paragraph of this Agreement is determined by a court of competent jurisdiction to be void, illegal, or unenforceable, the remaining portions not found to be void, illegal, or unenforceable, shall remain in full force and effect.

SECTION XXVIII – MISCELLANEOUS

1. The parties agree to waive any and all claims for consequential damages of any type against the other.
2. Unless otherwise required under this Agreement, CONSULTANT shall not have any responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, any hazardous or toxic substance of any form at the Project site.
3. Nothing in this Agreement shall create any contractual relationship with or a cause of action in favor of a third party against either the Town or the CONSULTANT.

IN WITNESS WHEREOF the parties hereto have set their hand to and executed this Agreement this 10th day of July, 2019.

CONSULTANT:

Mock, Roos & Associates, Inc.
5720 Corporate Way
West Palm Beach, Florida 33407

TOWN:

Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

BY: [Signature] 7/2/19

By: [Signature]
John C. Randolph, Esq., Attorney
For Legal Form and Sufficiency

BY: [Signature]
Kirk W. Blouin, Town Manager
Town of Palm Beach

Title: G. Vice President
(If not PRESIDENT, attach evidence of authority to sign.)

ATTEST:

[Signature]
Kathleen Dominguez, Town Clerk
Town of Palm Beach

WITNESS: Debra C. McCray

(Town Seal)



ENGINEER FIRM CERTIFICATE

I, Debra C. M'Uay of Mock, Roos & Associates, Inc. (corporation), hereby certify that Garrett J. Gruber is a SR. Vice President of the firm and, is authorized to perform professional services in the name, and on behalf of Mock, Roos & Associates, Inc.. I further certify that the foregoing is consistent with the By-Laws of the said corporation, and has not been modified or rescinded.

IN WITNESS WHEREOF, I have executed this certificate and have caused the corporate seal of Mock, Roos & Associates, Inc. to be hereunder affixed on this 2nd day of July, 2013: 2019

(Seal)

Debra C. M'Uay
Clerk of the Corporation

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Exhibit A

**Mock, Roos & Associates, Inc.
Town of Palm Beach
Professional Civil Engineering
Hourly Rates**

	Hourly Rates*
Project Director	\$195.00
Corporate Officer	185.00
Senior Project Manager	175.00
Senior Engineer	170.00
Project Manager	160.00
Project Engineer III	150.00
Project Engineer II	125.00
Project Engineer I	110.00
Senior CADD Technician	110.00
Designer/CADD Technician	95.00
Senior Field Representative	135.00
Field Representative.....	90.00
Senior Administrative Assistant	70.00

*Rates apply to regular and overtime hours.

