

PROFESSIONAL SERVICES AGREEMENT
(Planning and Development Services)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on September 13, 2022, by and between the **City of Greenacres**, a Florida municipal corporation (“City”) and **Denise Malone**, AICP, in her individual capacity (“CONSULTANT”).

RECITALS

WHEREAS, the City is in need of professional planning and development operations oversight services on an as needed basis;

WHEREAS, CONSULTANT is a certified planner by the American Institute of Certified Planners with extensive experience directing planning and development services within local governments;

WHEREAS, the City and the CONSULTANT desire to enter this Agreement to address the terms and conditions of the CONSULTANT rendering the services to the City; and,

WHEREAS, the City finds entering this Agreement with the CONSULTANT as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the CONSULTANT, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement as true and correct statements.

SECTION 2: CONSULTANT’S SERVICES. The CONSULTANT shall provide professional planning and development director services to the City on an as needed basis, which services may include, but are not limited to, comprehensive plan review and updates, general zoning and planning code updates, development plan review and staff report preparation, attendance at development review committee, Planning and Zoning Board of Appeals, and City Council meetings, and any other planning, zoning, or development related activities, all as directed by the City Manager from time to time.

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that the relationship between the CONSULTANT and the City is that of independent contractors and neither shall be considered a joint employer, venturer, partner, agent, representative or other relationship of the other for any purpose expressly or by implication. Accordingly, CONSULTANT and anyone she utilizes to perform the services under this Agreement shall not have any claim under this Agreement or against the City for employment-related benefits of any kind. Similarly, this Agreement does not guarantee to the CONSULTANT a minimum number of projects or hours. This Agreement does not confer any rights of sovereign immunity to CONSULTANT or any of her agents, representatives, or employees (if any).

SECTION 4: TERM, TIME, AND TERMINATION.

(a) Term. The term of this Agreement shall commence upon the approval of this Agreement by the City and shall be subject to termination by either party as set forth herein.

(b) Time for Completion. Time is of the essence in the performance of this Agreement. The CONSULTANT shall at all times carry out her duties and responsibilities as expeditiously as possible and in accordance with the project schedule as agreed to with the City.

(c) Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, or regulations. The CONSULTANT or City may suspend its performance under this Agreement as a result of a force majeure without being in default of this Agreement, but upon the removal of such force majeure, the CONSULTANT or City shall resume its performance as soon as is reasonably possible. Upon the CONSULTANT's request, the City shall consider the facts and extent of any failure to timely perform the services and, if the CONSULTANT's failure to timely perform was without its or its sub-consultants' fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than thirty (30) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

(d) Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination.

(e) Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) days from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) days, then this Agreement shall terminate at the end of the three (3) day period without further notice or demand.

(f) Early Termination. If this Agreement is terminated before the completion of all services by either party, the CONSULTANT shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

(g) Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement is subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify CONSULTANT of such occurrence and either the City or CONSULTANT may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay CONSULTANT for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

(a) Invoices. Unless otherwise agreed in writing with the City Manager, the CONSULTANT shall render monthly invoices to the City for services that have been rendered in conformity with this Agreement in the previous month. The invoices shall specify the services performed and the time spent on such work. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. Invoices will normally be paid within thirty (30) days following the City's receipt of the CONSULTANT's invoice.

(b) CONSULTANT's Fee. The City shall pay the CONSULTANT for all services performed pursuant to this Agreement at an hourly rate of One Hundred Fifty Dollars (\$150.00) per hour billable by the CONSULTANT in increments of a quarter-hour (15 minutes).

SECTION 6: INDEMNIFICATION. The CONSULTANT shall indemnify, defend, and hold harmless the City, including its officers, employees, and agents from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence of the CONSULTANT, her agents or any other persons utilized by the CONSULTANT in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or CONSULTANT, nor shall this Agreement be construed as a waiver of the City's right to sovereign immunity. Notwithstanding the foregoing provision, neither the CONSULTANT nor the City shall have any liability regardless of the theory of recovery, including breach of contract or negligence, to the other party for any indirect, incidental, special, or consequential damages, cost or expense whatsoever, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss. This waiver of consequential damages is made regardless that (i) either party has been advised of the possibility of such damages and (ii) that such damages may be foreseeable.

SECTION 7: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 8: LICENSES. The CONSULTANT represents that she has and will continue to maintain all licenses and approvals required to conduct her business and that she will at all times conduct her business activities in a reputable manner. The CONSULTANT is responsible for providing all necessary equipment and tools to perform the services (e.g., computer, internet access, etc.). All of the services required hereunder shall be performed by the CONSULTANT. The CONSULTANT shall not assign this Agreement or utilize any other persons to perform the services unless prior written approval is obtained from the City Manager. Any persons authorized to perform such services, whether an agent, representative or employee of CONSULTANT shall also be properly licensed.

SECTION 9: LAW, VENUE AND REMEDIES. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held exclusively in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 10: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 11: PUBLIC ENTITY CRIMES. CONSULTANT acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a CONSULTANT, supplier or sub-CONSULTANT under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The CONSULTANT will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 12: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CITY shall be sent to:

FOR CITY:
CITY MANAGER
CITY OF GREENACRES
5800 MELALEUCA LANE
GREENACRES, FL 33463

FOR CONSULTANT:
DENISE MALONE, AICP
7361 Water Dance Way
Lake Worth, FL 33467

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

SECTION 13: ENTIRETY OF AGREEMENT. The City and the CONSULTANT agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. 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.

SECTION 14: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 15: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the City reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 16: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event CONSULTANT fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to the CONSULTANT to terminate for cause.

SECTION 17: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the City. The Effective Date is the date this Agreement is executed by the City.

SECTION 18: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 19: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 20: COUNTERPARTS. This Agreement may be executed in one or more counterparts electronically, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be signed digitally or electronically by either party and the same shall be considered an original signature.

SECTION 21: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the CONSULTANT acknowledges that 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.

SECTION 22: OWNERSHIP OF DELIVERABLES. The deliverables, work product, specifications, calculations, supporting documents, or other work products requested by the City under this Agreement and produced by the CONSULTANT shall become the property of the City. The CONSULTANT may keep copies or samples thereof and shall have the right to use the same for its own purposes. The City accepts sole responsibility for the reuse of any such deliverables in a manner other than as initially intended or for any use of incomplete documents.

SECTION 23: PUBLIC RECORDS. The CONSULTANT shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONSULTANT does not transfer the records to the City.
- (d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If the CONSULTANT transfers all public records to the City upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF GREENACRES, ATTN: CITY CLERK, AT (561) 642-2006, CITYCLERK@GREENACRESFL.GOV, 5800 MELALEUCA LANE, GREENACRES, FL 33463.

SECTION 24: CONFIDENTIAL AND PROPRIETARY INFORMATION. Each party (the "Receiving Party") will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software ("Confidential Information") obtained from the other party (the "Disclosing Party"); provided, however, that the Receiving Party will not be prohibited from disclosing or using

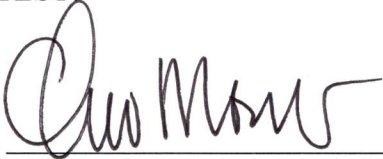
information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party's Confidential Information, (iv) that is already in the Receiving Party's possession at the time of disclosure, or (v) that is required to be released by law.

SECTION 25: NO THIRD-PARTY BENEFICIARIES. There are no third-party beneficiaries under this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement (Planning Services) as of the day and year set forth above.

CITY OF GREENACRES

ATTEST:

By: 
Quintella Moorer, City Clerk

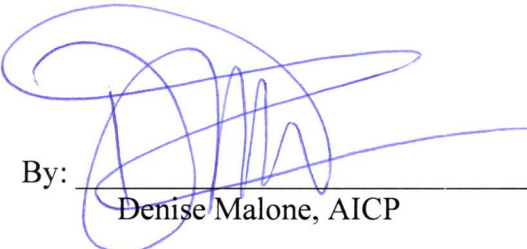
By: 
Andrea McCue, City Manager



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: 
Glen J. Torcivia, City Attorney

CONSULTANT:

By: 
Denise Malone, AICP

