

CONTRACT FOR CONTINUING PROFESSIONAL SERVICES (CCNA)

THIS CONTRACT ("Contract") is entered into by and between the **Town of Highland Beach**, Florida, a municipal corporation ("Town") and **Caulfield & Wheeler, Inc.** ("Firm") on 24 day of April, 2024.

RECITALS

WHEREAS, the Town issued RFQ No. 24-0001 for Continuing Professional Engineering, Architectural, Landscape Architectural, Surveying and Mapping Consulting Services (CCNA) ("RFQ") and has selected the Firm to perform the non-exclusive services; and,

WHEREAS, the Firm has agreed to the terms and conditions of the Contract and has submitted a Fee Schedule which is attached hereto as **Exhibit A** and incorporated herein; and,

WHEREAS, the Town Commission has determined that it is in the best interests of Town to enter into this Contract with the Firm.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the Town and the Firm agree as follows:

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

SECTION 2: FIRM'S SERVICES.

a. Scope of Services. The Firm shall provide the services specifically set forth in the RFQ and the Firm's qualification statement ("Qualifications"). Both the RFQ issued by the Town and the Qualifications are incorporated herein by reference as if set forth in full.

b. Task Orders. When the Town identifies a need for the Firm's services, the Town will request a proposal from the Firm to provide the services requested. The Firm's proposal will be based on the Fee Schedule agreed to by the Town and shall be submitted in a form approved by the Town. If a subconsultant(s) is to be utilized for services under a task order, the Firm shall obtain a written proposal from the subconsultant(s) and attach the same to the Firm's proposal submitted to the Town. Upon receipt of the Firm's proposal, the Town shall decide in its sole discretion whether to award the task order to the Firm. Depending on the lump sum, not to exceed amount of each proposed task order, the task order may be awarded by the Town Manager (if within his purchasing authority) or the Town Commission. If the task order is awarded to the Firm, the Firm shall commence the identified services upon receipt of a Notice to Proceed from the Town or upon the Firm's receipt of a fully executed task order for the services.

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Contract, it being understood that the Firm will act hereunder as an independent contractor and none of the Firm's, officers, directors, employees, independent contractors, representatives, or agents performing services for Firm pursuant to this Contract shall have any claim under this Contract or otherwise against the Town for compensation of any kind under this Contract. The relationship between the Town and Firm is that of independent contractors, and

neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM AND TERMINATION.

a. Term. The term of this Contract is for five (5) years. The parties may agree in writing to renew this Contract for an additional three (3) one-year periods.

b. Termination without cause. In addition to other rights the Town may have at law and pursuant to the Contract with respect to cancellation and termination of the Contract, the Town may, in its sole discretion, terminate for the Town's convenience the performance of any services under this Contract or the RFQ, in whole or in part, at any time upon written notice to the Firm. The Town shall effectuate such Termination for Convenience by delivering to the Firm a Notice of Termination for Convenience, specifying the applicable scope and effective date of termination, which termination shall be deemed operative as of the effective date specified therein without any further written notices from the Town required. Such Termination for Convenience shall not be deemed a breach of the Contract, and may be issued by the Town with or without cause.

Upon receipt of such Notice of Termination for Convenience from the Town, and except as otherwise directed by the Town, the Firm shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

Stop the Work specified as terminated in the Notice of Termination for Convenience;

Immediately deliver to the Town all records, in their original/native electronic format (i.e. CAD, Word, Excel, etc.), any and all other unfinished documents, and any and all equipment or materials already installed or purchased.

Upon issuance of such Notice of Termination for Convenience, the Firm shall only be entitled to payment for that work satisfactorily performed up until the date of its receipt of such Notice of Termination for Convenience, but no later than the effective date specified therein. Payment for the any work satisfactorily performed shall be determined by the Town in good faith, in accordance with the percent completion of the audit.

c. Termination for cause. Either party may terminate this Contract 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 Contract. The party electing to terminate this Contract shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have ten (10) days from the date of the notice in which to remedy the breach. If the breach is for non-payment, the breaching party shall have five (5) days from the date of the notice to remedy the breach for non-payment. If such corrective action is not taken within the required time, then this Contract shall terminate at the end of the required time without further notice or demand.

d. Effect of Termination. Termination of this Contract 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 Town is a municipal corporation and political subdivision of the state of Florida, and as such, this Contract

(and all Exhibits hereto) are subject to budgeting and appropriation by the Town of funds sufficient to pay the costs associated herewith in any fiscal year of the Town. Notwithstanding anything in this Contract to the contrary, in the event that no funds are appropriated or budgeted by the Town's governing board in any fiscal year to pay the costs associated with the Town's obligations under this Contract, or in the event the funds budgeted or appropriated are, or are estimated by the Town to be, insufficient to pay the costs associated with the Town's obligations hereunder in any fiscal period, then the Town will notify Firm of such occurrence and either the Town or Firm may terminate this Contract 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 Town of any kind whatsoever; however, Firm shall be paid for services rendered through and including the date of termination.

SECTION 5: COMPENSATION.

a. The Town agrees to compensate the Firm for the services performed in accordance with and not to exceed the hourly rates set forth in **Exhibit A (Fee Schedule)** and the budget for each task order. The fee schedule shall be the basis for all fees proposed by the Firm and in any approved task order. Said fee schedule shall remain in effect for the initial five (5) year term of this Contract. Thereafter, the Firm may request reasonable increases in the hourly rates, and the same will be negotiated by the parties in good faith. The Town agrees to compensate the Firm for the costs of any pre-approved subconsultant at cost plus ten percent (10%). Prior to the Town's payment of any subconsultant costs, the Firm shall provide the Town with the subconsultant's proposal, and the Town shall approve, disapprove, or negotiate the proposal with the Firm. Except as otherwise set forth herein, the Town shall not reimburse the Firm for any additional costs incurred as a direct or indirect result of the Firm providing services to the Town under this Contract and not set forth in **Exhibit A**. Further, the Town shall not be responsible for the payment of any reimbursable, out-of-pocket expenses except as provided for in an approved task order or amendment thereto. If reimbursable, out-of-pocket expenses are not listed in the Fee Schedule, the hourly rates are deemed to be all inclusive of such costs and expenses.

b. The Town agrees that it will use its best effort to pay the Firm within thirty (30) calendar days from presentation of the Firm's itemized report and invoice and approval of the Town's representative. The Firm shall submit monthly invoices, which shall include a report of work completed during the respective invoice period. The report shall be adequate in detail to describe work progress (% complete for each task) and written summaries of work completed.

c. In accordance with Section 287.055, Florida Statutes, as amended from time to time, professional services under the continuing services contract will be for projects that do not exceed \$4,000,000 in estimated construction costs or \$500,000 in estimated professional services for a study activity. Any changes to these statutory amounts shall automatically apply to this Contract on the effective date of such changes.

SECTION 6: INDEMNIFICATION.

a. The Firm, its officers, employees and agents shall indemnify, defend, and hold harmless the Town, including its officers, employees, and representatives from any and all

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 action, omission, negligence, recklessness or intentionally wrongful conduct of the Firm and/or other persons employed or utilized by the Firm in the performance of the services under this Contract, including but not limited to subconsultants.

b. Nothing contained in this Contract shall be construed or interpreted as consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as amended from time to time. The provisions and limitations of Section 768.28, Florida Statutes, are deemed to apply to this Contract to claims or actions arising in tort and/or contract.

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

SECTION 8: PERSONNEL. The Firm represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Town. All of the services required hereunder shall be performed by the Firm or under its supervision, and all personnel engaged in performing the services shall be fully qualified and authorized or permitted under federal, state and local law to perform such services.

SECTION 9: FEDERAL AND STATE TAX. The Town is exempt from payment of Florida State Sales and Use Tax. The Firm is not authorized to use the Town's Tax Exemption Number.

SECTION 10: INSURANCE. Prior to commencing any services, the Firm shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the Town and the Firm. All such insurance policies may not be modified or terminated without the express written authorization of the Town.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/	\$1,000,000 per occurrence
Errors and Omissions	\$3, 000,000 annual aggregate
Commercial general liability	\$1, 000,000 per occurrence
(Products/completed operations	
Contractual, insurance broad form property,	
Independent Auditor, personal injury)	\$2,000,000 annual aggregate
Excess liability	\$1,000,000
Automobile (owned, non-owned, & hired)	\$ 1,000,000 per occurrence

Worker's Compensation	\$ statutory limits
Including employer's liability insurance	\$ 100,000 per occurrence
	\$ 500,000 annual aggregate

The commercial general liability and excess liability policies will name the Town as an additional insured. Failure to comply with the foregoing requirements shall not relieve Firm of its liability and obligations under this Contract.

SECTION 11: SUCCESSORS AND ASSIGNS. The Town and the Firm each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as agreed in writing by all parties, this Contract is not assignable.

SECTION 12: LAW, VENUE, REMEDIES, AND ENFORCEMENT COSTS. This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held 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. The Town shall not be liable to the Firm for any special, incidental, or consequential damages of any kind whether or not caused by the Town's negligence even if the parties have been advised of the possibility of such damages. If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Contract, the parties agree that each party shall be responsible for its own attorneys' fees.

SECTION 13: 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 CONTRACT.

SECTION 14: NONDISCRIMINATION. The Firm warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 15: AUTHORITY TO PRACTICE. The Firm hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Contract, and that it will at all times conduct its business and provide the services under this Contract in a reputable manner. Proof of such licenses and approvals shall be submitted to the Town upon request.

SECTION 16: TAXES; ACCESS AND AUDITS.

16.1 The Town is exempt from payment of Florida State Sales and Use Tax.

16.2 The Firm shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the services for at least three (3) years after completion of the Contract or as otherwise required by law. The Town shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours and upon reasonable prior notice, at the Firm's place of business. In no circumstances will the Firm be required to disclose any confidential or proprietary information regarding its products and service costs.

SECTION 17: PUBLIC ENTITY CRIMES. Firm 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 contractor, supplier or sub-contractor 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 Firm will advise the Town immediately if it becomes aware of any violation of this statute.

SECTION 18: NOTICE. All notices required in this Contract shall be sent by certified mail, return receipt requested, or by nationally recognized overnight courier, and if sent to the Town shall be sent to:

Town of Highland Beach
Attn: Town Manager
3614 South Ocean Boulevard
Highland Beach, FL 33487

and if sent to the Firm, shall be sent to:

Caulfield & Wheeler, Inc.
Attn: John F. Wheeler, President
7900 Glades Road, Suite 100
Boca Raton, FL 33434

The foregoing names and addresses may be changed if such change is provided in writing to the other party.

SECTION 19: ENTIRETY OF CONTRACT. The Town and the Firm agree that this Contract sets forth the entire Contract 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 Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 20: WAIVER; SEVERABILITY. Failure of a party to enforce or exercise any of its right(s) under this Contract shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter. If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

SECTION 21: PREPARATION. This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

SECTION 22: MATERIALITY. All provisions of the Contract shall be deemed material.

SECTION 23: LEGAL EFFECT. This Contract shall not become binding and effective until approved by the Town.

SECTION 24: SURVIVABILITY. Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

SECTION 25: COUNTERPARTS. This Contract may be executed in one or more counterparts, 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 Contract. The parties agree to accept the execution of this Contract by electronic means.

SECTION 26: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the Firm acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Firm has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 27: PUBLIC RECORDS. Firm shall comply with Florida's Public Records Laws, and, if it is acting on behalf of the Town as provided under section 119.011(2), specifically agrees to:

- a. Keep and maintain public records required by the Town to perform the service.
- b. Upon request from public agencies custodian of public records, provide the Town 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 the contract term and following completion of the contract if the contractor does not transfer the records to the Town.
- d. Upon completion of the contract, transfer, at no cost, to the Town all public records in possession of the Firm or keep and maintain public records required by the Town to perform

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

e. IF THE FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE TOWN OF HIGHLAND BEACH, ATTN: LANELDA GASKINS, AT (561) 278-4548, LGASKINS@HIGHLANDBEACH.US, 3614 S. OCEAN BLVD., HIGHLAND BEACH, FL 33487.

Failure of the Firm to comply with the requirements of this section shall be a material breach of the Contract, and the Town shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate.

SECTION 28: THIRD PARTY BENEFICIARIES. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or the Firm.

SECTION 29: CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS. This Contract consists of the RFQ, this Contract, the Qualifications and the Fee Schedule (**Exhibit A**). The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. Any conflicts among the documents shall be resolved in the following order: this Contract, Fee Schedule, the RFQ, and the Qualifications. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

SECTION 30: E-VERIFY. Pursuant to Section 448.095(5), Florida Statutes, the Firm shall:

a. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subconsultants (providing services or receiving funding under this Contract) to register with and use the E-Verify system to verify the work authorization status of all the subconsultants' newly hired employees;

b. Secure an affidavit from all subconsultants (providing services or receiving funding under this Contract) stating that the subconsultant does not employ, contract with, or subcontract with an unauthorized alien;

c. Maintain copies of all subconsultant affidavits for the duration of this Contract;

d. Comply fully, and ensure all of its subconsultants comply fully, with Section 448.095, Florida Statutes;

e. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract; and

f. Be aware that if the Town terminates this Contract under Section 448.095(5)(c), Florida Statutes, the Firm may not be awarded a public contract for at least 1 year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the Town as a result of the termination of the Contract.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract for Continuing Professional Consulting Services as of the day and year set forth below by the Town.

FIRM: CAULFIELD & WHEELER, INC.

BY: 
Signature of Authorized Representative

Print name and position: John F. Wheeler, P.E., President

TOWN OF HIGHLAND BEACH:

Attest:

Date: _____

By: _____
Lanelda Gaskins, MMC
Town Clerk

By: _____
Natasha Moore
Mayor

Approved as to Form and
Legal Sufficiency:

By: _____
Len Rubin
Town Attorney