

PROFESSIONAL SERVICES AGREEMENT
(IT-Related Consulting Services)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on _____ day of _____, 2021, by and between the **Town of Highland Beach**, a Florida municipal corporation (“Town”) and **Node0 IT, LLC**, a Florida Limited Liability Company (“Consultant”).

RECITALS

WHEREAS, the Town has previously worked with the Consultant regarding its IT needs;

WHEREAS, the Town desires to continue its relationship with Consultant regarding its IT needs;

WHEREAS, the Consultant has provided the Town with a proposal to provide the IT services sought;

WHEREAS, the Consultant possesses a distinctive field of expertise and maintains specific licenses to allow it to provide the Town and its police department IT consulting services;

WHEREAS, based on the Consultant’s past and current work with the Town, its ability to obtain and maintain its current licenses which allow it to work with the Town’s police department, it is in the best interest of the Town, pursuant to Section 33-2(c)(11) of the Town Code, to forego sealed bids or written quotes and to award the contract to Consultant; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by the Consultant to the Town.

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 Consultant 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 consulting services to the Town as directed by the Town Manager/or designee. The general scope of the Consultant’s services is to provide IT related services and as further set forth and detailed in the Consultant’s proposal attached hereto as **Exhibit “A”** and incorporated herein.

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

a. **Term; Renewal.** The term of this Agreement shall commence upon the approval of this Agreement by the Town Commission and shall continue until such time as either party terminates this Agreement as set forth herein.

b. 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 Town 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 Town shall resume its performance as soon as is reasonably possible. Upon the Consultant's request, the Town shall consider the facts and extent of any failure to perform the services and, if the Consultant's failure to perform was without its or its subconsultants' fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the Town'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 three (3) days before a notice of delay or claim therefore is made in writing to the Town. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

c. 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.

d. 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) business days from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) business days, then this Agreement shall terminate at the end of the three (3) business day period without further notice or demand.

e. 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 subconsultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the Town in the format acceptable to Town.
3. Continue and complete all parts of the services that have not been terminated.

f. Effect of Termination. Except for a termination for cause, 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 Town is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement (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 Agreement 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 Agreement, 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 Consultant of such occurrence and either the Town 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 Town of any kind whatsoever; however, Town shall pay Consultant for all services performed under this Agreement through the date of termination.

SECTION 5: COMPENSATION.

a. Payments. The Town agrees to compensate the Consultant in accordance with the rate schedule set forth in **Exhibit “A”**.

b. Invoices. The Consultant shall render invoices to the Town, on a monthly basis, for services that have been rendered in conformity with this Agreement and Exhibit “A”. The invoices shall specify the services performed and the time spent on the same. 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 Town’s receipt of the Consultant’s invoice. Invoices should be sent to the Town’s finance department.

SECTION 6: INDEMNIFICATION. The Consultant, its officers, employees and agents shall indemnify and hold harmless the Town, including its officers and employees 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, recklessness or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the services under this Agreement. The Town 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 Town or the Consultant, nor shall this Agreement be construed as a waiver of sovereign immunity for the Town beyond the waiver provided in section 768.28, Florida Statutes.

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: PERSONNEL. The Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. 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 Consultant 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: SUB-CONSULTANTS. The Town reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and approve all qualifications of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Agreement. All sub-consultants providing professional services to the Consultant under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement. In the event that a sub-consultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the Consultant shall indemnify and hold harmless the Town for any claim in excess of the sub-consultant’s insurance coverage, arising out of the negligent acts, errors or omissions of the sub-consultant. The Consultant shall not charge an administrative fee or surcharge on any sub-consultant’s services; all sub-consultant costs shall be a direct pass-through cost to the Town.

SECTION 10: FEDERAL AND STATE TAX. The Town is exempt from payment of Florida State Sales and Use Tax. The Consultant is not authorized to use the Town’s Tax Exemption Number.

SECTION 11: INSURANCE. Prior to commencing any services, the Consultant 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 Consultant. 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/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent Consultant, personal injury)	\$1,000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits - unless certificate of exemption is provided.

Proof of all insurance coverage shall be furnished to the Town by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that the Consultant has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve Consultant of its liability and obligations under this Agreement.

SECTION 12: SUCCESSORS AND ASSIGNS. The Town and the Consultant each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 13: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. 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 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 14: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 15: ACCESS AND AUDITS. The Consultant shall maintain adequate records to justify all payments made by the Town under this Agreement for at least three (3) years after completion of this Agreement and longer if required by applicable federal or state 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, at the Consultant's place of business. In no circumstances will Consultant be required to disclose any confidential or proprietary information regarding its products and service costs.

SECTION 16: NONDISCRIMINATION. The Consultant 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 17: AUTHORITY TO PRACTICE. The Consultant 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 Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner and consistent with all applicable laws. Proof of such licenses and approvals shall be submitted to the Town upon request.

SECTION 18: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, 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 Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 19: 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 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 Consultant will advise the Town immediately if it becomes aware of any violation of this statute.

SECTION 20: 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 TOWN shall be sent to:

Town of Highland Beach
Attn: Town Manager
3614 So. Ocean Blvd.
Highland Beach, FL 33487

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

Node0 IT, LLC
12765 W Forest Hill Blvd.
Suite 1310
Wellington, FL 33414

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 21: ENTIRETY OF AGREEMENT. The Town 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 22: 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 23: 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 Town reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 24: 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 Town may at its option provide notice to the Consultant to terminate for cause.

SECTION 25: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the Town. The Effective Date is the date this Agreement is executed by the Town.

SECTION 26: 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 27: 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 28: COUNTERPARTS. This Agreement 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 Agreement.

SECTION 29: PALM BEACH COUNTY IG. In accordance with Palm Beach County Ordinance No. 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 No. 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 30: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. This Agreement consists of this Agreement and Exhibit "A". The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement and Exhibit "A", the terms and conditions of this Agreement shall prevail. 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 31: OWNERSHIP OF DELIVERABLES. The deliverables, work product, specifications, calculations, supporting documents, or other work products which are listed as deliverables by the Consultant in Exhibit "A" or prepared for or on behalf of the Town under this Agreement, if any, shall become the property of the Town upon delivery. The Consultant may keep copies or samples thereof and shall have the right to use the same. The Town accepts sole responsibility for the reuse of any such documents in a manner other than as initially intended or for any use of incomplete documents.

Notwithstanding the foregoing, in performing or providing any of Consultant's Services under any invoice or statement of work, the Town may use Consultant's digital assets, intellectual property, products, materials (including training materials), information, ideas, concepts, routines, know-how, techniques, tools, templates, models, software, libraries, procedures, documentation, technology, interfaces, databases, graphics, components, reports, processes, best practices, and methodologies owned or licensed by or developed on behalf of the Consultant or any of its suppliers ("Consultant Intellectual Property"). The Town agrees that the Consultant or its suppliers shall retain all right, title and interest (including all patent, copyright, trade secret and other intellectual property rights) in and to all Consultant Intellectual Property

and that no Consultant Intellectual Property shall be deemed to be a work product or a “work made for hire”. The Town further acknowledges and agrees that Consultant may modify and/or improve Consultant Intellectual Property during the course of this Agreement. The Town agrees that all such modifications, improvements, and derivative works shall be included within the meaning of “Consultant Intellectual Property”, unless otherwise specifically agreed by the parties in writing. For the avoidance of doubt, the Town is not granted any rights, title or interest in or to any Consultant Intellectual Property and/or any other equipment, supplies, software, tools, documentation, and materials owned, leased, or used by Consultant. All Consultant Intellectual Property is deemed to be confidential information for purposes of this Agreement. The Town shall have or obtain no rights in or to any Consultant Intellectual Property other than pursuant to a separate written agreement or Invoice signed by an authorized representative of each party. Notwithstanding any other provision of this Agreement to the contrary, Consultant shall be free to use any ideas, concepts, or know-how developed or acquired by Consultant during the provision of the Consultant’s Services to the extent obtained and retained by Consultant’s personnel as impressions and general learning. Nothing in this Agreement will preclude Consultant from acquiring, developing, using, enhancing, or marketing services or materials that are similar or related to any Work Product prepared for the Town.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of the Consultant, the undersigned hereby represents to the Town that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the Consultant for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 33: 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 Town as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- a. Keep and maintain public records required by the Town to perform the service.
- b. Upon request from the Town’s custodian of public records or designee, 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 this Agreement and following completion of this Agreement if the Consultant does not transfer the records to the Town.
- d. Upon completion of this Agreement, transfer, at no cost, to the Town all public records in possession of the Consultant or keep and maintain public records required by the Town to perform the service. If the Consultant transfers all public records to the Town upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and 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 Town, upon request from the Town’s custodian of public records or designee, in a format that is compatible with the information technology systems of the Town.

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 TOWN OF HIGHLAND BEACH, ATTN: LANELDA GASKINS, AT (561) 278-4548, LGASKINS@HIGHLANDBEACH.US, 3614 SO. OCEAN BLVD., HIGHLAND BEACH, FL 33487.

SECTION 34: 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 35: NO THIRD PARTY BENEFICIARIES. There are no third party beneficiaries under this Agreement.

SECTION 36: E-VERIFY. Consultant warrants and represents that the Consultant and all subconsultants are in compliance with Section 448.095, Florida Statutes, as may be amended. Consultant has registered to use, and shall continue to use, the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of newly hired employees and has received an affidavit from each subconsultant stating that the subconsultant does not employ, contract with or subcontract with an unauthorized alien. If the Town has a good faith belief that Consultant has knowingly violated Section 448.09(1), Florida Statutes, the Town shall terminate this Agreement pursuant to Section 448.095(2), Florida Statutes, as may be amended. If the Town has a good faith belief that a subconsultant has knowingly violated Section 448.09(1), Florida Statutes, but Consultant has otherwise complied, it shall notify Consultant, and Consultant shall immediately terminate its contract with the subcontractor.

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SIGNATURE PAGE FOLLOWS

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

TOWN OF HIGHLAND BEACH, FLORIDA

By: _____
Douglas Hillman, Mayor

ATTEST:

Approved as to form and legal sufficiency:

Lanelda Gaskins, Town Clerk

Glen J. Torcivia, Town Attorney

NODE0 IT, LLC

By: _____

Print Name: _____

Title: _____

[Corporate Seal]

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____ as _____ of Node0 IT, LLC, a Florida Limited Liability Company, and who is personally known to me or who has produced the following _____ as identification.

Notary Public

EXHIBIT "A"

Node0 IT Professionals shall furnish an on-site engineer for a minimum of 2 days per week (eight hours per day) to manage the Town's computer network at a monthly rate of \$5200.00.

Node0 IT Professionals shall also furnish "Remote Managed Information Technology Services" throughout the month, providing 24/7 monitoring of the Town's network and responding to issues as they arise which will be billed according to the previous contract's monthly rate of \$1166.00.

Additional on-site or remote non-scheduled technical support shall be provided upon request and availability, and will be billed at the agreed upon rate of \$ 75.00 per hour.

Total monthly reoccurring Charges Due at the 1st of the month will be \$6366.00.