

**PROFESSIONAL SERVICES AGREEMENT
(Treasury Reserves Portfolio Investment)**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made this _____, between the **City of Lake Worth Beach**, Florida, a municipal corporation (“CITY”) with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **AndCo Consulting LLC**, a limited liability company authorized to do business in the State of Florida (“CONSULTANT”) with its office located at 531 W Morse Blvd, Suite 200, Winter Park, FL 32789.

RECITALS

WHEREAS, CONSULTANT has provided the CITY with a written proposal to provide Treasury Reserves Portfolio Investment Consulting Services for the CITY’s Reserve Fund; and

WHEREAS, the CITY’s procurement code, section 2-112 (C), authorizes the selection of a consultant to provide professional services with a distinctive field of expertise without competitive selection; and

WHEREAS, the CITY desires to accept the CONSULTANT’s proposal in order for CONSULTANT to render the services to the CITY as provided herein; and

WHEREAS, the CONSULTANT further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of investment consulting services by CONSULTANT to the CITY; and,

WHEREAS, the CITY finds entering this Agreement with the CONSULTANT 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 sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. RECITALS

1.1 The recitals set forth above are incorporated into this Agreement as true and correct statements.

2. TERM

2.1 The term of this Agreement shall commence upon the approval of this Agreement by the City Commission and shall be for an initial term of three (3) years unless earlier terminated as stated herein. The parties may extend the term for additional two (2), one-year periods by amendment to this Agreement. The City Manager is authorized to approve an amendment to this Agreement to extend the term as set forth herein.

3. SCOPE OF SERVICES

3.1 As more specifically set forth in the Consultant’s proposal (dated November 8, 2021) which is attached hereto as **Exhibit “A”** and incorporated herein, the Consultant shall conduct Treasury Reserves Portfolio Investment Consulting Services for the CITY’s Reserve Fund in accordance to the Florida Statue 218.415 Local Government Investment Policies and the CITY’s Investment policy.

3.2 The CONSULTANT has represented to the CITY that it has expertise in the type of services that is required as set forth in this Agreement. The CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the CITY's review and approval and shall be in accordance with the generally accepted standards of practice in the State of Florida, as may be applied to the type of services to be rendered, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the services to be provided and performed by the CONSULTANT. In the event of any conflicts in these requirements, the CONSULTANT shall notify the CITY of such conflict and utilize its best professional judgment to advise CITY regarding resolution of the conflict.

3.3 The CONSULTANT agrees to obtain and maintain throughout the term of this Agreement all such licenses as are required to do business in the State of Florida, the City of Lake Worth Beach, and in Palm Beach County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the services to be provided and performed by the CONSULTANT pursuant to this Agreement.

3.4 The CONSULTANT agrees to employ and designate, in writing, within 14 calendar days after receiving its Notice to Proceed, or other directive to commence services from the CITY, a qualified employee to serve as the CONSULTANT's project manager (the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

3.5 The Scope of Services shall be performed by the CONSULTANT or under its supervision and all personnel engaged in performing the Scope of Services shall be fully qualified and, if required, authorized or permitted under the federal, state and local law to perform such Scope of Services. All of the CONSULTANT's personnel (and all authorized subcontractors), while on CITY premises, shall comply with all CITY requirements governing safety, conduct and security.

3.6 The Scope of Services shall be completed in accordance with the terms and conditions set forth in the Exhibit "A" and in accordance to the CITY's Investment Policy, not attached but referenced herein.

4. INDEPENDENT CONSULTANT; USE OF AGENTS OR ASSISTANTS

4.1 The CONSULTANT is and shall be, in the performance of the Scope of Services under this Agreement, an independent CONSULTANT, and not an employee, agent, or servant of the CITY. All persons engaged in any of the Scope of Services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONSULTANT's sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the Scope of Services.

4.2 To the extent reasonably necessary to enable the CONSULTANT to perform the Scope of Services hereunder, the CONSULTANT shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the CONSULTANT.

5. FEE AND ORDERING MECHANISM

5.1 The CITY agrees to compensate CONSULTANT in accordance with the rate schedule set forth in **Exhibit "A"** (the CONSULTANT's rate proposal), which is attached hereto and incorporated herein. The CITY shall not reimburse CONSULTANT for any additional costs incurred as a direct or indirect result of CONSULTANT providing services to the CITY under this Agreement and not set forth in **Exhibit "A"**.

5.2 Should the CITY require additional materials or services, not included in this Agreement, fees and payment for such services will be set forth in a separate amendment, as authorized in accordance with the CITY's procurement code, prior to any such additional materials or services being provided by the CONSULTANT.

6. INVOICE

6.1 The CONSULTANT shall submit an itemized quarterly invoice in arrears to the CITY for approval prior to receiving compensation. The CONSULTANT shall be paid within thirty (30) days of receipt of an approved invoice for services.

6.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONSULTANT within a reasonable time after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any payment to the CONSULTANT until the dispute is resolved.

7. AUDIT BY CITY

7.1 The CONSULTANT shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONSULTANT's performance under this Agreement including, but not limited to, expenses for subcontractors, agents or assistants who performed services under this Agreement, direct and indirect charges for services performed and detailed documentation for all such services performed or to be performed under this Agreement.

8. COPIES OF DATA/DOCUMENTS

8.1 Copies or original documents prepared by the CONSULTANT in relation to services associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

9. OWNERSHIP

9.1 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONSULTANT pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

10. WRITTEN AUTHORIZATION REQUIRED

10.1 The CONSULTANT shall not make changes in the Scope of Services or perform any additional services or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the CONSULTANT's sole risk and without payment from the CITY.

11. DEFAULTS, TERMINATION OF AGREEMENT

11.1 If the CONSULTANT fails to timely perform the Scope of Services or has failed in any other respect to satisfactorily perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the City Manager or designee may give written notice to the CONSULTANT specifying defaults to be remedied. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONSULTANT does not remedy defaults within the allotted time or commence good faith steps to remedy the default to the reasonable satisfaction of the City Manager or designee, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONSULTANT including, without limitation, utilization of another CONSULTANT to provide for such services; and/or, the CITY may withhold any money due or which may become due to the CONSULTANT for such expense and/or services related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) days the CONSULTANT has not remedied defaults or commenced good faith

steps to remedy defaults to the satisfaction of the City Manager or designee, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

11.2 Notwithstanding paragraph 11.1, the CITY reserves the right and may elect to terminate this Agreement at any time, with or without cause. At such time, the CONSULTANT would be compensated only for that services which have been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

11.3 If this Agreement is terminated before the completion of the term, the CONSULTANT shall:

- (a) Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
- (b) Transfer all services in progress, completed services, and other materials related to the terminated services to the CITY in the format acceptable to CITY
- (c) Continue and complete all parts of the services that have not been terminated.

11.4 Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of services provided prior to the date of termination. Notwithstanding the foregoing, the parties acknowledge and agree that the CITY is a municipal corporation existing under the laws 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.

12. INSURANCE

12.1 Prior to commencing the Scope of Services, the CONSULTANT shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. 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 and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the CITY. Failure to comply with the foregoing requirements shall not relieve the CONSULTANT of its liability and obligations under this Agreement. All insurance, other than Workers' Compensation and Professional Liability, required hereunder shall specifically include the "City of Lake Worth Beach" as an "Additional Insured", and the CONSULTANT shall provide additional insured endorsements section of Certificates of Insurance.

12.2. The CONSULTANT shall maintain, during the life of this Agreement, commercial general liability, including contractual liability insurance, on a primary, non-contributory basis in the amount of \$1,000,000 per occurrence (\$2,000,000 aggregate) to protect the CONSULTANT from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the CONSULTANT or by anyone directly employed by or contracting with the CONSULTANT.

12.3. The CONSULTANT shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONSULTANT from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of non-owned automobiles, including rented automobiles whether such operations be by the CONSULTANT or by anyone directly or indirectly employed by the CONSULTANT. CONSULTANT does not currently own any automobiles and shall obtain and maintain coverage consistent with the limits set forth in this paragraph for any owned automobiles acquired during the term of this Agreement.

12.4. The CONSULTANT shall maintain, during the life of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

12.5 The CONSULTANT shall maintain during the life of this Agreement, Cyber Liability insurance with limits not less than \$5,000,000 per occurrence or claim. Coverage shall be sufficiently broad to respond to the duties and obligations as set forth in the Scope of Services and shall include, but not be limited to, claims involving infringement of intellectual property, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with sufficient limits to respond to these obligations.

12.6 The CONSULTANT shall maintain, during the life of this Agreement, standard Professional Liability Insurance in the minimum amount of \$3,000,000.00 for any single loss.

13. WAIVER OF BREACH

13.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

14. INDEMNITY

14.1 The CONSULTANT shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, patent infringement or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including all attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent arising out of or alleged to have arisen out of the acts, omissions, or neglect of the CONSULTANT or any of its agents, employees, subcontractors or by anyone the CONSULTANT directly or indirectly employed or utilized to perform services under this Agreement.

14.2 The CONSULTANT's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONSULTANT whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

14.3 Compliance with any insurance requirements required elsewhere in this Agreement shall not relieve CONSULTANT of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this section.

14.4 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. Further, nothing contained in this Agreement 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.

14.5 The CONSULTANT's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

15. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

15.1 This Agreement consists of the terms and conditions provided herein, and Exhibit "A". To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the Exhibit "A" (including all specifications, exhibits and addenda attached thereto) next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

15.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

16. ASSIGNMENT

16.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONSULTANT. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONSULTANT and not for the benefit or any other party. The CONSULTANT shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

16.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

17. SUCCESSORS AND ASSIGNS

17.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

18. WAIVER OF TRIAL BY JURY

18.1 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.

19. GOVERNING LAW AND REMEDIES

19.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

19.2 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.

20. TIME IS OF THE ESSENCE

20.1 Time is of the essence in the completion of the Scope of Services as specified herein.

21. NOTICES

21.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONSULTANT have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONSULTANT to the CITY shall be given to the CITY address as follows:

City of Lake Worth Beach
Attn: City Manager
7 North Dixie Highway
Lake Worth Beach, Florida 33460

With a copy to:

City of Lake Worth Beach
Attn: Finance Director
7 North Dixie Highway
Lake Worth Beach, Florida 33460

All notices, demands or requests from the CITY to the CONSULTANT shall be given to the CONSULTANT address as follows:

AndCo Consulting LLC
Attn: Chief Compliance Officer
531 W Morse Blvd, Suite 200
Winter Park, Florida 32789

22. SEVERABILITY

22.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

23. DELAYS AND FORCES OF NATURE

23.1 The CONSULTANT shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Upon the CONSULTANT's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the services for reason beyond the control of the CONSULTANT and, if the CONSULTANT'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the services at any time. If the CONSULTANT is delayed at any time in the progress of the services by any act or neglect of the CITY or its employees, or by any other CONSULTANT employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONSULTANT'S control, or by delay authorized by the CITY pending negotiation or by any cause which

the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONSULTANT's sole remedy for a delay in completion of the services for any reason will be an extension of time to complete the services and CONSULTANT specifically waives any right to seek any monetary damages or losses for a delay in completion of the services, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONSULTANT due to a delay in completion of the services.

24. COUNTERPARTS

24.1 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. This Agreement may be signed digitally and each digitally signed counterpart shall be considered as an original of the signing party.

25. PUBLIC ENTITY CRIMES

25.1 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. CONSULTANT will advise the CITY immediately if it becomes aware of any violation of this statute.

26. PREPARATION

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

27. PALM BEACH COUNTY INSPECTOR GENERAL

27.1 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.

28. ENFORCEMENT COSTS

28.1 Except as required in an indemnification provision herein, all parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to this Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement.

29. PUBLIC RECORDS

29.1 CONSULTANT shall comply with Florida's Public Records Laws, Chapter 119, Florida Statutes, and, if it is acting on behalf of the CITY as provided under section 119.011(2), the CONSULTANT specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the services under this Agreement.
- (b) Upon request from the CITY's custodian of public records, 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 this Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said 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 Agreement term and following completion of the Agreement, if the CONSULTANT does not transfer the records to the CITY.
- (d) Upon the completion of the 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 services. 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 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 CITY, upon request from the CITY's custodian of public records, 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, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

30. COPYRIGHTS AND/OR PATENT RIGHTS

30.1 CONSULTANT warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling of the goods, shipped or ordered, as a result of this Agreement and the CONSULTANT agrees to hold the City harmless from any and all liability, loss, or expense occasioned by any such violation.

31. CONFIDENTIAL AND PROPRIETARY INFORMATION

31.1 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.

32. EXPORT ADMINISTRATION

32.1 Each party agrees to comply with all export laws and regulations of the United States ("Export Laws") to assure that no software deliverable, item, service, technical data or any direct product thereof

arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

33. INFRINGEMENT INDEMNITY

33.1 CONSULTANT will defend or settle at its expense a claim or suit brought by a third party against the CITY arising out of a claim asserting that the Scope of Services or other deliverables ("deliverables" hereafter) provided by CONSULTANT under this Agreement infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. CONSULTANT will indemnify and hold harmless the CITY against and from damages, costs, and reasonable attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) CONSULTANT is promptly notified in writing of such claim or suit, (ii) CONSULTANT will have the sole control of the defense and settlement thereof, and (iii) CITY furnishes CONSULTANT, on reasonable request, information available to CITY for such defense. The CITY will not admit any such claim without prior consent of CONSULTANT.

(a) In the event of a claim of infringement, CONSULTANT shall, at its option:

1. procure for CITY the right to continue using the deliverables provided under this Agreement; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, CONSULTANT will refund to CITY the fee actually paid by CITY under the Agreement (as amortized on a straight-line basis over the time in which the CITY was able to use the deliverables).

(b) CONSULTANT will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by CONSULTANT or by its recommendation; or
2. combination of the deliverables with products other than those supplied by CONSULTANT;
3. the alleged infringement or misappropriation relates to such modification or combination; and/or
4. the specifications or written direction of the CITY directs CONSULTANT to construct, fabricate or otherwise provide the infringing deliverables, design, apparatus or, article, with CONSULTANT's products, services, or work product.

(c) CONSULTANT will also not have any indemnification obligation with respect to a claim: (i) if it has provided CITY with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with this Agreement.

(d) CONSULTANT's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon CONSULTANT whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of this Agreement.

34. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH

34.1 CONSULTANT certifies that all material, equipment, etc., contained in this bid meets all OSHA requirements. CONSULTANT further certifies that, if the material, equipment, etc., delivered is subsequently found to be deficient in any OSHA requirements in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONSULTANT.

35. FEDERAL AND STATE TAX

35.1 The CITY is exempt from payment of Florida State Sales and Use Tax. CONSULTANT is not authorized to use the CITY's Tax Exemption Number.

36. PROTECTION OF PROPERTY

36.1 The CONSULTANT shall at all times guard against damage or loss to the property of the CITY or of other vendors or CONSULTANTS and shall be held responsible for replacing or repairing any such loss or damage. The CITY may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the successful CONSULTANT or its agents. The CONSULTANT shall be responsible to safeguard all of their property such as tools and equipment while on site. The CITY will not be held responsible for any loss of CONSULTANT property due to theft or vandalism.

37. E-VERIFY

37.1 Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONSULTANT shall:

- (a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
- (b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- (c) Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;
- (d) Comply fully, and ensure all of its subcontractors 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 Agreement; and,
- (f) Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONSULTANT may not be awarded a contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

38. SCRUTINIZED COMPANIES

38.1 CONSULTANT certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONSULTANT or any of its subcontractors are found to have submitted a false certification; or if the CONSULTANT or any

of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

38.2 If this Agreement is for one million dollars or more, the CONSULTANT certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONSULTANT, or any of its subcontractors are found to have submitted a false certification; or if the CONSULTANT or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

38.3 The CONSULTANT agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

38.4 The CONSULTANT agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

38.5 The CONSULTANT agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONSULTANT shall immediately notify the CITY of the same.

38.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

39. SURVIVABILITY

39.1 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.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have made and executed this **Treasury Reserves Portfolio Investment Services Agreement** on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONSULTANT: **AndCO Consulting LLC**

By: _____
[Signature]

Print Name: Sara Searle

Title: Chief Compliance Officer

STATE OF Florida)
COUNTY OF Orange)

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 3rd day of March 2023, by Sara Searle, as the CCO [title] of **AndCo Consulting LLC**, a Limited Liability Company, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONSULTANT to the same.

[Signature]

Notary Public Signature
Notary Seal:



KIM SPURLIN
Commission # GG 355222
Expires November 13, 2023
Bonded Thru Budget Notary Services

EXHIBIT "A"
Consultants Proposal (2 Pages)

Clients first.



To: Bruce Miller, Finance Director and Andre McAden, Controller;
Lake Worth Beach, FL

From: Tim Nash

Date: November 8, 2021

Re: Treasury Reserves Portfolio Investment Consulting Services

We are grateful for the opportunity to work with all four City of Lake Worth Beach Pension Funds and are happy to provide some detail as to how we may be able to assist the City of Lake Worth Beach with the management of your treasury reserves portfolio.

AndCo is an independent institutional investment consulting firm. We are structured as a Limited Liability Company and we are 100% employee-owned and managed. We have no parent or affiliated companies. AndCo advises approximately 690 institutional clients with approximately \$96 billion of assets under advisement. We have client relationships all over the United States along with Bermuda and Canada. Our mission is to represent the sole interest of our clients by redefining independence. Our vision is to be a transformational organization viewed as the leader in our industry. We continuously seek to place the interests of our clients first, serving with care and a level of stewardship that only true independence can provide. We believe this can help lead to better overall results.

Our firm has extensive experience working with cities and vendors to create a program of management and oversight of their reserve portfolio that maintains the liquidity needs as required by law, but also aims to provide higher net rates of return than are typically earned by these portfolios. The following is a summary of some distinctions between AndCo and our competitors, and additionally, pursuant to our discussions and per your request, a summary of a program we manage for the City of Jacksonville Beach that we think could be a good model to use as you look to enhance your reserve portfolio.

AndCo's distinctions between our competitors:

- We accept full fiduciary responsibility for each of our clients, without equivocation or exception.
- We only provide our services on a flat-fee basis. We do not receive any compensation derived from the investments, from investment companies, or based on performance results.
- We consult over 690 institutional clients with \$96 billion in assets under advisement. This includes over 450 public funds with approximately \$64 billion in assets.
- An experienced and credentialed team supports each consultant. Our seasoned team of 91 professionals includes 24 CFA® Charter holders and 39 advanced degrees.

Similar entity:

Please find the attached report which highlights the structure and returns of the City of Jacksonville Beach Treasury Portfolio. Their Plan utilizes three separate account managers

who manage portfolios of securities where all securities have a maturity of five-years or less. This was created intentionally as a protection against a potential loss of market liquidity similar to what was experienced in 2008. Should the financial markets experience an environment negatively affecting liquidity, the City can simply end active management of the portfolios and allow all securities held within the investment program to mature to cash over the ensuing 5-year period. In addition to the enhanced liquidity profile of the portfolio, since 10/1/2009 the Treasury Portfolio has achieved a net (of fees) return of 0.68% greater than the Florida SBA. This outperformance delta works out to be approximately \$540,000/year in excess earnings. Please note the scope of services as referenced in the attached Jacksonville Beach Treasury Portfolio client agreement with AndCo Consulting. AndCo was retained for a retainer fee of **\$42,000** payable as an annual hard dollar fee billed quarterly in arrears.

If there are any questions regarding the referenced client and their scope of services, its potential for validation to fulfill with a negotiation for a new contract with AndCo and the City of Lake Worth Beach, please contact Ashlie Gossett at the City of Jacksonville Beach. She is aware that we have provided this agreement and contact information for your review.

**Past performance is not indicative of future performance. There is no guarantee that other clients will experience similar results as various factors can cause actual outcomes to differ materially.*

Sample Florida Municipal Reserve Plan Clients:

City of Altamonte Springs
City of Casselberry
City of Jacksonville Beach
University of Central Florida

Proposed fee for Services to City of Lake Worth Beach Treasury Reserve Plan:

We provide each of our clients all services offered by our firm for our base fee. This allows the peace of mind to know you will never have to choose between cost and your fiduciary duties. As stated in our proposal, we propose an annual hard dollar full-service investment consulting retainer fee of \$30,000 which incorporates a discount for multiple relationships with The City of Lake Worth Beach. In addition, we would guarantee this proposed fee for 3 years.

Trust, integrity, confidence, and respect are the cornerstones of any successful business relationship. We always have and always will ensure that our clients come first. We would be honored to expand our relationship with the City of Lake Worth Beach as investment consultants for the City's Operating Reserves Portfolio.

We would be happy to provide any further clarification regarding our proposal. Please feel free to contact us at the phone number listed below with any questions. Thank you in advance for your time and consideration; it is greatly appreciated.

Tim Nash
Senior Consultant
AndCo Consulting
(407)-902-3739
timn@AndCoConsulting.com