

PROFESSIONAL SERVICES AGREEMENT
(ANNUAL INDEPENDENT FINANCIAL AUDITING SERVICES)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **RSM US, LLP**, a limited liability partnership authorized to do business in the State of Florida (“Consultant”).

RECITALS

WHEREAS, the City issued a Request for Proposal number 20-208 for Annual Independent Financial Auditing Services in accordance with the section 218.391, Florida Statutes (Auditor selection procedure) (the “RFP”); and

WHEREAS, the necessary auditing services are to be performed in accordance with generally accepted auditing standards, the standards set forth for financial audits in the U.S. General Accounting Office's (GAO) Government Auditing Standards, the provisions of the Federal Single Audit Act of 1996 and the U.S. Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governments, and Nonprofits, and the Rules of the Auditor General of the State of Florida, as amended from time to time; and

WHEREAS, Consultant has provided the City with a written proposal in response to the RFP to provide the services as described and set out in the RFP; and

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

WHEREAS, Consultant further warrants that it is experienced and capable of performing the services 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 services by Consultant to the City.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and 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 independent financial auditing services to the City as more specifically described in RFP, which is incorporated herein by reference. The City may request additional services as needed based upon mutual agreement between the parties.

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 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 City for compensation of any kind under this Agreement. The relationship between the City 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. 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 (inclusive of audits for the fiscal years ending September 30, 2020, 2021 and 2022) unless earlier terminated as stated herein. The parties may extend the term for two (2) additional fiscal years (inclusive of audits for the fiscal years ending September 30, 2023 and 2024).

b. Time for Completion. Time is of the essence in the performance of this Agreement. Consultant shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the project schedule as set forth in RFP.

c. Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, or regulations. The Consultant or City may suspend its performance under this Agreement as a result of a force majeure event without being in default of this Agreement, but upon the removal of such force majeure event, the Consultant or City shall resume its performance as soon as is reasonably possible. Upon the Consultant's request, the City shall consider the facts and extent of any failure to perform the services and, if the Consultant's failure to perform was without its or its sub-consultant's fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

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

e. Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement for breach 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.

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

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

g. Effect of Termination. 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 (and all Exhibits hereto) are 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.

h. **Parties' Understandings Concerning Situation Around COVID-19.** Consultant and the City acknowledge that, at the time of the execution of this Agreement, federal, state and local governments, both domestic and foreign, have restricted travel and/or the movement of their citizens due to the ongoing and evolving situation around COVID-19. In addition, like many organizations and companies in the United States and around the globe, Consultant has restricted its employees from travel and onsite work, whether at a client facility or Consultant facility, to protect the health of both Consultant's and its clients' employees. Accordingly, to the extent that any of the services described in this Agreement requires or relies on Consultant or City personnel to travel and/or perform work onsite, either at the City's or Consultant's facilities, including, but not limited to, maintaining business operations and/or IT infrastructure, Consultant and the City acknowledge and agree that the performance of such work may be delayed, significantly or indefinitely, and thus certain services described herein may need to be rescheduled and/or suspended. Consultant and the City agree to provide the other with prompt written notice (not less than five (5) calendar days) in the event any of the services described herein will need to be rescheduled and/or suspended due to COVID-19 and this Agreement shall be amended to address changes in scope and/or cost.

SECTION 5: COMPENSATION.

a. **Payments.** The City agrees to compensate Consultant in accordance with the Annual Fees (total all-inclusive maximum price) set forth in **Exhibit "A"**. 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"**.

b. **Invoices.** Consultant shall render invoices to the City for services that have been rendered in conformity with this Agreement, the RFP and **Exhibit "A"**. The invoices shall specify the services performed and the time spent on such work. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. Invoices will be reviewed for approval and if an invoice is not approved, the City will notify Consultant within ten (10) days of deficiencies in the invoice. Once the deficiencies are corrected and a new or amended invoice submitted, the City shall make payment within twenty (20) days. Invoices will normally be paid within thirty (30) days following the City's receipt of Consultant's invoice.

SECTION 6: INDEMNIFICATION. Consultant, its officers, employees and agents shall indemnify and hold harmless the City, 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, of Consultant, its officers, directors, employees, representatives and agents employed or utilized by Consultant in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. In no event shall either party be liable to the other for claims of punitive, consequential, special, or indirect damages. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or Consultant, nor shall this Agreement be construed as a waiver of sovereign immunity for the City 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. 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 City. All of the services required hereunder shall be performed by 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 City 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 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, Consultant shall indemnify and hold harmless the City 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.

SECTION 10: FEDERAL AND STATE TAX. 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.

SECTION 11: INSURANCE. Prior to commencing any services, 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 City and Consultant. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per claim
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

The commercial general liability and excess liability policies will name the City as an additional insured on a primary, non-contributing basis and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that 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 City and 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 RIGHTS TO A TRIAL BY JURY AND AGREE ANY LITIGATION RELATED TO THIS AGREEMENT SHALL BE RESOLVED BY A STATE OR FEDERAL JUDGE IN PALM BEACH COUNTY, FLORIDA.

SECTION 15: ACCESS AND AUDITS. Consultant shall maintain adequate records to justify all payments made by the City 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 City 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 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. 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. 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. Proof of such licenses and approvals shall be submitted to the City 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 City 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 City shall be sent to:

City of Lake Worth Beach
Attn: City Manager

7 N. Dixie Highway
Lake Worth Beach, FL 33460

and if sent to Consultant, shall be sent to:

RSM US LLP
Attn: Brett Friedman
1555 Palm Beach Lakes Blvd, Suite 700
West Palm Beach, FL 33401

with a copy of any and all legal notices to:

RSM US LLP
Attn: Office of the General Counsel
200 South Wacker Dr., Suite 3900
Chicago, IL 60606

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 City and 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 City 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 City may at its option provide notice to Consultant to terminate for cause.

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

SECTION 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 number 2011-009, Consultant acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. Consultant has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 30: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. The agreement of the parties consists of this Agreement, Consultant's Arrangement Letter (which is incorporated herein by reference), the RFP (which is incorporated herein by reference), 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 the aforementioned documents, the terms and conditions of this Agreement and Exhibit "A" shall prevail with the RFP 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.

SECTION 31: OWNERSHIP OF DELIVERABLES. The deliverables, work product, specifications, calculations, supporting documents, or other work products which are listed as deliverables by Consultant in **Exhibit "A"** to the City shall become the property of the City. Consultant may keep copies or samples thereof and shall have the right to use the same for its own purposes. The City accepts sole responsibility for the reuse of any such deliverables in a manner other than as initially intended or for any use of incomplete documents. For clarity, the Audit Documentation for this engagement is the property of Consultant and constitutes confidential information. For the purposes of this Agreement, the term "Audit Documentation" shall mean the confidential and proprietary records of Consultant's audit procedures performed, relevant audit evidence obtained, other audit-related workpapers, and conclusions reached. Audit Documentation shall not include custom-developed documents, data, reports, analyses, recommendations, and deliverables authored or prepared by Consultant for the City under this Agreement, or any data, reports, analyses, workpapers or other documents belonging to the City and/or furnished to Consultant by the City.

SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY. By signing this Agreement, on behalf of Consultant, the undersigned hereby represents to the City 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 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. Consultant shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if Consultant does not transfer the records to the City.
- (d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of Consultant or keep and maintain public records required by the City to perform the service. If Consultant

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

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: DEBBIE ANDREA, AT (561) 586-1662, DANDREA@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

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 and professional, regulatory, and/or ethical standards. If either party plans to disclose or use the other party's information due to professional, regulatory, and/or ethical standards, the disclosing party shall, to the extent legally permissible, provide prior written notice to the other party.

SECTION 35: EXPORT ADMINISTRATION. 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.

SECTION 36: SCRUTINIZED COMPANIES.

(a) 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 Consultant or any of its subcontractors are found to have submitted a false certification; or if 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.

(b) If this Agreement is for one million dollars or more, 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 Consultant, or any of its subcontractors are found to have submitted a false certification; or if 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.

- (c) Consultant agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
- (d) 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.
- (e) Consultant agrees that if it or any of its subcontractors' status changes in regards to any certification herein, Consultant shall immediately notify the City of the same.
- (f) 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.

REMAINDER OF THIS PAGE LEFT BLANK
SIGNATURE PAGE FOLLOWS

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

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Pam Triolo, Mayor

By: _____
Deborah M. Andrea, City Clerk

APPROVED AS TO FORM AND
FINANCIAL LEGAL SUFFICIENCY:

APPROVED FOR
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

CONSULTANT: RSM US LLP

By: Brett Friedman

[Corporate Seal]

Print Name: Brett Friedman

Title: Partner

STATE OF Florida)
COUNTY OF Broward)

The foregoing instrument was acknowledged before me this 15th day of September, 2020, by Brett Friedman, who was physically present, as Partner (title), of **RSM US LLP**, a limited liability partnership, which is authorized to do business in the State of Florida, and who is personally known to me or who has produced the following n/a – personally known as identification.

Notary Public

Carol Morgan Kuzava
Print Name: Carol Morgan Kuzava
My commission expires: 7/24/2023



EXHIBIT "A"

(Fees)



COST EFFECTIVENESS

a. Total all-inclusive maximum price. The proposal should contain all pricing information relative to performing the audit engagement as described in this Request for Proposals. The total all-inclusive maximum price proposal is to contain all direct and indirect costs including all out-of-pocket expenses. The audit firm shall provide a truth in negotiations certificate stating that the fees, rates and costs proposed are accurate and complete. The certificate shall express the audit firm's understanding that if the proposal is accepted, the fees will not increase over the agreed upon contractual amount for the entire contract term, regardless of changes in accounting principles, or State or federal laws, rules and requirements associated with the annual financial report. The City will not be responsible for expenses incurred in preparing and submitting the proposal. Such costs should not be included in the proposal.

Fee assumptions

As a national firm, we provide a level of resources and expertise that is unmatched by that of a local firm and is needed by a city of your size. Resources that are extremely valuable to our clients and help them with challenges as they arise. In these unusual times with the pandemic and a constantly changing regulatory environment, we believe that provides a level of cost effectiveness and value for your professional service dollar that exceeds that of our competitors. **We are the leading provider of government audit services to the South Florida market but we are not a low cost provider. We believe the value, expertise and reliability we bring to our clients far exceeds the difference in cost for our services.** Audit services provide a critical function to governments especially in difficult times. As this section is titled, we agree that it is the kind of service that should be based on maximizing quality and cost effectiveness and not about choosing the lowest cost provider not when the public trust is at stake.

We agree to provide a fixed fee that will not increase over the term of the contract provided the following assumptions are met:

- Assistance will be supplied by the City personnel, including preparation of requested schedules and analyses of accounts before we commence fieldwork.
- There will be no significant changes in the nature and scope of the audit.
- Significant changes in the nature and scope of your business may result in annual professional fee increases. Significant changes may include the addition of new locations, businesses or lines of business; unpreparedness on the part of the City; an unusual number of adjustments to the financial statements; and changes in the scope of work as required by management. This does not include new accounting principles or state or federal laws as noted above.

Should it be necessary to extend the scope of our services due to unpreparedness on the part of the City, significant accounting revisions requiring multiple adjusting journal entries, or other significant changes in the nature and scope of the engagement, we will contact you to discuss these items before proceeding with the out-of-scope work.

First-year costs

We plan to absorb the first-year costs of gathering historical information, building permanent files and understanding your accounting system and business objectives. We estimate these costs to be approximately \$10,000.

Our acceptance of this engagement is subject to completion of our acceptance procedures.



TRUTH IN NEGOTIATION CERTIFICATION

RSM hereby certifies that the fees, rates and costs proposed are accurate and complete.

RSM US LLP
Name of Consultant

By: *[Handwritten Signature]*
Authorized Signature

July 22, 2020
Date



b. Rates provided for partner, specialist, supervisory and staff level employees with hours anticipated for each. The proposal should include a schedule of professional fees and expenses that supports the total all-inclusive maximum price. The cost of special services should be disclosed as separate components of the total all-inclusive maximum price.

	Partner	Director	Manager	Supervisor	Senior	Associate
Rate	\$500	\$400	\$300	\$250	\$200	\$150

We understand that the City is looking for value in the professional relationship they have with their auditors. Value comes from the knowledge, experience and dedication that the auditing firm employs. We have developed an hourly budget and timeline that we feel will accomplish the objectives of the City and meet your specific needs. The information which you have shared with us, combined with our experience, has been used to develop the following plan and audit timeline detailing the amount of time planned by segment and by level as follows:

Segment	Number of hours anticipated				
	Partners	Managers	Supervisors & Seniors	Staff	Total
Planning	22	44	66	88	220
Fieldwork	66	132	198	264	660
Reporting	22	44	66	88	220
Total Hours by Level	110	220	330	440	1,100

c. Out-of-pocket expenses included in the total all-inclusive maximum price and reimbursement rates. Out-of-pocket expenses for firm personnel (e.g., travel, lodging and subsistence) will be reimbursed at the rates used by the City for its employees. All expense reimbursements will be charged against the total all-inclusive maximum price submitted by the firm. In addition, a statement must be included in the proposal that the firm will accept reimbursement for travel, lodging and subsistence at the prevailing City rates for its employees.

Our fees for the services described above are based upon the value of the services performed and the time required by the individuals assigned to the engagement plus directly billed expenses, including report processing, travel, meals and fees for services from other professionals, as well as a charge of 5% of fees for all other expenses, including indirect administrative expenses such as technology, research and library databases, communications, photocopying, postage and clerical assistance. RSM will accept reimbursement for travel, lodging and subsistence at the prevailing City rates for its employees.

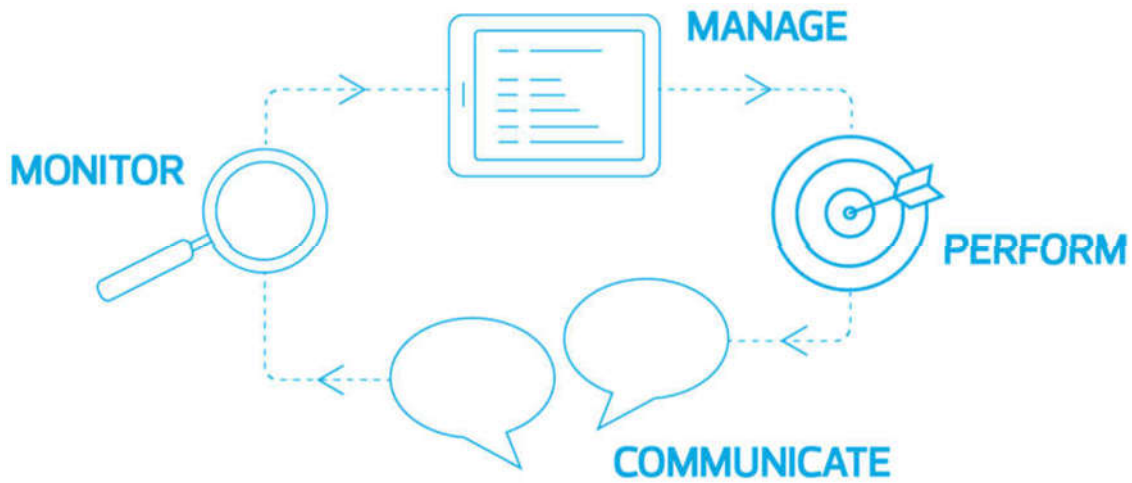
d. Manner of payment. Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's dollar cost proposal. Interim billing shall cover a period of not less than a calendar month.

RSM acknowledges and accepts the manner of payment requirement above for the City. Client payments can be mailed via paper check to our lockbox or distributed to RSM via ACH or wire transfers.



e. Annual fees. The fee proposed for each year of the engagement should be separately stated for each fiscal year end (FY 2020, FY 2021, FY 2022, FY 2023 & FY 2024).

Summary of deliverables	Estimated fees				
Audit services	2020	2021	2022	2023	2024
Audit Services - City	\$104,600	\$104,600	\$107,700	\$107,700	\$107,700
Audit Services - CRA	10,400	10,400	10,700	10,700	10,700
Annual Fees (Total all-inclusive maximum price)	\$115,000	\$115,000	\$118,400	\$118,400	\$118,400





September 1, 2020

RSM US LLP

To the Honorable Mayor and Members of the City Commission,
City Manager
City of Lake Worth Beach
Lake Worth Beach, FL 33460

1555 Palm Beach Lakes Blvd., Suite 700
West Palm Beach, FL 33401
O 561 697 1785
F 561 697 8055
www.rsmus.com

Attention: Finance Director

This Arrangement Letter is entered into by and between the City of Lake Work Beach, Florida (the “City”, “you”, or “your”) and RSM US LLP (“RSM”, “we”, “us”, or “our”) pursuant to the Professional Services Agreement for Annual Independent Financial Auditing Services dated XX/XX/XXXX (the Contract) between RSM and the City, and reflects our understanding of the arrangements for the services we are to perform for the City for the term of the Contract.

The Objective and Scope of the Audit of the Financial Statements

The City has requested that we audit the financial statements of the City’s governmental activities, business-type activities, the discretely presented component unit, each major fund and the aggregate remaining fund information as of and for the year-ended September 30, 2020 (and thereafter), and as further described in the City’s Request for Proposal, issued XX/XX/XXX (the RFP), which collectively comprise the basic financial statements. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this Arrangement Letter.

Our audit will be conducted with the objective of our expressing an opinion on the financial statements.

We will also perform the audit of the City for the year ended September 30, 2020 (and thereafter) to satisfy the audit requirements imposed by Chapter 10.550, Rules of the Auditor General.

We will also perform the audit of the City for the year ended September 30, 2020 (and thereafter) to satisfy the audit requirements imposed by the Single Audit Act and Subpart F of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), the Florida Single Audit Act, and Chapter 10.550, Rules of the Auditor General of the State of Florida.

The Responsibilities of the Auditor

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (GAAS); *Government Auditing Standards* issued by the Comptroller General of the United States (GAS); the provisions of the Single Audit Act; Subpart F of Title 2 U.S. CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*; and the U.S. Office of Management and Budget’s (OMB) Compliance Supplement, the Florida Single Audit Act, and the Rules of the Auditor General for the State of Florida. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor’s judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS. Also, an audit is not designed to detect errors or fraud that are immaterial to the financial statements. The determination of abuse is subjective; therefore, GAS does not expect us to provide reasonable assurance of detecting abuse.

In making our risk assessments, we consider internal control relevant to the City's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.

We will also communicate to the City (a) any fraud involving senior management and fraud (whether caused by senior management or other employees) that causes a material misstatement of the financial statements that becomes known to us during the audit, and (b) any instances of noncompliance with laws and regulations that we become aware of during the audit (unless they are clearly inconsequential).

The funds that the City has told us are maintained by the City and that are to be included as part of our audit are listed in the City's 2019 financial statements.

The federal and state financial assistance programs and awards that you have told us that the City participates in and that are to be included as part of the single audit are as listed in the City's 2019 single audit report:

We are responsible for the compliance audit of major programs and projects under the Uniform Guidance and the Florida Single Audit Act, including the determination of major programs and projects, the consideration of internal control over compliance, and reporting responsibilities.

Our report on internal control will include any significant deficiencies and material weaknesses in controls of which we become aware as a result of obtaining an understanding of internal control and performing tests of internal control consistent with requirements of the standards and regulations identified above. Our report on compliance matters will address material errors, fraud, abuse, violations of compliance obligations, and other responsibilities imposed by state and federal statutes and regulations or assumed by contracts; and any state or federal grant, entitlement or loan program questioned costs of which we become aware, consistent with requirements of the standards and regulations identified above.

The Responsibilities of Management and Identification of the Applicable Financial Reporting Framework

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance, acknowledge and understand that they have responsibility:

1. For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;
2. To evaluate subsequent events through the date the financial statements are issued or available to be issued, and to disclose the date through which subsequent events were evaluated in the financial statements. Management also agrees that it will not conclude on subsequent events earlier than the date of the management representation letter referred to below;

3. For the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error;
4. For establishing and maintaining effective internal control over financial reporting, and for informing us of all significant deficiencies and material weaknesses in the design or operation of such controls of which it has knowledge;
5. For report distribution; and
6. To provide us with:
 - a. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation and other matters;
 - b. Additional information that we may request from management for the purpose of the audit; and
 - c. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence;
 - d. When applicable, a summary schedule of prior audit findings for inclusion in the single audit reporting package; and
 - e. If applicable, responses to any findings reported on the schedule of findings and questioned costs.

As part of our audit process, we will request from management and, when appropriate, those charged with governance, written confirmation concerning representations made to us in connection with the audit, including among other items:

1. That management has fulfilled its responsibilities as set out in the terms of this Arrangement Letter; and
2. That it believes the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Management is responsible for identifying and ensuring that the City complies with the laws and regulations applicable to its activities, and for informing us about all known material violations of such laws or regulations. In addition, management is responsible for the design and implementation of programs and controls to prevent and detect fraud or abuse, and for informing us about all known or suspected fraud or abuse affecting the entity involving management, employees who have significant roles in internal control, and others where the fraud or abuse could have a material effect on the financial statements or compliance. Management is also responsible for informing us of its knowledge of any allegations of fraud or abuse, or suspected fraud or abuse, affecting the entity received in communications from employees, former employees, analysts, regulators or others.

Management is responsible for the preparation of the supplementary information in accordance with accounting principles generally accepted in the United States of America. Management agrees to include the auditor's report on the supplementary information in any document that contains the supplementary information and indicates that the auditor has reported on such supplementary information. Management also agrees to present the supplementary information with the audited financial statements or, if the supplementary information will not be presented with audited financial statements, to make the audited

financial statements readily available to the intended users of the supplementary information no later than the date of issuance of the supplementary information and the auditor's report thereon.

Because the audit will be performed in accordance with the Florida Single Audit Act and the Uniform Guidance, management is responsible for (a) identifying all federal awards and state financial assistance received and expended; (b) preparing the schedule of expenditures of federal awards and state financial assistance (including notes and noncash assistance received) in accordance with Uniform Guidance requirements and the Florida Single Audit Act; (c) internal control over compliance; (d) compliance with federal and state statutes, regulations, and the terms and conditions of federal awards and state financial assistance; (e) making us aware of significant vendor relationships where the vendor is responsible for program compliance; (f) following up and taking corrective action on audit findings, including the preparation of a summary schedule of prior audit findings and a corrective action plan; and (g) submitting the reporting package and data collection form.

The City is responsible for informing us of its views about the risks of fraud or abuse within the City, and its knowledge of any fraud or abuse or suspected fraud or abuse affecting the City.

The City's Records and Assistance

If circumstances arise relating to the condition of the City's records, the availability of appropriate audit evidence or indications of a significant risk of material misstatement of the financial statements because of error, fraudulent financial reporting or misappropriation of assets which, in our professional judgment, prevent us from completing the audit or forming an opinion, we retain the unilateral right to take any course of action permitted by professional standards, including declining to express an opinion or issue a report, or withdrawing from the engagement.

During the course of our engagement, we may accumulate records containing data that should be reflected in the City's books and records. The City will determine that all such data, if necessary, will be so reflected. Accordingly, the City will not expect us to maintain copies of such records in our possession.

The assistance to be supplied by City's personnel, including the preparation of schedules and analyses of accounts, has been discussed and coordinated with the City's Financial Services Director. The timely and accurate completion of this work is an essential condition to our completion of the audit and issuance of our audit report.

Nonaudit Services

In connection with our audit, you have requested us to perform certain nonaudit services:

1) Preparation of the Comprehensive Annual Financial Report

GAS independence standards require that the auditor maintain independence so that opinions, findings, conclusions, judgments and recommendations will be impartial and viewed as impartial by reasonable and informed third parties. Before we agree to provide a non-audit service to the City, we determine whether providing such a service would create a significant threat to our independence for GAS audit purposes, either by itself or in aggregate with other non-audit services provided. A critical component of our determination is consideration of management's ability to effectively oversee the non-audit services to be performed. The City has agreed that the Financial Services Director possesses suitable skill, knowledge or experience and that the individual understands the services to be performed sufficiently to oversee them. Accordingly, the management of the City agrees to the following:

1. The City has designated the Financial Services Director as a senior member of management who possesses suitable skill, knowledge and experience to oversee the services;

2. The Financial Services Director will assume all management responsibilities for subject matter and scope of the preparation of the comprehensive annual financial report;
3. The City will evaluate the adequacy and results of the services performed; and
4. The City accepts responsibility for the results and ultimate use of the services.

GAS further requires that we establish an understanding with the City's management and those charged with governance of the objectives of the non-audit services, the services to be performed, and the entity's acceptance of its responsibilities, the auditor's responsibilities and any limitations of the non-audit services. We believe this Arrangement Letter documents that understanding.

Other Relevant Information

RSM may mention the City's name and provide a general description of the engagement in RSM 's client lists and marketing materials.

From time to time and depending upon the circumstances, we may use third-party service providers to assist us in providing professional services to the City. In such circumstances, it may be necessary for us to disclose confidential client information to them. We enter into confidentiality agreements with all third-party service providers and we are satisfied that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In addition, we may utilize financial information the City has provided to us in connection with this engagement for purposes of creating benchmarking data to be used by the City professionals and other clients. This benchmarking data is aggregated with data from a minimum of five other entities so that users of the data are unable to associate the data with any single entity in the database.

If any term or provision of this Arrangement Letter is determined to be invalid or unenforceable, such term or provision will be deemed stricken and all other terms and provisions will remain in full force and effect.

In accordance with GAS, a copy of our most recent peer review report is enclosed for your information.

Access to Workpapers

In the event we are requested by the City or authorized by the City to produce our documents or our personnel as witnesses with respect to our engagement for the City, the City will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

The Audit Documentation (as discussed in Section 31 of the Contract) for this engagement is the property of RSM and constitutes confidential information. However, the City acknowledges and grants your assent that representatives of the cognizant or oversight agency or their designee, other government audit staffs, and the U.S. Government Accountability Office shall have access to the Audit Documentation upon their request and that we shall maintain the Audit Documentation for a period of at least three years after the date of the report, or for a longer period if we are requested to do so by the cognizant or oversight agency. Access to requested documentation will be provided under the supervision of RSM's audit personnel and at a location designated by our firm.

Termination

Provisions for termination are as described in the Contract.

Information Security - Miscellaneous Terms

RSM is committed to the safe and confidential treatment of the City's Confidential Information (as set forth in Section 34 of the Contract). RSM is required to maintain the confidential treatment of the City's Confidential Information consistent with the Contract. The City agrees that it will not provide RSM with any unencrypted electronic confidential or proprietary information, and the parties agree to utilize commercially reasonable measures to maintain the confidentiality of the City information, including the use of collaborate sites to ensure the safe transfer of data between the parties.

RSM or the City may terminate this relationship immediately in either party's sole discretion if it determines that continued performance would result in a violation of law, regulatory requirements, applicable professional standards or other documented standards (which have been previously provided to the other party), or if either party is placed on a verified sanctioned entity list or if any director or executive of, or other person closely associated with, either party or its affiliates is placed on a verified sanctioned person list, in each case, including but not limited to lists promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. State Department, the United Nations Security Council, the European Union or any other relevant sanctioning authority including the State of Florida.

Reporting

We will issue a written report upon completion of our audit of the City's financial statements. Our report will be addressed to the City Commission. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

In addition to our report on the City's financial statements, we will also issue the following types of reports:

1. A report on the fairness of the presentation of the City's schedule of expenditures of federal awards and state financial assistance for the year ending September 30, 2020 and each fiscal year thereafter where RSM performs the services under the Contract;
2. Reports on internal control related to the financial statements and major programs and projects. These reports will describe the scope of testing of internal control and the results of our tests of internal control;
3. Reports on compliance with laws, regulations, and the provisions of contracts or grant agreements. We will report on any noncompliance that could have a material effect on the financial statements and any noncompliance that could have a material effect, as defined by Subpart F of Title 2 U.S. CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, and the Florida Single Audit Act, on each major program and project;
4. An accompanying schedule of findings and questioned costs;
5. A management letter in Accordance with the Rules of the Auditor General of the State of Florida;
6. Independent auditor's report on an examination conducted in accordance with AICPA Professional Standards, AT-C Section 315, regarding compliance requirements in accordance with Chapter 10.800, Rules of the Auditor General.

The Contract and this Arrangement Letter constitute the complete and exclusive statement of agreement between RSM and the City of Lake Worth Beach, Florida, superseding all proposals, oral or written, and all other communications with respect to the terms of the engagement between the parties.

Electronic Signatures and Counterparts

Each party hereto agrees that any electronic signature of a party to this Arrangement Letter or any electronic signature to a document contemplated hereby (including the Contract) is intended to authenticate such writing and shall be as valid, and have the same force and effect, as a manual signature. Any such electronically signed document shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Each party hereto also agrees that electronic delivery of a signature to any such document (via email or otherwise) shall be as effective as manual delivery of a manual signature. For purposes hereof, "electronic signature" includes, but is not limited to, (i) a scanned copy (as a "pdf" (portable document format) or other replicating image) of a manual ink signature, (ii) an electronic copy of a traditional signature affixed to a document, (iii) a signature incorporated into a document utilizing touchscreen capabilities or (iv) a digital signature. This Arrangement Letter and the Contract may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement. Paper copies or "printouts," of such documents if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

If the Contract and this Arrangement Letter reflects the arrangements as the City understands them, please sign and date the enclosed copy and return it to us.

RSM US LLP



Brett Friedman
Partner

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Pam Triolo, Mayor

By: _____
Deborah M. Andrea, City Clerk

APPROVED AS TO FORM AND
FINANCIAL LEGAL SUFFICIENCY:

APPROVED FOR
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director