

TOWN OF LOXAHATCHEE GROVES

RESOLUTION NO. 2019-49

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPROVING AN AGREEMENT FOR TOWN ATTORNEY LEGAL SERVICES BETWEEN THE TOWN OF LOXAHATCHEE GROVES AND TORCIVIA, DONLON, GODDEAU & ANSAY, P.A.; NAMING TORCIVIA, DONLON, GODDEAU & ANSAY, P.A. AS THE DESIGNATED TOWN ATTORNEY FOR THE FIRM; AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE AGREEMENT; PROVIDING FOR CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town Council finds it is in the best interest of the Town of Loxahatchee Groves to approve an Agreement for Interim Town Attorney Legal Services with Torcivia, Donlon, Goddeau & Ansay, P.A, and to name Brian Shutt as the Designated Town Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution.

Section 2. The Town Council of the Town of Loxahatchee Groves approves the Agreement for Interim Town Attorney Legal Services between the Town of Loxahatchee Groves and Torcivia, Donlon, Goddeau & Ansay, P. A., attached hereto and incorporated herein as Exhibit "A", and authorizes the appropriate Town Officials to execute same. Brian Shutt is the designated Town Attorney.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

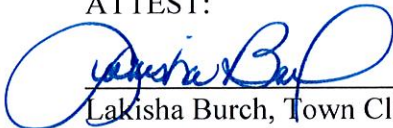
Section 5. This Resolution shall become effective immediately upon its passage and adoption.

Council Member DeMarois offered the foregoing Resolution. Council Member Maniglia seconded the Motion, and upon being put to a vote, the vote was as follows:

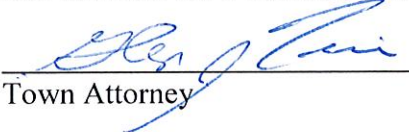
	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
ROBERT SHORR, MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DAVE DEMAROIS, VICE MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LAURA DANOWSKI, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LISA EL-RAMEY, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PHILLIS MANIGLIA, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THIS 5th DAY OF SEPTEMBER, 2019.

ATTEST:

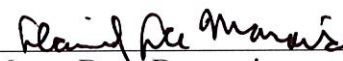

Lakisha Burch, Town Clerk

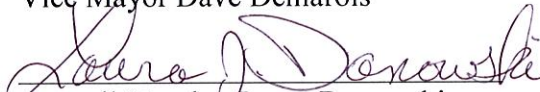
APPROVED AS T LEGAL FORM:


Town Attorney

TOWN OF LOXAHATCHEE GROVES,
FLORIDA


Mayor Robert Shorr


Vice Mayor Dave Demarois


Council Member Laura Danowski

Council Member Lisa El-Ramey

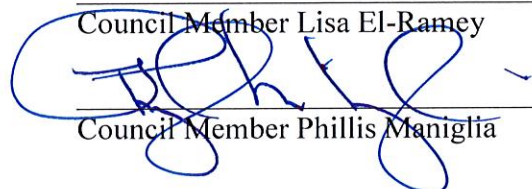

Council Member Phillis Maniglia

EXHIBIT "A"

**AGREEMENT FOR TOWN ATTORNEY LEGAL SERVICES BETWEEN
THE TOWN OF LOXAHATCHEE GROVES AND TORCIVIA, DONLON, GODDEAU
& ANSAY, P.A.**

LEGAL SERVICES AGREEMENT

THIS LEGAL SERVICES AGREEMENT ("Agreement") is entered on ____ day of _____, 2019, by and between the **TOWN OF LOXAHATCHEE GROVES**, a Florida municipal corporation ("Town") and **TORCIVIA, DONLON, GODDEAU & ANSAY, P.A.**, a corporation authorized to do business in the State of Florida ("Firm").

RECITALS

WHEREAS, the Town issued a Request for Letters of Interest from qualified firms to provide municipal legal services to the Town;

WHEREAS, the Firm submitted a Letter of Interest to the Town, which the Town Council accepted and appointed the Firm on an interim basis;

WHEREAS, the Town wishes to appoint the Firm as the Town Attorney; and

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

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

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

SECTION 2: FIRM'S SERVICES. As more specifically set forth in the Town's Request for Letters of Interest's scope of services, the Firm shall be the Town Attorney and shall provide the Town with general municipal legal services and such other matters of a non-routine legal nature requiring substantial time and effort, subject to prior authorization by a majority of the Town Council or Town Manager.

SECTION 3: TERM AND TERMINATION.

a. **Term.** The term of this Agreement shall commence upon the approval of this Agreement by the Town Council and shall continue until such time as this Agreement is terminated as stated herein.

b. **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.

c. **Effect of Termination.** Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the Town is a municipal corporation and political subdivision of the state of Florida, and as such, this Agreement is subject to budgeting and appropriation by the Town of funds sufficient to pay the costs associated herewith in any fiscal year of the Town. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the Town's governing board in any fiscal year to pay the costs

associated with the Town's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the Town to be, insufficient to pay the costs associated with the Town's obligations hereunder in any fiscal period, then the Town will notify Firm of such occurrence and either the Town or Firm may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the Town of any kind whatsoever; however, Town shall pay Firm for all services performed under this Agreement through the date of termination.

SECTION 4: COMPENSATION.

a. Compensation. The Town agrees to compensate the Firm at the rate of \$205.00 per hour for services performed by the Firm's attorneys and \$95.00 per hour for the Firm's legal assistant's preparation of documents or other services which exceed thirty (30) minutes of time. Time shall be invoiced in increments of 0.10 hours.

b. Reimbursements. The Town will reimburse the Firm for any out-of-pocket expenses, including, but not limited to, filing fees, long distance telephone charges, postage charges, courier fees, outside printing, photocopying, court reporting and transcription fees. Payment for some of these fees is outlined more specifically below.

- i. In-house photocopying will be paid at the rate of twenty-five cents (.25) per page (with each invoice specifying the number of copies for which reimbursement is sought).
- ii. The Town will not pay for local facsimile transmissions.
- iii. Long distance telephone calls must state the number of calls, date, length of call, and per minute cost.
- iv. Any travel, per diem, mileage (IRS rate), or meal expenses, which may be reimbursable, must be approved in advance (orally) and will be paid in accordance with the rates and conditions set forth in section 112.061, Florida Statutes.
- v. The Town does not pay for local travel (Palm Beach County), including, but not limited to, attorney's time for such local travel and/or reimbursement for meals.
- vi. For all disbursements, the Town requires copies of paid receipts, invoices, or other documentation acceptable to the Town Manager. Such documentation must be sufficient to establish that the expense was actually incurred and necessary in the performance of legal services provided.
- vii. The Town will not be responsible for the cost of any computerized legal research service that the Firm receives on a fixed or "flat fee" basis. For payment of computerized research on a "per minute" basis, the Town requires copies of transaction reports indicating the total time for each research session, the charge per minute, and a brief description of the issues researched. Any extensive research project (research in excess of three hours whether said research is performed during one session or over several sessions or which is likely to exceed \$300) must be discussed with and approved in advance. Since assignments are made to firms which have been selected for their expertise in particular areas of law, the Town will not pay for research that is routine in nature. The Town will pay only for updating and Shepardizing existing research and/or fact specific research.

c. Invoices. The Firm shall render monthly invoices to the Town for services that have been rendered in conformity with this Agreement in the previous month. The invoices shall specify the services

performed and the time spent on such work. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. The Firm understands that the invoices must be approved by the Town Council so it will work with the Town Manager to send its invoices to the Town in time for placement on a Town Council agenda. Invoices will normally be paid within thirty (30) days following the Town's receipt of the Firm's invoice.

SECTION 5: INDEMNIFICATION. The Firm, its officers, employees and agents shall indemnify and hold harmless the Town, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence, of the Firm, its officers, directors, employees, representatives and agents employed or utilized by the Firm in the performance of the services under this Agreement. The Town agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or the Firm, nor shall this Agreement be construed as a waiver of sovereign immunity for the Town beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 6: 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 7: PERSONNEL. The Firm represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Town. All the services required hereunder shall be performed by the Firm or under its supervision, and all personnel engaged in performing the services shall be fully qualified and authorized or permitted under federal, state and local law to perform such services.

SECTION 8: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that Firm will act hereunder as an independent contractor and none of the Firm's, officers, directors, employees, independent contractors, representatives or agents performing services for Firm pursuant to this Agreement shall have any claim under this Agreement or otherwise against the Town for compensation of any kind under this Agreement. The relationship between the Town and Firm is that of independent contractors, and neither shall be considered a joint venture, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

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

SECTION 10: INSURANCE. Prior to commencing any services, the Firm shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the Town and

the Firm. All such insurance policies may not be modified or terminated without the express written authorization of the Town.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent Firm, 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 certificates shall clearly indicate that the Firm 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 Firm of its liability and obligations under this Agreement.

SECTION 11: SUCCESSORS AND ASSIGNS. The Town and the Firm each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this 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 12: 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 13: WAIVER OF JURY TRIAL. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

SECTION 14: ACCESS AND AUDITS. The Firm shall maintain adequate records to justify all payments made by the Town under this Agreement for at least three (3) years after completion of this Agreement and longer if required by applicable federal or state law. The Town shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Firm's place of business. In no circumstances will Firm be required to disclose any confidential or proprietary information regarding its products and service costs.

SECTION 15: NONDISCRIMINATION. The Firm warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 16: AUTHORITY TO PRACTICE. The Firm hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this 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 Town upon request.

SECTION 17: 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 18: PUBLIC ENTITY CRIMES. Firm acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Firm will advise the Town immediately if it becomes aware of any violation of this statute.

SECTION 19: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the TOWN shall be sent to:

Town of Loxahatchee Groves
Attn: Town Manager
155 F Road
Loxahatchee Groves, FL 33470

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

Torcivia, Donlon, Goddeau & Ansay, P.A.
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

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 20: ENTIRETY OF AGREEMENT. The Town and the Firm 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 21: 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 22: PREPARATION AND NON-EXCLUSIVE. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the Town reserves the right to contract with individuals or firms to provide the same or similar services.

SECTION 23: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event Firm fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and Town may at its option provide notice to the Firm to terminate for cause.

SECTION 24: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the Town. The Effective Date is the date this Agreement is executed by the Town.

SECTION 25: 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 26: 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 27: PALM BEACH COUNTY IG. In accordance with Palm Beach County ordinance number 2011-009, the FIRM acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The FIRM has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

SECTION 28: PUBLIC RECORDS. The Firm shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the Town as provided under section 119.011(2), Florida Statutes, specifically agrees to:

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

IF THE FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE TOWN OF LOXAHATCHEE GROVES, ATTN: TOWN CLERK, AT (561) 793-2418, LBURCH@LOXAHATCHEEGROVESFL.GOV, 155 F ROAD, LOXAHATCHEE GROVES, FL 33470.

SECTION 29: NO THIRD-PARTY BENEFICIARIES. There are no third-party beneficiaries under this Agreement.

SECTION 30: SCRUTINIZED COMPANIES.

a. The Firm 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 Town may immediately terminate this Agreement at its sole option if the Firm or any of its subcontractors are found to have submitted a false certification; or if the Firm 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, the Firm 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 Town may immediately terminate this Agreement at its sole option if the Firm, or any of its subcontractors are found to have submitted a false certification; or if the Firm 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. The Firm agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

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

e. The Firm agrees that if it or any of its subcontractors' status changes regarding any certification herein, the Firm shall immediately notify the Town of the same.

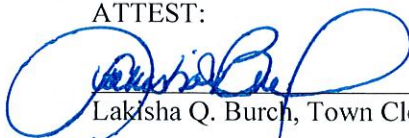
f. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

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

TOWN OF LOXAHATCHEE GROVES

By: 
Robert Shorr, Mayor

ATTEST:


Lakisha Q. Burch, Town Clerk

Approved as to form and legal sufficiency:


Town Attorney

TORCIVIA, DONLON, GODDEAU & ANSAY, P.A.

By: 
Glen J. Torcivia, Esq.