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**AGREEMENT BETWEEN THE CITY OF WESTLAKE
AND
CHEN MOORE & ASSOCIATES, INC.**

THIS AGREEMENT made and entered into this 19th day of September, 2016 by and between:

The City of Westlake ("CITY"), a municipality, located in Palm Beach County, Florida and whose address is 4005 Seminole Pratt Whitney Road, Loxahatchee, Florida 33470, and Chen Moore & Associates, consultants and engineers whose address is 500 Australian Avenue South, Suite 530, West Palm Beach, Florida 33401 ("Engineer").

RECITALS

WHEREAS, the City was incorporated on June 20, 2016, and whereas the City does not intend to have employees of the City, and the City has selected a firm to provide engineering services to the City as such services would be provided as a part of municipal services; and

WHEREAS, pursuant to the Consultants' Competitive Negotiations Act, Section 287.055, Florida Statutes, the City solicited proposals from qualified firms to provide professional engineering services on a continuing basis; and

WHEREAS, Engineer submitted a proposal to serve in this capacity; and

WHEREAS, the City Council determined that Engineer is qualified to serve as Engineer for the District and authorized negotiation of a contract pursuant to Florida Statutes; and

WHEREAS, City intends to employ Engineer to provide professional engineering services to the City, which may include, but are not limited to, engineering, planning, landscaping, construction administration, permitting, and financial and economic studies; and

WHEREAS, Engineer shall serve as City's professional representative in each service or project to which this Agreement applies and will give consultation and advice to the City during the performance of its services.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained the acts and deeds to be performed by the parties, and the payments by the City to the Engineer of the sums of money herein specified, the City and Engineer wish to enter into this agreement between them, as follows:

ARTICLE 1. TERM OF AGREEMENT.

This Agreement shall commence upon full execution by all parties hereto and shall be for a three (3) year term, with the option to renew for an additional three (3) year term.

ARTICLE 2. SCOPE OF SERVICES.

Engineer will provide general engineering services as set forth in RFQ 2016-01 and as set forth below:

1. ENGINEER hereby agree to perform and provide city engineer services to CITY and to act as the City Engineer, including oversight and administration of Engineering services, local planning agency and coordinating programs/operations and activities for Engineering services. ENGINEER acknowledges and agrees that this includes coordination and technical support as required with other City departments, management, public agencies, consulting engineers and citizens.
2. Preparation of any agenda memorandums, any necessary reports, plan amendments or engineering documents requested by the City Manager and attendance at meetings with management and meetings of the City Council.
3. Meet with officials of Federal, State and County agencies and other cities on CITY business when requested by CITY, through the City Manager.
4. Assist in the site plan application and review process including the local planning agency reviews for engineering design and overall quality control/quality assurance, such as but not limited to review and approval of water, sewer, paving and drainage plans for compliance with City Engineering Standards.
5. Review and approve plats, plat exemptions and plat waivers.
6. Sign and seal documents as required by law, i.e. engineering design drawings, plats, permit applications, etc.
7. Additionally, the CITY may require investigation, studies and the design and/or management of engineering and construction projects. The ENGINEER shall provide these services on a task order basis outside the typical City Engineer duties.
8. All special projects assigned to ENGINEER shall be approved by the City Manager prior to the commencement of any special project. In addition, ENGINEER shall not commence any special project until a written work authorization has been issued or a Purchase Order received. Any assigned special project shall be performed within the time frame established by the CITY and ENGINEER in each work authorization. Minor adjustments to the

timetable from completion approved by CITY in advance, in writing, will not constitute non-performance by ENGINEER per this Agreement.

9. Inspect engineering improvements right of way and connecting to the any City systems.
10. Complete final inspection issues on construction projects.

ARTICLE 3. COMPENSATION. It is understood and agreed that the payment of compensation for services under this contract shall be as follows:

- A. **Approved Budget:** The total cost for any designated project shall not exceed an approved budgeted amount. For all work, ENGINEER shall be compensated pursuant to the hourly rates from the Agreement with the City, as set forth in the attached **Schedule A**. Reimbursable expenses will be compensated per the itemized cost from the Agreement with the City.
- B. **Hourly Personnel Rates:** For services or projects where scope of services is not clearly defined, or recurring services or other projects where the City desires the use of the hourly compensation rates outlined in Schedule A. This Agreement provides for the renegotiation of hourly rates outlined in Schedule A on the annual anniversary of this Agreement.
- C. **Work Authorizations:** In no event shall ENGINEER be compensated for any work which has not been authorized in writing by CITY.

ARTICLE 4. REIMBURSABLE EXPENSES. Reimbursable expenses consist of actual expenditures made by Engineer, its employees, or its consultants in the interest of the project for the incidental expenses listed as follows:

- A. Expenses of transportation and living when traveling in connection with District projects and fees paid for securing approval of authorities having jurisdiction over the Project. All expenditures shall be made in accordance with Chapter 112, Florida Statutes.
- B. Expenses of reproduction, postage and handling of drawings and specifications.

ARTICLE 5. ACCOUNTING RECORDS. For a period of five (5) years, financial records of Engineer pertaining to the services provided hereunder shall be kept on a basis of generally accepted accounting principles and shall be available to the City or its authorized representative for observation or audit at mutually agreeable times.

ARTICLE 6. REUSE OF DOCUMENTS. All documents including drawings and specifications furnished by the Engineer pursuant to this Agreement are the property of the City. The Engineer does not represent that the documents may be suitable for reuse by the City or others for any extensions of the work for which they were provided or any other project without consent

by the Engineer. Any reuse without specific written consent by the Engineer will be at the City's sole risk and without liability or legal exposure to the Engineer.

ARTICLE 7. INSURANCE. Engineer will maintain throughout this AGREEMENT the following insurance:

- (a) Worker's compensation and employer's liability insurance as required by the state where the work is performed.
- (b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- (c) Commercial general liability insurance covering claims for injuries to members of the public or damages to property of others arising out of any covered negligent act or omission of ENGINEER or of any of its employees, agents or subcontractors, with \$1,000,000 per occurrence and in the aggregate.
- (d) Professional liability insurance of \$1,000,000 per occurrence and in the annual aggregate.
- (e) CITY will be named as an additional insured with respect to ENGINEER's liabilities hereunder in insurance coverages identified in items (b) and (c) and ENGINEER waives subrogation against CITY as to said policies.

Engineer shall provide CITY with a certificate evidencing compliance with the above terms and naming the CITY and its council members, agents and staff as additional insureds. Engineer shall provide the CITY with thirty (30) days notice of cancellation. For the duration of the Agreement, Engineer shall be insured in the above amounts.

ARTICLE 8. CONTINGENT FEE. The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 9. AUDIT. The Engineer agrees that the CITY or any of its duly authorized representatives shall, until the expiration of three years after expenditure of funds under this Agreement, have access to and the right to examine any books, documents, papers, and records of the Engineer involving transactions related to the Agreement. The engineer agrees that payment made under the Agreement shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. All required records shall be

maintained until an audit is completed and all questions arising therefrom are resolved, or five years after completion of all work under the Agreement.

ARTICLE 10. INDEMNIFICATION. The Engineer agrees, to the fullest extent permitted by law, to indemnify, defend, and hold the CITY harmless of and from any and all liabilities, claims, causes of action, demands, suits, or losses arising from the negligent acts, errors or omissions of the Engineer, Engineer's agents or employees, in the performance of professional services under this Agreement. Engineer agrees and covenants that nothing herein shall constitute or be construed as a waiver of the CITY's sovereign immunity pursuant to section 768.28, Florida Statutes.

The CITY agrees, to the extent permitted by section 768.28, Florida Statutes, and other applicable law, to indemnify and hold the Engineer harmless from any damage, liability or cost to the extent caused by the CITY's own negligent acts, errors or omissions and those of the CITY's agents or employees arising from the obligations and duties of the CITY under this Agreement.

ARTICLE 11. PUBLIC RECORDS. The Engineer shall allow access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Engineer in conjunction with this Agreement. In addition to allowing access to public records, the Engineer shall provide the following with respect to public records:

- (a) Keep and maintain public records required by City to perform the services under this Agreement.
- (b) Upon request from City, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that 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 record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the records are not transferred to City.
- (d) Upon completion of this Agreement, transfer to City, at no cost, all public records in possession of Engineer upon termination of this Agreement or keep and maintain public records required by City to perform the services. If Engineer transfers the records to City, Engineer shall destroy any duplicate public records that are exempt or confidential and exempt. If Engineer keeps and maintains public records upon completion of this Agreement, Engineer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City upon request in a format that is compatible with the information technology systems of City. The failure of Engineer to comply with the provisions set forth in this section shall constitute a material breach of this Agreement entitling City to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to City, who will be responsible for responding to any such public records requests. Engineer will

expeditiously provide any requested records to City to enable City to respond to the public records request.

ARTICLE 12. CONTROLLING LAW. Engineer and the CITY agree that this Agreement shall be controlled and governed by the laws of the State of Florida. Venue for any legal dispute in a court of law shall be Palm Beach County, Florida.

ARTICLE 13. ASSIGNMENT. Neither the CITY nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the express written consent of the other. Nothing in this paragraph shall prevent the Engineer from employing such independent professional associates and consultants as Engineer deems appropriate, pursuant to Article 5 herein.

ARTICLE 14. TERMINATION. The CITY or Engineer may terminate this Agreement without cause upon sixty (60) days written notice. At such time as Engineer receives notification of the intent of the CITY to terminate the contract, Engineer shall not perform any further services unless directed to do so by the City Manager. In the event of any termination without cause, Engineer will be paid for services rendered to the date of termination and all reimbursable expenses incurred to date of termination.

The City may terminate this Agreement with cause upon written notice to Engineer. Engineer shall have thirty (30) days to cure any default for cause. In the event of any termination for cause where the Engineer does not cure within the 30 day time frame, Engineer shall not perform any further services for the CITY after Engineer's receipt of notification of termination for cause, but Engineer shall be paid for services rendered to the date of termination and all reimbursable expenses incurred to the date of termination.

ARTICLE 15. RECOVERY OF COSTS AND FEES. In the event either party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party direct costs incurred, including reasonable attorneys' fees.

ARTICLE 16. WAIVER. OWNER waives all claims against ENGINEER, including those for latent defects, that are not brought' within five (5) years of substantial completion of the facility designed or final payment to ENGINEER, whichever is earlier.

ARTICLE 17. NOTICES. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. As to the City: Ken Cassel, Manager
4001 Seminole Pratt Whitney Road
Westlake, Florida 33470

With a copy to: Pam E. Booker, Esquire
4001 Seminole Pratt Whitney Road
Westlake, FL 33470

B. As to the Engineer: Chen Moore & Associates
500 Australian Avenue South,
Suite 530
West Palm Beach, Florida 33401

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the City and counsel for the Engineer may deliver Notice on behalf of the City and the Engineer. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addresses set forth herein.


ARTICLE 18. ACCEPTANCE. Acceptance of this Agreement is indicated by the signature of the authorized representative of the City and the Engineer in the spaces provided below.

ARTICLE 19. COUNTERPARTS. This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgement pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

IN WITNESS WHEREOF, the parties hereto have caused these present to be executed the day and year first above written.

Attest:

CITY OF WESTLAKE, FLORIDA



City Clerk, Sandra DeMarco

By: 

Kenneth G. Cassel, City Manager

CHEN MOORE & ASSOCIATES, INC.



Witness

By: 

Peter Moore, President & CEO