

**AGREEMENT BETWEEN THE CITY OF WESTLAKE
AND
NZ CONSULTANTS, 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 NZ Consultants, as professional planners whose address is 1851 W. Indiantown Road, Suite 100, Jupiter, Florida 33458 ("Planner").

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 planning and zoning 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 planning services on a continuing basis; and

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

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

WHEREAS, City intends to employ Planner to provide professional planning services to the City, which may include, but are not limited to, creation of a comprehensive plan, creation of land development regulations, planning functions, zoning functions, landscaping, financial and economic studies, mapping and GIS services and any other services as directed by the City Manager; and

WHEREAS, Planner 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 Planner of the sums of money herein specified, the City and Planner 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 term of three (3) years, with the option to renew for an additional two (2) year term upon mutual agreement of the parties.

ARTICLE 2. SCOPE OF SERVICES.

A detailed specification for the scope of services is set forth in the attached composite **Schedule "A"**. A general description of the services to be provided are as follows:

- **CREATION OF COMPREHENSIVE PLAN**

The Planner will draft and create a comprehensive plan consistent with Florida Statutes, Chapter 163, and the requirements of Palm Beach County's regulations, by coordinating with required state and local agencies. The planner shall establish goals, policies and objectives for the City of Westlake. The elements in the comprehensive plan shall include, but not be limited to a future land use element, capital improvement element, transportations element, utility element, public facilities element and a housing element. The plan shall include goals, policies and objectives.

- **CREATION OF WESTLAKE LAND DEVELOPMENT REGULATIONS**

The Planner should be familiar with the Palm Beach County approvals for Minto PBLH, LLC, the Unified Land Development Code for Palm Beach County, and other regulations which will be utilized for project review and reports to the City Council as applications are submitted to the City of Westlake.

- **CREATION OF DOCUMENTS**

The Planner shall create documents for applicants to complete with the various submittals to the City. The Planner shall create a schedule of review dates and turn around time frames for applications. The Planner shall create forms, applications and checklists for review by the Planner on applications submitted for review and approval by the Planner and/or the City of Westlake.

- **CREATION OF FEE SCHEDULE**

The Planner shall create a fee schedule for review and approval by the City for the various applications required for development purposes.

- **REVIEW OF PLANS AND APPLICATIONS SUBMITTED TO CITY**

The Planner shall review and prepare staff reports to the City regarding all applications which are submitted to the City for review, processing and approval. The reports shall include a recommendation to the City Manager and the City Council. Any other items requested by the City Manager or his designee.

- **PUBLIC HEARINGS FOR TRANSMITTAL**

The Planner will present the Comprehensive plan to the local planning agency, the City Council and the Department of Economic Opportunity for the state required review and approval. This phase shall include responses to the objections, recommendations and comments from the state and any public hearings which will be necessary.

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

- A. The Planner will issue an invoice once per month for the work, which has been completed, in the City Manager's sole discretion. If the City Manager determines that the work specified in the invoice has been performed according to the job specifications, the City shall pay the invoice within 30 days.
- B. The Planner's invoice shall show a complete breakdown of the project components, the quantities completed and the amount due, and any other supporting documentation as may be required by the Contract documents for approval.
- C. 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 B**. This Agreement provides for the renegotiation of hourly rates outlined in Schedule B on the annual anniversary of this Agreement.

ARTICLE 4. REIMBURSABLE EXPENSES. Reimbursable expenses consist of actual expenditures made by Planner, 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, for long distance calls and telegrams, and fees paid for securing approval by agencies. 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 Planner 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 Planner 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 Planner.

ARTICLE 7. INSURANCE. Planner 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 PLANNER 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 PLANNER's liabilities hereunder in insurance coverages identified in items (b) and (c) and PLANNER waives subrogation against CITY as to said policies.

Planner 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. Planner shall provide the CITY with thirty (30) days notice of cancellation. For the duration of the Agreement, Planner shall be insured in the above amounts.

ARTICLE 8. PROHIBITION AGAINST CONTINGENT FEE. The Planner warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Planner, 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 Planner, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 9. AUDIT. The Planner 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 Planner involving transactions related to the Agreement. The Planner 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 Planner 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 Planner, Planner's agents or employees, in the performance of professional services under this Agreement. Planner 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 Planner 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 Planner 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 Planner in conjunction with this Agreement.

ARTICLE 12. CONTROLLING LAW. Planner 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 Planner 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 Planner from employing such independent professional associates and consultants as Planner deems appropriate, pursuant to Article 5 herein.

ARTICLE 14. TERMINATION. The CITY or Planner may terminate this Agreement without cause upon sixty (60) days written notice. At such time as Planner receives notification of the intent of the CITY to terminate the contract, Planner shall not perform any further services unless directed to do so by the City Manager. In the event of any termination without cause, Planner 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 Planner. In the event of any termination for cause, Planner shall not perform any further services for the CITY after Planner's receipt of notification of termination for cause, but Planner 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 PLANNER, including those for latent defects, that are not brought within five (5) years of substantial completion of the facility designed or final payment to PLANNER, whichever is earlier.

ARTICLE 17. 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 Planner: Nilsa Zacarias, AICP
1851 W. Indiantown Road
Suite 100
Jupiter, Florida 33458

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 Planner 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 counter parts 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

NZ CONSULTANTS



Witness

By: 

Nilsa Zacarias, AICP, President

EXHIBIT A -SCOPE OF WORK**COMPREHESIVE PLAN**

Please see the following tasks to prepare and approve the City of Westlake Comprehensive Plan:

- *Kick of Meeting with City*
- 1 Assist City in creation of LPA and its functions, establish procedures, and fulfill other requirements of Ch. 163.3174, F.S.
- 2 Create a Comprehensive Plan, pursuant to Ch. 163.3177, F.S.
 - a. Due Diligence: Identification of general data & analysis to support plan in general and study all existing documentation and approvals
 - b. Development of principles and a vision for the Comprehensive Plan
 - i. Write Up
 - ii. Data and Analysis
 - c. Definition of Comp Plan format and structure
 - d. Population projections/ Develop Methodology
- 3 Prepare required Comprehensive Plan Elements and Map Series
 - a. *Map Series (by others)***
 - b. Future Land Use Element
 - c. Housing Element
 - d. *Transportation Element ***
 - e. *Infrastructure (Sanitary Sewer, solid waste, drainage, potable water)***
 - f. Conservation Element (Natural Groundwater Aquifer Recharge)
 - g. Recreation and Open Space
 - h. Intergovernmental Element
 - i. Capital Improvements Element
- 4 Coordinate Comp Plan with Land Development Regulations
- 5 Prepare Comp Plan package for the LPA Hearing.
 - a. Prepare public hearing/Legal Ad
- 6 Prepare package for the Transmittal Hearing – Council Hearing
 - a. Prepare public hearing/Legal Ad
- 7 Initiate State Coordinated Review process and Timeframes
 - a. Transmittal to the State
 - b. Receipt by DEO
 - c. State review agencies comments. Includes SFWMD and TCRPC
 - d. Objections, Recommendations and Comments (ORC)
 - e. Adoption hearing/Legal Ad
 - f. Transmittal to the State
 - g. DEO Letter of Completeness
 - h. Notice of Intent to find in compliance

*** There will be coordination and review meetings with the City through the Comprehensive Plan Process**

**** The Transportation and Infrastructure Elements will require coordination and input from City's Engineers.**



SCHEDULE B - NZ CONSULTANTS

PROFESSIONAL HOURLY RATE SCHEDULE- 2016

PRINCIPAL PLANNER	\$145
SENIOR PLANNER	\$125
PLANNER	\$100
ASSISTANT PLANNER	\$85
ARCHIT. DESIGN	\$145
GIS	\$125