

AGREEMENT



THIS AGREEMENT, made and entered into this ____ day of January, 2024, by and between:

CITY OF MARGATE, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, 5790 Margate Blvd., Margate, Florida, 33063, (hereinafter referred to as "CITY"); and Berry, Dunn, McNeil & Parker, LLC located at 2211 Congress Street, Portland, ME 04102 (hereinafter referred to as "CONSULTANT").

WITNESSETH:

IN CONSIDERATION of the mutual covenants and conditions as herein expressed and of the faithful performance of all such covenants and conditions, the parties do mutually agree as follows:

ARTICLE I

THE AGREEMENT DOCUMENTS

The Agreement Documents consist of all of the following: Request for Proposal (RFP) 2023-016 package and Consultant's RFP response and clarification regarding pricing and travel expenses dated December 13, 2023, all addenda issued for the RFP and Consultant's response(s) thereto, Scrutinized Companies Certification, E-Verify Form, Certificate(s) of Insurance, which are made a part of this agreement, or any additional documents which are required to be submitted under the Agreement, and all renewals, amendments, modifications and supplements issued on or after the effective date of the Agreement.

ARTICLE 2

SCOPE OF THE WORK

CONSULTANT shall furnish Professional Strategic Planning Services as stipulated in RFP No. 2023-016, CONSULTANT'S response to RFP No. 2023-016, and any subsequent work amendments and modifications mutually agreed to by the parties to this Agreement.

RFP NO. 2023-016

ARTICLE 3

CONTRACT TIME

TIME IS OF THE ESSENCE OF THIS AGREEMENT. The work to be performed under this Agreement shall be under this Agreement shall be based on an agreed upon schedule of work to be completed on a frequency specified within the RFP document and/or a frequency stipulated as needed by the City. Failure to achieve timely completion of scheduled work shall be regarded as a breach of this Agreement and subject to appropriate remedies. The agreement's term shall be for a period of one year from the date of this agreement. With two six-month renewal options available providing both parties agree, all terms and conditions remain the same, and sufficient funding is available.

ARTICLE 4

AGREEMENT SUM

1. CITY shall pay CONSULTANT an amount not exceeding the following:

COST BY PROJECT PHASE

PHASE	FIXED-FEE COST
Phase 1: Project Initiation and Management	\$9,100
Phase 2: Participant Engagement and Strategic Analysis	\$22,800
Phase 3: Strategic Plan Development	\$21,400
Phase 4: Implementation Planning	\$16,300
Total Fixed-Fee Services Cost	\$69,600
Travel Expense Allocation*	\$9,000
AGREEMENT GRAND TOTAL	<u>\$78,600</u>

***City shall be invoiced only for travel expenses actually incurred; not to exceed the \$9,000 allocation.**

ARTICLE 5

PAYMENT

1. The CONSULTANT shall requisition payment for work completed. Payment shall be made as above provided upon full completion of work phases or portions thereof as determined by CITY and as outlined in Exhibit "B" - Scope of Services of RFP No. 2023-016. CITY shall make payment to CONSULTANT within 30 calendar days after its approval.
2. CITY may withhold in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

- a. Defective work not remedied.
- b. Claims filed or unreasonable evidence indicating the probable filing of claims by other parties against the CONSULTANT.
- c. Failure of the CONSULTANT to make payment to subconsultants.
- d. Damage to the CITY or to another consultant not remedied.
- e. Reasonable evidence that the work cannot be completed for the unpaid balance of the Agreement time.
- f. Reasonable evidence that the work will not be completed within the Agreement Time.
- g. Persistent failure to carry out the work in accordance with the Agreement Documents.

When the above grounds are removed or resolved or the CONSULTANT provides a surety bond or a consent of surety satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

ARTICLE 6

FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Agreement Sum, shall be paid by the CITY to the CONSULTANT when all outstanding work has been completed and all controversy regarding the preceding has been settled to the CITY'S satisfaction.

ARTICLE 7

MISCELLANEOUS PROVISIONS

1. Terms used in this Agreement which are defined in the General Conditions of the Agreement shall have the meanings designated in those Conditions.
2. This agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection, or dispute arising out of this Agreement shall be litigated only in the Seventeenth Judicial Circuit in and for Broward County, Florida.
3. No waiver of any provision, covenant, or condition within this agreement or of the breach of any provision, covenant, or condition within this agreement shall be taken to constitute a waiver of any subsequent breach of such provision, covenant, or condition.
4. CONSULTANT shall not assign or transfer the Agreement or its rights, title or interests therein without CITY'S prior written approval. The obligations undertaken by CONSULTANT pursuant to the Agreement shall not be delegated or assigned to any other person or firm unless CITY shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Agreement by CONSULTANT and the CITY may, at its discretion, cancel the Agreement and all rights, title and interest

of CONSULTANT shall thereupon cease and terminate.

5. This agreement, and attachments, represents the entire understanding of the parties as to the matters contained herein. No prior oral or written understanding shall be of any force and effect with respect to those matters covered hereunder. This agreement may only be modified by amendment in writing signed by each party.
6. **THE PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, PROCEEDING, LAWSUIT OR COUNTERCLAIM BASED UPON THE AGREEMENT, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE MATTERS TO BE ACCOMPLISHED IN THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR THE ACTIONS OR INACTIONS OF ANY PARTY.**
7. **PUBLIC RECORDS:** The Consultant shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and specifically agrees to:
 - A. Keep and maintain public records required by the City of Margate to perform the service.
 - B. Upon request from the City of Margate's custodian of public records, provide the City of Margate with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter 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 the Agreement term and following completion of the Agreement if the Consultant does not transfer the records to the City of Margate.
 - D. Upon completion of the Agreement, transfer, at no cost, to the City of Margate all public records in possession of the Consultant or keep and maintain public records required by the City of Margate to perform the service. If the Consultant transfers all public records to the City of Margate upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Margate, upon request from the City of Margate's custodian of public records, in a format that is compatible with the information technology systems of the City of Margate.
 - E. **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT,**

AGREEMENT THE CUSTODIAN OF PUBLIC RECORDS AT:

Telephone number:

(954) 972-6454

E-mail address:

recordsmanagement@margatefl.com

Mailing address:

5790 Margate Boulevard

Margate, FL 33063

- 8. SCRUTINIZED COMPANIES:** In accordance with s. 287.135, Florida Statutes, as amended, a company is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a agreement with an agency or local governmental entity for goods or services of:

8.1 Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such agreement, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

.1 One million dollars or more, if, at the time of bidding on, submitting a proposal for, or entering into or renewing such agreement, the company:

.2 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.73, Florida Statutes; or

.3 Is engaged in business operations in Cuba and Syria.

8.2 By submitting a bid, proposal or response, the company, principals or owners certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations in Syria.

8.3 The City reserves the right to terminate this agreement if Consultant is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

9. E-VERIFY

1) Definitions:

“Consultant” means a person or entity that has entered or is attempting to enter into a agreement with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

“Subconsultant” means a person or entity that provides labor, supplies, or services to or for a consultant or another subconsultant in exchange for salary, wages, or other remuneration.

- 2) Effective January 1, 2021, public and private employers, consultants and subconsultants will begin required registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Vendor/Consultant/Subconsultants acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:
- a) All persons employed by Vendor/Consultant/Subconsultants to perform employment duties within Florida during the term of the agreement; and
 - b) All persons (including subvendors/subconsultants) assigned by Vendor/Consultant/Subconsultant to perform work pursuant to the agreement with the Department. The Vendor/Consultant/Subconsultant acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the agreement is a condition of the agreement with the City of Margate; and
 - c) By entering into this Agreement, the Consultant becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subconsultants to provide an affidavit attesting that the subconsultant does not employ, agree with, or subconsultant with, an unauthorized alien. The consultant shall maintain a copy of such affidavit for the duration of the agreement. Failure to comply will lead to termination of this agreement, or if a subconsultant knowingly violates the statute, the subconsultant must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this agreement is terminated for a violation of the statute by the Consultant, the Consultant may not be awarded a public agreement for a period of 1 year after the date of termination and shall be liable for any additional costs incurred by the City as a result of the termination.

ARTICLE 8

NOTICES

All notices required by any of the Agreement Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

The business address of the CITY is:

City Manager
City of Margate
5790 Margate Boulevard
Margate, Florida 33063

The business address of the CONSULTANT is:

BerryDunn
2211 Congress Street
Portland, ME 04102

IN WITNESSETH WHEREOF, CITY and CONSULTANT have signed this Agreement in duplicate. One counterpart each has been delivered to CITY and CONSULTANT. All portions of the Agreement Documents have been signed or identified by CITY and CONSULTANT.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

CITY OF MARGATE

Tommy Ruzzano, Mayor
____ day of _____, 20__

Cale Curtis, City Manager
____ day of _____, 20__

ATTEST:

APPROVED AS TO FORM:

Jennifer M. Johnson, City Clerk
____ day of _____, 20__

David N. Tolces, City Attorney
____ day of _____, 20__

FOR CONSULTANT

FOR PARTNERSHIP:

Partner (signature)

(Print Name)

_____ day of _____, 2023

Partner (signature)

(Print Name)

_____ day of _____, 2023

**AGREEMENT BETWEEN CITY OF MARGATE AND CONSULTANT FOR THE PROJECT – RFP 2023-016
STRATEGIC PLAN CONSULTING SERVICES**