

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") effective February 15, 2017 is entered into by and between City of Margate, FL ("Client"), with offices at 5790 Margate Blvd., Margate, FL 33063 and Witt O'Brien's, LLC ("Consultant"), located at 1201 15th Street NW, Suite 600, Washington, DC 20005

WHEREAS, Consultant is in the business of providing certain consulting services, and is willing to provide such services to Client;

WHEREAS, Consultant submitted a proposal to Client dated January 12, 2017 to provide services ("Consultant Proposal"), a copy of which is attached and incorporated herein as Exhibit A;

WHEREAS, Client desires to utilize Consultant's services as provided for herein; and,

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. Recitals

The above-referenced recitals are true and correct, and are incorporated herein.

2. General Terms and Conditions

The general terms and conditions of this Agreement are set forth in Appendix A, attached hereto and incorporated herein.

3. Scope of Work

Consultant shall provide the services set forth in Appendix B, attached hereto and incorporated herein ("Services"). Consultant shall furnish all reports and deliverables as set forth in Appendix B in accordance with the terms set forth therein (hereafter "Deliverables").

4. Period of Performance

The period of this Agreement shall be for one (1) year from the signing of this Agreement and may be renewed for successive one (1) year periods subject to adjustments of costs and fees to be agreed upon in writing.

5. Fees and Payment

In consideration of Services performed hereunder, Client shall pay Consultant in accordance with Appendix C.

6. Notice

Any notice given by either party shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, or Federal Express or DHL courier, shipped prepaid, addressed to the parties at the addresses herein designated for each party or at such other addresses as they may hereafter designate in writing.

Douglas E. Smith City Manager City of Margate 5790 Margate Boulevard Margate, FL 33063 citymanager@margatefl.com (954) 972-6454Phone	Contracts Department Witt O'Brien's LLC 1201 15th Street NW, Suite 600 Washington, DC 20005 Phone: +1 (202) 585-0780 Email: contractrequests@wittobriens.com For legal notices, a copy shall be provided to: Legal Counsel Witt O'Brien's 2200 Eller Drive Fort Lauderdale, Florida 33136 Phone: (954) 627-5298
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7. Entire Agreement

Both parties acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and further agree that it is the entire agreement between the parties hereto which supersedes all prior agreements, written or oral, relating to the subject matter hereof. No modification or waiver of any provision shall be binding unless in writing signed by the party against whom such modification or waiver is sought to be enforced.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, execute this Agreement to be effective as of the date set forth above.

APPENDIX A

GENERAL TERMS & CONDITIONS

1. **CONSULTANT'S RESPONSIBILITIES.** Consultant ("Consultant") shall perform the Services utilizing the standard of care normally exercised by professional consulting firms in performing comparable services under similar conditions. CONSULTANT MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

2. **CLIENT'S RESPONSIBILITIES.** Client shall provide site access to the site or facility at which the Services are to be performed at such times as may reasonably be required by Consultant, and shall make timely payments in accordance with the terms and conditions of this Agreement. To the extent Client has access to information relating to the Services to be performed, Client shall provide such information as is reasonably available and appropriate for the efficient performance of the Services ("Information"). Such Information includes, but is not limited to, available site history and the identification, location, quantity, concentration and character of known or suspected hazardous conditions, wastes, substances or materials that are likely to pose a significant risk to human life, health, safety or to the environment. Consultant shall be entitled to rely upon the Information provided by the Client or the Client's agents without independent verification except to the extent set forth herein and shall bear no liability arising from such reasonable reliance.

3. **COMMENCEMENT AND COMPLETION OF THE SERVICES.** The Services shall commence and shall be completed on the respective dates specified in this Agreement or, in the absence of such

specification, as soon as good practice and due diligence reasonably permit.

4. **PROPRIETARY INFORMATION.** Proprietary confidential information ("Proprietary Information") disclosed by either party under this Agreement shall be clearly labeled and identified as Proprietary Information by the disclosing party at the time of disclosure. When concurrent written identification of Proprietary Information is not feasible at the time of such disclosure, the disclosing party shall provide such identification in writing promptly thereafter. Proprietary Information shall not be disclosed to any other person except to those individuals who need access to such Proprietary Information as needed to ensure proper performance of the Services. Neither party shall be liable for disclosure or use of Proprietary Information which: (1) is generally available to the public without breach of this Agreement; (2) is disclosed with the prior written approval of the disclosing party; or (3) is required to be released by applicable law or court order. Each party shall return all Proprietary Information relating to this Agreement to the disclosing party upon request of the disclosing party or upon termination of this Agreement, whichever occurs first. Each party shall have the right to retain a copy of the Proprietary Information for its internal records and subject to ongoing compliance with the restrictions set forth in this Paragraph 4.

5. **DELIVERABLES.** Upon payment in full for the Services, and unless otherwise agreed to by the parties, the Deliverables shall be the property of the Client. The Consultant shall not disclose the Deliverables relating to the Services to a third party without the prior written authorization of the Client. Client shall be

solely responsible for any disclosure of the Deliverables, which may be required by law and agrees to indemnify and hold Consultant harmless for any loss, liability, or claim resulting from Client's failure to make such disclosure and fully indemnify Consultant. Where applicable law requires immediate disclosure by the Consultant, Consultant shall make its best efforts to give prior notice to Client. At Client's request and expense, Consultant will assist the Client in making such disclosures as may be required by law.

Notwithstanding the foregoing, the Client acknowledges that in the course of its performance under the Agreement the Consultant may use products, materials and methodologies proprietary to the Consultant, and the Client agrees that it shall have or obtain no rights in such proprietary products, materials and methodologies except pursuant to a separate written agreement (if any) executed by the parties.

6. LIABILITY AND INDEMNIFICATION

6.1 CONSULTANT PEOPLE AND PROPERTY. TO THE EXTENT PERMITTED BY LAW, CONSULTANT WILL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS CLIENT, FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, COSTS (INCLUDING LEGAL FEES), EXPENSES AND LIABILITIES IN RESPECT OF:

(a) LOSS OF OR DAMAGE TO THE PROPERTY OF CONSULTANT WHETHER OWNED OR LEASED BY CONSULTANT; AND

(b) PERSONAL INJURY INCLUDING DEATH OR DISEASE TO ANY PERSON EMPLOYED BY CONSULTANT;

ARISING FROM OR RELATING TO THE PERFORMANCE OF THE AGREEMENT.

6.2 CLIENT PEOPLE AND PROPERTY. TO THE EXTENT PERMITTED BY LAW, CLIENT WILL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS CONSULTANT FROM AND AGAINST ANY CLAIMS, LOSSES, DAMAGES, COSTS (INCLUDING LEGAL FEES), EXPENSES AND LIABILITIES IN RESPECT OF:

(a) LOSS OF OR DAMAGE TO THE PROPERTY OF CLIENT WHETHER OWNED OR LEASED BY CLIENT; AND

(b) PERSONAL INJURY INCLUDING DEATH OR DISEASE TO ANY PERSON EMPLOYED BY CLIENT;

ARISING FROM OR RELATING TO THE PERFORMANCE OF THE AGREEMENT.

NOTWITHSTANDING THE FOREGOING, NEITHER PARTY EXCLUDES OR LIMITS ITS LIABILITY FOR FRAUD.

6.2 LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND. EXCEPT AS OTHERWISE PROVIDED HEREIN, CONSULTANT'S LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE, THE FEES ACTUALLY PAID BY CLIENT TO CONSULTANT UNDER THIS AGREEMENT.

6.3 IMMUNITIES. Nothing set forth herein shall be deemed a waiver by Client of any of its immunities provided by law, including but not limited to those set forth in Section 768.28, Florida Statutes.

7. ACCEPTANCE. Client shall have five (5) days from the date each deliverable is made to Client to reject all or part of each Deliverable. Each Deliverable, to the

extent not rejected in writing by Client, shall be deemed accepted.

8. PAYMENT TERMS. Invoices will be submitted monthly and are due upon receipt. Invoices for out of pocket expenses may be submitted on a monthly basis and are due upon receipt. Timely payment is a material part of the consideration for the performance of the Services.

Invoices will be paid Net 30. A service charge equivalent to 1.5% (per month) of invoice amount may be assessed by Consultant and will be paid by Client for invoices aging beyond 30 days until invoice is paid in full.

In the event that payment has not been made in accordance with the terms of this Agreement, in addition to any other remedy, which Consultant may have under law or equity, Consultant may stop work immediately, without further duty, obligation, and/or liability.

9. CONTRACT CEILING PRICE. For time and material or unit price contracts with a contract ceiling, if at any time Consultant has reason to believe that an increase in such limitation will be necessary, it will give prior notice to that effect and proposing a new limitation figure and giving appropriate supporting data so that Client may, at its sole discretion, increase such limitation by written modification to this Agreement.

10. CURRENCY OF PAYMENT. Unless otherwise set forth in this Agreement, all payments shall be made in United States Dollars (\$US). Where exchange rates are involved, the rate of exchange between \$US and the other currency involved in the transaction shall be the rate of exchange as of the date of invoice. The date of each invoice shall be clearly marked on each invoice.

11. HEALTH & SAFETY. Client shall notify Consultant of any known or suspected hazards existing at any site where the Services are to be provided, including but not limited to, hazardous waste, substances or materials and underground utilities.

12. CONFLICT OF INTEREST. The Client acknowledges that the Consultant provides similar services for a broad range of other clients and agrees that Consultant shall be free to work for other clients in matters that do not involve the use of any Proprietary Information that has been disclosed by the Client under the terms of this Agreement or do not directly relate to the specific Services provided by the Consultant to the Client under this Agreement.

13. FORCE MAJEURE. Neither party shall be responsible for any delay or failure in performance, other than the obligation to make payments for work previously performed, to the extent that such delay or failure was caused by a force majeure event including Act of God, war, civil disturbance, governmental action, labor dispute unrelated to and without fault or negligence of the party claiming the force majeure event, computer virus, or denial of access to the site or any other event beyond the reasonable control of the claiming party. Performance under this Agreement shall resume promptly once the cause of delay or failure ceases and an equitable adjustment shall be made to the price and/or schedule of the Services including any mobilization or demobilization costs of Consultant.

14. CHANGED CONDITIONS. The discovery of any hazardous waste, substance or material; underground obstruction; underground utilities; or other latent obstruction to the performance of the Services to the extent that such conditions are not the subject of the Services, and to the extent that such

conditions were not brought to the attention of the Consultant prior to execution of this Agreement, or any change in law that materially affects the obligations or rights of either party under this Agreement, shall constitute a materially different site condition entitling the Consultant to an equitable adjustment in the contract price, time of performance, or both, as appropriate. If the change materially changes the nature of the Services, the Consultant may terminate this Agreement as a result of such changed conditions.

15. CHANGES TO THE SERVICES. The Client may direct changes within the general Scope of Work. Upon notification of such direction, the Consultant shall prepare an estimate of the additional costs and time required, if any, to perform the change. Upon mutual written agreement, Consultant shall perform the change and an equitable adjustment shall be made to the price and/or time schedule as appropriate.

16. GOVERNING LAW. The Agreement will be governed by the laws of the State of Florida, without reference to its rules relating to choice of law to the contrary. Customer consents to the exclusive jurisdiction of state and federal courts located in Florida, with respect to any claim arising under or by reason of the Agreement.

17. THIRD PARTY LITIGATION. In the event that any litigation, proceeding, or claim (including any investigation which may be preliminary thereto) involving the Services performed by Consultant is commenced by a third party, Consultant shall furnish, if compelled by law or upon the reasonable request of Client, such person or persons from Consultant's organization as are familiar with the matters embraced within the knowledge of Consultant's personnel to testify as witnesses and to provide Consultant's

records and such other information and assistance in connection with such litigation, proceeding or claim (or investigation preliminary thereto). To the extent Consultant may be required, either by law or at the request of Client, to provide such testimony, records, information, or assistance, Client shall reimburse Consultant for the reasonable value of its services at its then prevailing rate for comparable work, based on the time expended, and for Consultant's out-of-pocket expenses incurred in connection therewith in accordance with the provisions of this Agreement.

18. INDEPENDENT CONTRACTOR. The Consultant is an independent contractor and shall not be deemed to be an employee or agent of the Client. Consultant shall indemnify and hold Client harmless against all liability and loss resulting from Consultant's failure to pay all taxes and fees imposed by the government under employment insurance, social security and income tax laws with regard to Consultant's employees engaged in the performance of this Agreement.

19. NON-SOLICITATION OF EMPLOYEES. Neither party shall solicit for employment or hire the employees of the other party involved in the management or performance of the Services during the term of this Agreement and for one year thereafter.

20. NONWAIVER. No waiver of any breach of this Agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provision of this Agreement.

21. SEVERABILITY. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and to the extent possible, this Agreement

shall continue without affect to the remaining provisions.

22. ASSIGNMENT/SUBCONTRACTS. Neither party may assign this Agreement without the written consent of the other party, which shall not unreasonably be withheld; provided, however, that Consultant may assign this Agreement in connection with a sale of all or substantially all of its assets without Client's consent, or to a parent, subsidiary, or affiliate.

23. DRAFTING PARTY. Each party has reviewed this Agreement and any question of interpretation shall not be resolved by any rule of interpretation providing for interpretation against the drafting party. This Agreement shall be construed as though drafted by both parties.

24. GOVERNING LAW. The validity, enforceability and interpretation of this Agreement shall be determined and governed by the laws of the State of Florida and, where applicable by virtue of preemption, under the laws of the United States of America.

25. CAPTIONS. The captions and headings of this agreement are intended for convenience and reference only, do not affect the construction or meaning of this agreement and further do not inform a party of the covenants, terms or conditions of this Agreement or give full notice thereof.

26. ADDITIONAL INSTRUMENTS. The parties agree to provide the other with any and all documents required to carry out any and all obligations in connection with the agreement as set forth herein.

27. NO AGENCY. Except as specifically set forth otherwise, it is agreed and understood that neither party hereto is, by this Agreement or anything herein

contained, constituted or appointed agent or representative of the other for any purpose whatsoever, nor shall anything in this Agreement be deemed or construed as granting either party any right or authority to assume or to create any obligation, warranty or responsibility, express or implied, for or in behalf of the other.

28. ORDER OF PRECEDENCE. In the event of a conflict in the terms and conditions of this Agreement, the following order of precedence shall apply:

- A. This Agreement
- B. The Rate Schedule (Appendix C)
- C. The Scope of Work (Appendix B)
- D. The General Terms and Conditions (Appendix A)
- E. Task Orders (if applicable)
- F. Other Contract Documents

29. ENTIRE AGREEMENT. The parties acknowledge that they have read this Agreement, understand it and agree to be bound by its terms. This Agreement supersedes all prior agreements, whether written or oral, relating to the subject matter hereof. No modification or change to this Agreement shall be binding unless such modification or change is in writing and signed by an authorized representative of each party.

30. OTHER. Neither Party shall disseminate or make use of any materials making reference to the other Party, without the other Party's written consent. Neither Party shall make any statements or promises relating to the other Party or its Services or any use of the other Party's name, which is not authorized in writing by the other Party.

31. TERMINATION. This agreement may be terminated at any time by either party provided the requesting party provides the other with 30 days written notice. Either party may also immediately terminate this Agreement upon a material

breach of this Agreement, with no further payment or service obligation from either party past the date of termination. In any

event of termination, Client shall pay for services rendered through the date of termination.

**APPENDIX B
SCOPE OF WORK**

Consultant shall provide the following services:

Consultant shall provide the services as set out in Consultant Proposal dated January 12, 2017 which is attached hereto as Exhibit A and is incorporated into and forms part of this Agreement.

APPENDIX C Compensation

Compensation for services will be based as follows:

A qualified Senior Public Assistance/Hazard Mitigation Specialist at \$130/hour would be utilized to perform this task.

We estimate that this Phase One task would cost approximately \$5,000 with the following qualifications and assumptions. The cost includes:

- Initial meeting/conference call with City personnel from responsible Department(s).
- Review of the following documents: One purchasing/procurement policy, one purchasing/procurement SOP, up to two boiler plate bid documents, up to two contract documents or templates.
- If additional policies, procedures, bid documents or contracts are to be included for review, additional hours may be required.
- Post-recommendation meeting/conference call to discuss.

EXHIBIT A PROPOSAL FOR SPECIFIC WORK QUOTED

Witt O'Brien's is pleased to provide a preliminary quotation for the Phase One services that the City desires including Federal/FEMA compliance review and recommendations related to the City's purchasing policy, procedures, boiler plate bid, and related contractual documents.

A qualified Senior Public Assistance/Hazard Mitigation Specialist at \$130/hour would be utilized to perform this task.

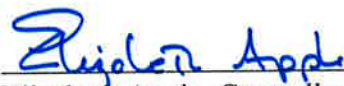
We estimate that this Phase One task would cost approximately \$5,000 with the following qualifications and assumptions. The cost includes:

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- Review of the following documents: One purchasing/procurement policy, one purchasing/procurement SOP, up to two boiler plate bid documents, up to two contract documents or templates.
- If additional policies, procedures, bid documents or contracts are to be included for review, additional hours may be required.
- Post-recommendation meeting/conference call to discuss.

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MARGATE AND WITT O'BRIEN'S, LLC**

Approved by the City Commission of the City of Margate the 15th day of February 2017.

Witt O' Brien's, LLC


Elizabeth Apple, Controller
10 day of February, 2017

City of Margate

Tommy Ruzzano, Mayor

____ day of _____, 2017

ATTEST:

Joseph J. Kavanagh, City Clerk

____ day of _____, 2017

Douglas E. Smith, City Manager

____ day of _____, 2017

APPROVED AS TO FORM:

Douglas R. Gonzales, City Attorney

____ day of _____, 2017