



AGENDA ITEM REQUEST FORM

Item No. 11e

Municipal Services

Department Submitting Request

Pat Himelberger

Dept Head's Signature

REGULAR COMMISSION MTG Meeting Dates - 7:00 PM

DEADLINE TO Town Clerk

ROUNDTABLE MEETING Meeting Dates - 7:00 PM

DEADLINE TO Town Clerk

- April 27, 2011
- May 24, 2011
- June 28, 2011
- July 26, 2011

- April 15 (5:00 pm)
- May 13 (5:00 pm)
- June 10 (5:00 pm)
- July 15 (5:00 pm)

- April 12, 2011
- May 10, 2011
- June 14, 2011
- July 12, 2011

- April 1 (5:00 pm)
- April 29 (5:00 pm)
- June 3 (5:00 pm)
- July 1 (5:00 pm)

- | | | | |
|---------------------------------------|-----------------------------------------|---------------------------------------------|---------------------------------------|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Reports | <input checked="" type="checkbox"/> Consent | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Old Business | <input type="checkbox"/> New Business |

FY2011 DESIGNATED HIGH PRIORITY ITEM

SUBJECT TITLE: Continuing Services Agreements with Hughes Hughes Inc. and Flynn Engineering PA

EXPLANATION: At the June 28, 2011 Town Commission meeting, the Commission approved the firms recommended by the Evaluation Committee for the RFQ for Continuing Professional Services For Municipal Construction, Repair and Maintenance Projects. At that time, the Town Manager said she would bring the professional agreements back to the Commission for approval in order that the Commission could become familiar with the format. These Agreements have been reviewed and accepted by the Town Attorney.

The standard agreement (that staff developed and the Town Attorney has reviewed and modified for legal sufficiency and clarity) defines Compensation, Reimbursable Expenses, Work Authorization, Subcontractor's Fee, Travel Expenses, Insurance Requirements, Termination, Change Orders, Document Ownership and Deliverables among other items. The initial term of these agreements are for 3 years and include two 1 year extension options should the Town and Contractor agree to extend. Attached to the Continuing Services Agreement is the Work Authorization which the various firms will be submitting for approval when asked by the Town to provide a cost for a particular scope of work.

The first Continuing Services Agreement presented for your approval (**as Exhibit A**) is with the firm of Hughes Hughes Inc. for Traffic Engineering services.

The second Continuing Services Agreement is with the firm of Flynn Engineering Services PA for Engineering and Certified Engineering Inspection (CEI) services. (**Exhibit B.**)

In an effort to expedite the process, staff requests that the Commission authorize the Town Manager to execute Continuing Services Agreements with the following firms as the Agreements are returned to the Town: Architectural Alliance, Calvin Giordano, Carnahan Proctor & Cross, EDSA, Erdman Anthony, Gartek Engineering, Jaime Correa, Keith & Associates, Mathews Consulting and GAI Consultants.



AGENDA ITEM REQUEST FORM

Item No. _____

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Dept Head's Signature

EXPECTED OUTCOME: Staff recommends the following:

1. Approve and authorize execution of the Continuing Services Agreement with Hughes Hughes Inc.
2. Approve and authorize execution of the Continuing Services Agreement with Flynn Engineering Services PA
3. Authorize the Town Manager to execute the Continuing Services Agreements of the following firms: Architectural Alliance, Calvin Giordano, Carnahan Proctor & Cross, EDSA, Erdman Anthony, Gartek Engineering, Jaime Correa, Keith & Associates, Mathews Consulting and GAI Consultants.

EXHIBITS:

- A. Continuing Services Agreement with Hughes Hughes Inc.
- B. Continuing Services Agreement with Flynn Engineering Services PA

Reviewed by Town Attorney

Yes No

Town Manager Initials CH

CONTINUING SERVICES

A G R E E M E N T

Between

THE TOWN OF LAUDERDALE BY-THE-SEA

And

HUGHES HUGHES INC.

2011

CONTINUING SERVICES

A G R E E M E N T

Between

TOWN OF LAUDERDALE BY-THE-SEA, FLORIDA

And

HUGHES HUGHES INC.

THIS AGREEMENT is made between the Town of Lauderdale-By-The-Sea, FLORIDA, a Florida municipal corporation, (hereinafter referred to as the "TOWN") and Hughes Hughes Inc., a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the "CONTRACTOR"), whose principal place of business is 728 SW 4 Place, Suite 103, Fort Lauderdale, FL 33312.

WHEREAS, pursuant to Section 287.055, Florida Statutes, the TOWN requested qualifications from qualified engineers and selected the CONTRACTOR to provide professional engineering services with respect to Traffic Services; and

WHEREAS, the CONTRACTOR is willing and able to perform such professional, services for the TOWN within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the CONTRACTOR to perform a specific project, but to set forth certain terms and conditions which shall automatically be incorporated into Work Authorizations for specific projects.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the TOWN and CONTRACTOR agree as follows:

SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the TOWN for the CONTRACTOR's professional services for a Work Authorization, exclusive of reimbursable expenses.

1.2 **Reimbursable Expenses:** the expenses directly attributable to the Work Authorization that cannot be defined in the fees the CONTRACTOR quotes for the Work Authorization, but that the TOWN agrees in writing will be costs the TOWN will reimburse to the CONTRACTOR. Reimbursable expenses may include, application and permit fees paid for securing approval of authorities having jurisdiction over the Work Authorization; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents specified beyond those provided in the quote for the Work Authorization; travel expenses as provided in Paragraph 1.5 of this Agreement.

1.3 **Work Authorization:** an agreement to provide services for a particular project or service.

1.4 **Subcontractor Fee:** the direct and actual cost of the subcontractor with no markup, as reflected by actual invoices of the subcontractor.

1.5 **Travel Expenses:** Travel expenses, whether within or outside of Broward County, and whether to the specific project or otherwise, shall not be reimbursed unless CONTRACTOR has secured advance written authorization for such travel from the Town Manager. All approved travel expenses will be reimbursed in accordance with the TOWN's adopted travel policy.

SECTION 2. WORK AUTHORIZATIONS/SCOPE OF SERVICES/COMPENSATION

2.1 In accordance with the Consultants' Competitive Negotiation Act, the CONTRACTOR may provide professional services to the TOWN for Work Authorizations as approved from time to time by either the Town Commission or Town Manager as authorized by this Section 2. The services shall be for the following types of projects or disciplines:

- **Traffic Engineering Services**

2.2 When the need for services for a Work Authorization occurs, the Town Manager may enter into negotiations with the CONTRACTOR for a Work Authorization under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONTRACTOR with a "Scope of Services Request," requesting from the CONTRACTOR a proposal to provide such professional services. The CONTRACTOR shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The Town Manager or designated representative and CONTRACTOR shall negotiate the terms of the Work Authorization in accordance with the provisions of this Section 2.

2.3 The TOWN and CONTRACTOR shall utilize as the agreement for each Work Authorization, a copy of which is attached and incorporated into this Agreement as Exhibit "A". Each supplemental agreement for a Work Authorization will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The tasks to be performed;
- c. The schedule to perform various tasks identified and the completion date of the entire scope of services;
- d. The amount and type of Compensation requested and the proposed payment schedule;
- e. The CONTRACTOR'S Project Manager and any subcontractors assigned to the Work Authorization;
- f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consulting agreements; and
- g. Any modifications to the Work Authorization, if mutually agreed upon by the parties.

2.4 If the Town Manager determines that the CONTRACTOR's services in its capacity as TRAFFIC ENGINEER CONTRACTOR for a particular project are needed on an hourly basis, in lieu of a lump sum Compensation package, the CONTRACTOR shall charge the TOWN for professional services at those hourly fees as specified in Exhibit "B." The Work Authorization shall specify that the CONTRACTOR's services shall be provided on an hourly basis with a maximum amount of Compensation that may not be exceeded without additional approval from the TOWN.

2.5 CONTRACTOR will invoice the TOWN on a monthly basis for services rendered the previous month, or less frequently as the Work Authorization provides. The invoice shall identify work completed, by whom and percentage of Work Authorization completed. Additionally, the invoice shall include a line item reflecting retainage as applicable. After receipt the Town shall notify CONTRACTOR of any discrepancies or disputed items on the invoice. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records and payment records of CONTRACTOR. The TOWN shall pay the CONTRACTOR the undisputed portion of the invoice within thirty (30) days of receipt of the invoice. The Town Manager shall make a final determination regarding the disputed portion of the invoice within forty-five (45) days of receipt of the invoice. Mediation between the TOWN and CONTRACTOR shall be held by the Town Manager during the aforesaid forty-five (45) day period.

2.6 Retainage: The TOWN reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONTRACTOR until the Project is completed. For projects that are divided into several phases, any retainage shall be withheld and may be released

individually for each phase of the Project at TOWN's discretion. Said retainage may be withheld at the sole discretion of the TOWN Manager and as security for the successful completion of the CONTRACTOR'S duties and responsibilities under the Work Authorization.

2.7 The professional services to be rendered by the CONTRACTOR shall commence within three days of the execution of the applicable Work Authorization unless provided otherwise in the Work Authorization. Performance of work by CONTRACTOR prior to execution of a Work Authorization shall be at CONTRACTOR's sole risk. Time is of the essence with regard to this Agreement and any Work Authorization issued hereunder.

2.8 The Town Manager is authorized to negotiate and execute a Work Authorization for projects in which the CONTRACTOR'S services do not exceed \$15,000.00. Any services exceeding \$15,000.00 require Town Commission approval. Should the Town Commission formally increase the Town Manager's authority to execute Work Authorizations, this Agreement shall automatically be adjusted to reflect that higher authority level.

2.9 The Contract Documents for each Work Authorization shall incorporate this Continuing Services Agreement.

SECTION 3. TERM/TERMINATION

3.1 **Term of Agreement.** – This Continuing Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for 3 years, unless and until terminated pursuant to Section 3.2 or other applicable sections of this Agreement. This Continuing Agreement may be renewed for two one-year extensions, as agreed to by the TOWN and CONTRACTOR. Each Work Authorization shall specify the period of service agreed to by the TOWN and CONTRACTOR for services to be rendered under said Work Authorization.

3.2 **Termination For Convenience** – The TOWN shall have the right at any time to terminate this Agreement for any reason whatsoever or without reason, with thirty (30) calendar days' written notice. If any such termination notice is provided by the TOWN, the CONTRACTOR shall immediately cease work on any Work Authorizations issued under this Agreement upon receipt of the notice from the TOWN. In the event the TOWN terminates the Agreement as provided for herein through no fault of the CONTRACTOR, the TOWN shall pay to the CONTRACTOR its reasonable costs, actually incurred and paid as of the date of notice, and of demobilization costs that are reasonable and customary and can be documented as actually incurred.

3.3 **Termination of Work Authorization** – Work Authorization(s). may be terminated through the following provisions:

- a. **For Cause.** A Work Authorization may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of

the party initiating the termination. In the event that CONTRACTOR abandons a Work Authorization or causes it to be terminated by the TOWN, the CONTRACTOR shall indemnify the TOWN against any loss pertaining to the termination. In the event that the CONTRACTOR is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience as referenced in 3.3 b.

- b. **For Convenience.** A Work Authorization may be terminated by the TOWN for convenience upon fourteen (14) calendar days' written notice to the CONTRACTOR. In the event of termination, the CONTRACTOR shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subcontractor obligations. The CONTRACTOR shall be compensated for all services performed to the satisfaction of the TOWN and for reimbursable expenses incurred prior to the date of termination. The CONTRACTOR shall promptly submit its invoice for final payment and reimbursement. Under no circumstances shall the TOWN make any payment to the CONTRACTOR for services which have not been performed.
- c. **Assignment upon Termination.** Upon termination of this Work Authorization, a copy of all of the CONTRACTOR's work product shall become the property of the TOWN and the CONTRACTOR shall, within ten (10) working days of receipt of written direction from the TOWN, transfer to either the TOWN or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONTRACTOR pertaining to this Work Authorization. Further, upon the TOWN'S request, the CONTRACTOR shall assign its rights, title and interest under any subcontractor's agreements to the TOWN.
- d. **Suspension for Convenience.** The TOWN shall have the right at any time to direct the CONTRACTOR to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the TOWN, the CONTRACTOR shall immediately comply with same. In the event the TOWN directs a suspension of performance as provided for herein through no fault of the CONTRACTOR, the TOWN shall pay to the CONTRACTOR its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full Compensation for any such suspension.

3.4 **Non-Exclusive Agreement** - Notwithstanding the provisions of Subsection 3.1, the Town Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other CONTRACTOR retained by the TOWN under continuing services agreements for the same or similar services. Nothing in this Agreement shall be construed to give the CONTRACTOR a right to perform services for a specific project.

SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

4.1 **Changes Permitted.** In the event that CONTRACTOR believes that work outside of the scope of the Work Authorization has been requested or must be undertaken, CONTRACTOR will notify the Town Project Manager in writing and may not expect Compensation for performing the work in question unless the TOWN agrees to such Compensation through a Town-approved change order to the Work Authorization. If it is agreed that additional services are warranted, CONTRACTOR shall begin work after Commission or Town Manager approval, whichever applies.

4.2 **Change Order Defined.** Change Order shall mean a written order to the CONTRACTOR executed by the TOWN, issued after execution of a Work Authorization, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

4.3 **Effect of Executed Change Order.** The execution of a Change Order by the TOWN and the CONTRACTOR shall constitute conclusive evidence of the TOWN's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The CONTRACTOR, by executing the Change Order, waives and forever releases any claim against the TOWN for additional time or Compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order.

SECTION 5. SURVIVAL OF PROVISIONS

5.1 Any terms or conditions of either this Agreement or any subsequent Work Authorization that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 6. TOWN'S RESPONSIBILITIES

6.1 Assist CONTRACTOR by placing at its disposal available information that is pertinent to the Work Authorization as may be requested in writing by the CONTRACTOR and allow reasonable access to pertinent information relating to the services to be performed by CONTRACTOR.

6.2 Arrange for access to and make all provisions for CONTRACTOR to enter upon public property as required for CONTRACTOR to perform services.

SECTION 7. ETHICS

7.1 The code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

7.2 CONTRACTOR warrants and represents that its employees shall abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes.

7.3 No officer or employee of the Town of Lauderdale-By-The-Sea, Florida, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof. Any subcontractors hired by the firm must also adhere to this policy and it must be included in their contracts as well.

SECTION 8. POLICY OF NON-DISCRIMINATION/WAGES

8.1 The CONTRACTOR shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

8.2 If the Project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, CONTRACTOR shall be required to comply with the same.

SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES

9.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the TOWN or furnished by the CONTRACTOR pursuant to any Work Authorization, shall become the property of the TOWN, whether the Work Authorization for which they are made is completed or not, and shall be delivered by CONTRACTOR to the TOWN within five (5) calendar days after receipt of written notice requesting delivery of said documents or digital files. The CONTRACTOR shall have the right to keep one record set of the documents upon completion of the Work Authorization, however, in no event shall the CONTRACTOR, without the TOWN'S prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

9.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the TOWN for each Work Authorization shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the TOWN.

9.3 All final plans and documents prepared by the CONTRACTOR shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect,

Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

9.4 All deliverables should be provided in hard copy format as well as electronic format to the TOWN. Drawings should be provided in CADD and PDF, spread sheets in Microsoft Excel, and written documentation should be provided in Microsoft Word. The date of submittal to the TOWN shall be deemed to be the later of delivery of hard copies and delivery of electronic copies as applicable.

SECTION 10. RECORDS/AUDITS

10.1 CONTRACTOR shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Work Authorization. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of three (3) years after the completion of each Work Authorization. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the CONTRACTOR of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.

10.2 The CONTRACTOR shall comply with Chapter 119, Florida Statutes, as applicable.

10.3 Refusal of the CONTRACTOR to comply with the provisions of Sections 10.1 or 10.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Work Authorization.

SECTION 11. NO CONTINGENT FEE

11.1 CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, 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 CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONTRACTOR violates this provision, the TOWN shall have the right to terminate this Agreement or any Work Authorization, without liability, and at its sole discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 12. INDEPENDENT CONTRACTOR

12.1 The CONTRACTOR is an independent contractor under this Agreement and any Work Authorizations. Personal services provided by the CONTRACTOR shall be by employees

of the CONTRACTOR and subject to supervision by the CONTRACTOR, and not as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Work Authorizations shall be those of the CONTRACTOR.

SECTION 13. ASSIGNMENT; AMENDMENTS

13.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR, without the prior written consent of the TOWN.

13.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 14. INDEMNIFICATION/HOLD HARMLESS

14.1 Pursuant to Section 725.08, Florida Statutes, the CONTRACTOR shall indemnify and hold harmless the TOWN and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR or any persons employed or utilized by the CONTRACTOR in the performance of this Agreement or any Work Authorization.

SECTION 15. INSURANCE

The CONTRACTOR shall secure and maintain throughout the duration of this Agreement and any Work Authorization, insurance of such type and in such amounts necessary to protect its interest and the interest of the TOWN against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the CONTRACTOR, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONTRACTOR'S insurance and shall not contribute to the CONTRACTOR'S insurance. The insurance coverage shall include a minimum of:

15.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws.

15.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONTRACTOR against claims for injuries to members of the public and/or damages to property of others arising from the CONTRACTOR'S use of motor vehicles or any other

equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$500,000 per occurrence for Bodily Injury and Property Damage, Hired & Non Owned Auto Liability.

15.3 **Comprehensive General Liability.** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONTRACTOR against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONTRACTOR or any of its agents, employees, or subcontractors. The limit of liability shall not be less than combined single limit of \$2,000,000 per occurrence and in the general aggregate for Bodily Injury and Property Damage and general aggregate for Products/Completed Operations, Comprehensive General Liability insurance shall include endorsements for property damage; personal injury, contractual liability; completed operations; products liability and independent contractors coverage.

(a) The TOWN is to be specifically included as an Additional Insured for the liability of the CONTRACTOR resulting from operations performed by or on behalf of TOWN in performance of this or any Work Authorization. CONTRACTOR'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONTRACTOR'S insurance. CONTRACTOR'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

15.4 **Professional Liability:** \$1,000,000 per incident

15.5 **Certificate of Insurance:** Prior to the execution of this Agreement, CONTRACTOR shall provide the Town Manager with evidence of insurability from the CONTRACTOR's Insurance Carrier or a Certificate of Insurance. Prior to execution of any Work Authorization, the CONTRACTOR shall provide to the Town Manager, Certificates of Insurance evidencing the required insurance coverage's. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall specifically Name the TOWN as additionally insured. The TOWN reserves the right to require the CONTRACTOR to provide a certified copy of such policies, upon written request by the TOWN. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the CONTRACTOR before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town Manager.

15.6 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONTRACTOR shall be responsible for the payment of any deductible

or self-insured retentions in the event of any claim. The Town Manager may require the CONTRACTOR, as a condition of execution of a particular Work Authorization, to provide a bond or other monetary consideration to cover the CONTRACTORS' deductible for Professional Liability Insurance.

15.6 The TOWN reserves the right to change the insurance requirements depending upon the scope of work in a Work Authorization.

SECTION 16. REPRESENTATIVE OF TOWN AND CONTRACTOR

16.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager or his/her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

16.2 **CONTRACTOR Representative.** CONTRACTOR shall inform the TOWN Representative, in writing, of the representative of the CONTRACTOR to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 17. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

17.1 If either the TOWN or CONTRACTOR is required to enforce the terms of this Agreement or any Work Authorization by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

17.2 In the event of any litigation arising out of this Agreement or any Work Authorization, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED

18.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 19. CONTRACTOR'S RESPONSIBILITIES

19.1 The CONTRACTOR and any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONTRACTOR shall be accurate, coordinated and adequate for construction and shall comply with all applicable TOWN Codes, state and federal laws, rules and regulations.

19.2 The CONTRACTOR shall exercise the same degree of care, skill and diligence in the performance of the services for each Work Authorization as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. If at any time during the term of any Work Authorization or the construction of the Project for which the CONTRACTOR has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Work Authorization, it is determined that the CONTRACTOR'S documents are incorrect, defective or fail to conform to the Scope of Services of the particular Work Authorization, upon written notification from the TOWN , the CONTRACTOR shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save and except any costs and expenses which the TOWN would have otherwise paid absent the CONTRACTOR'S error or omission. The TOWN'S rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement or the Work Authorization, equity or otherwise.

19.3 The CONTRACTOR'S obligations under Paragraph 19.2 of this Agreement shall survive termination of this Agreement or Work Authorization.

SECTION 20. SUBCONTRACTORS

20.1 In the event the CONTRACTOR requires the services of any subcontractors or other professional associates in connection with services covered by any Work Authorization, the CONTRACTOR must secure the prior written approval of the Town Manager.

20.2 Any subcontract with a subcontractor shall afford to the TOWN rights against the subcontractor which correspond to those rights afforded to the TOWN against the CONTRACTOR herein, including but not limited to those rights of termination as set forth herein.

20.3 No reimbursement shall be made to the CONTRACTOR for any subcontractors that have not been previously approved by the TOWN for use by the CONTRACTOR.

SECTION 21. NOTICES

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is

intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR CONTRACTOR:

Hughes Hughes Inc.
Attention: Molly J. Hughes, President
728 SW 4 Place, Suite 103
Fort Lauderdale, Florida 33312
Telephone: (954)563-1121
Facsimile: (954)563-9790

FOR TOWN:

Town of Lauderdale by-the-Sea
Attention: Constance Hoffmann, Town Manager
4501 Ocean Drive
Lauderdale by-the-Sea, Florida 33308
Telephone: (954)776-0576

With a copy to:

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.,
Town Attorneys
Attention: Susan Trevarthan, Esq., AICP
200 East Broward Blvd. Suite 119
Fort Lauderdale, Florida 33308
Telephone: (954)763-4242

SECTION 22. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONTRACTOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation of this Agreement or any Work Authorization are accurate, complete, and current at the time of contracting. Each Work Authorization's Contract Prices and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Work Authorization Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Work Authorization.

SECTION 23. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Work Authorization. Venue of any action to enforce this Agreement or any Work Authorization shall be in Broward County, Florida.

SECTION 24. GOVERNING LAW

This Agreement and any Work Authorization shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 25. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 26. EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

SECTION 27. SEVERABILITY

If any provision of this Agreement or any Work Authorization or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 28. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The TOWN , signing by and through its Town Manager, attested to by its Town Clerk, duly authorized to execute same and by CONTRACTOR by and through its _____, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

ATTEST:

TOWN OF LAUDERDALE BY-THE-SEA

June White
Town Clerk

By: _____
Constance Hoffmann
Town Manager

Date: _____

Approved as to form and legality
for the use and reliance of the

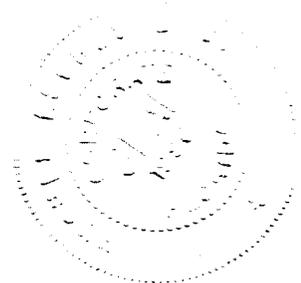
TOWN OF LAUDERDALE BY-THE-SEA, FLORIDA, only:

Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.
Town Attorney

CONTRACTOR

By: _____
Molly J. Hughes, President
Molly J. Hughes

Date: July 20, 2011





HUGHES HUGHES INC.

July 20, 2011

Nikki Smith
Deputy Town Clerk
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308

RE: Continuing Services Agreement

Dear Ms. Smith:

Please accept this letter clarifying that Molly J. Hughes, President and Secretary of Hughes Hughes Inc., a Florida Corporation, is authorized to sign on behalf of the firm.

If you have any questions or require any additional information, please don't hesitate to contact us.

Sincerely,

Molly J. Hughes, AICP, PTP, AVS
President

Mary J. Hughes
Executive Vice President

authorization letter.wpd

EXHIBIT "A"

WORK AUTHORIZATION

Between

TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA

And

HUGHES HUGHES INC.

for

Work Authorization No. ____

[INSERT NAME OF PROJECT]

ATTEST:

TOWN OF LAUDERDALE BY-THE-SEA

June White, CMC
Town Clerk

By: _____
Constance Hoffmann
Town Manager

Date: _____

Approved as to form and legality
for the use and reliance of the
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, only:

Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.
Town Attorney

ATTEST:

CONTRACTOR

Secretary

By: _____

Name

Name

Date: _____

(CORPORATE SEAL)
WITNESSES:

Print Name: _____

Print Name: _____

**TOWN OF LAUDERDALE BY-THE-SEA
WORK AUTHORIZATION FOR PROFESSIONAL SERVICES**

Contractor:			
Address:			
Contract No. Agreement Description: Continuing Professional Services Contract _____, 2011		Work Authorization No.: Effective Date _____	
P.O. # For Work Authorization:		Budget	
Brief Task Description:			
In accordance with the above referenced agreement, you are authorized to perform the tasks detailed in attached Exhibit A (Scope of Services). All required services will be completed on or before: <u>See Exhibit "C"</u>			
The total amount or the limiting amount of the compensation will be: \$ _____ unless additional services are authorized by the Town in writing.			
Compensation elements are as follows:			
	Method of Compensation (Lump Sum, Hourly NTE)	Amount (\$)	Project Code
Total			
Other Notes: This Work Authorization is subject to the same terms and conditions of the <u>Continuing Professional Services Contract</u> dated: _____. Please acknowledge receipt of, and agreement with, this Work Authorization by signing and dating and returning three (3) original signed copies to the Town Manager. <u>The Town will send you one fully executed copy.</u>			
Town of Lauderdale by-the-Sea Approval:			
Constance Hoffmann, Town Manager	_____	_____	
	(Signature)	(Date)	
June White, Town Clerk	_____	_____	
	(Signature)	(Date)	
Contractor Acceptance:			
Contractor Name:	_____	_____	
Title:	(Signature)	(Date)	

Exhibit A

Name of Project

Scope of Services

Exhibit B
Hourly Compensation Rates

Exhibit C
Work Authorization Schedule

SCHEDULE

The schedule for the completion of the Work Authorization is as follows:

<u>Task</u>	<u>Task Duration</u>	<u>Completion Date</u>

Exhibit D-1 Staff Time Estimate

CONTRACTOR NAME - Summary / Total

Personnel	Hourly Rate	Hours per Task									Totals	
		Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8	Task 9	Hrs	Cost
Administration											0	\$0
											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Engineering / Landscape Arch											0	\$0
											0	\$0
											0	\$0
											0	\$0
											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Surveying											0	\$0
											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Cost per Task (\$)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Budget \$ per Task		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Subconsultants												
Total Labor and Subconsultants		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Direct Expenses												\$0
Work Authorization Total												\$0

Exhibit D-2 Staff Time Estimate

Subcontractor Name

Summary/Total

Personnel	Hourly Rate	Hours per Task									Totals	
		Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8	Task 9	Hrs	Cost
Administration												
											0	\$0
											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Engineering / Landscape Arch												
Specific Discipline											0	\$0
											0	\$0
											0	\$0
											0	\$0
											0	\$0
											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Surveying												
											0	\$0
											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Cost per Task (\$)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Budget \$ per Task		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Subconsultants												
Total Labor and Subconsultants		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Direct Expenses												\$0
Work Authorization Total												\$0

CONTINUING SERVICES

A G R E E M E N T

Between

THE TOWN OF LAUDERDALE BY-THE-SEA

And

FLYNN ENGINEERING SERVICES P.A.

2011

CONTINUING SERVICES

A G R E E M E N T

Between

TOWN OF LAUDERDALE BY-THE-SEA, FLORIDA

And

FLYNN ENGINEERING P.A.

THIS AGREEMENT is made between the Town of Lauderdale-By-The-Sea, FLORIDA, a Florida municipal corporation, (hereinafter referred to as the "TOWN") and Flynn Engineering P.A., a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the "CONTRACTOR"), whose principal place of business is 241 Commercial Boulevard, Lauderdale-By-The-Sea, FL 33308.

WHEREAS, pursuant to Section 287.055, Florida Statutes, the TOWN requested qualifications from qualified engineers and selected the CONTRACTOR to provide professional engineering services with respect to Engineering and Project Management (CEI) Services; and

WHEREAS, the CONTRACTOR is willing and able to perform such professional services for the TOWN within the basic terms and conditions set forth in this agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the CONTRACTOR to perform a specific project, but to set forth certain terms and conditions which shall automatically be incorporated into Work Authorizations for specific projects.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the TOWN and CONTRACTOR agree as follows:

SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the TOWN for the CONTRACTOR's professional services for a Work Authorization, exclusive of reimbursable expenses.

1.2 **Reimbursable Expenses:** the expenses directly attributable to the Work Authorization that cannot be defined in the fees the CONTRACTOR quotes for the Work Authorization, but that the TOWN agrees in writing will be costs the TOWN will reimburse to the CONTRACTOR. Reimbursable expenses may include, application and permit fees paid for securing approval of authorities having jurisdiction over the Work Authorization; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents specified beyond those provided in the quote for the Work Authorization; travel expenses as provided in Paragraph 1.5 of this Agreement.

1.3 **Work Authorization:** an agreement to provide services for a particular project or service.

1.4 **Subcontractor Fee:** the direct and actual cost of the subcontractor with no markup, as reflected by actual invoices of the subcontractor.

1.5 **Travel Expenses:** Travel expenses, whether within or outside of Broward County, and whether to the specific project or otherwise, shall not be reimbursed unless CONTRACTOR has secured advance written authorization for such travel from the Town Manager. All approved travel expenses will be reimbursed in accordance with the TOWN's adopted travel policy.

SECTION 2. WORK AUTHORIZATIONS/SCOPE OF SERVICES/COMPENSATION

2.1 In accordance with the Consultants' Competitive Negotiation Act, the CONTRACTOR may provide professional services to the TOWN for Work Authorizations as approved from time to time by either the Town Commission or Town Manager as authorized by this Section 2. The services shall be for the following types of projects or disciplines:

- **Engineering Services**
- **Project Management (CEI)**

2.2 When the need for services for a Work Authorization occurs, the Town Manager may enter into negotiations with the CONTRACTOR for a Work Authorization under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONTRACTOR with a "Scope of Services Request," requesting from the CONTRACTOR a proposal to provide such professional services. The CONTRACTOR shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The Town Manager or designated representative and CONTRACTOR shall negotiate the terms of the Work Authorization in accordance with the provisions of this Section 2.

2.3 The TOWN and CONTRACTOR shall utilize as the agreement for each Work Authorization, a copy of which is attached and incorporated into this Agreement as Exhibit "A" .

Each supplemental agreement for a Work Authorization will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The tasks to be performed;
- c. The schedule to perform various tasks identified and the completion date of the entire scope of services;
- d. The amount and type of Compensation requested and the proposed payment schedule;
- e. The CONTRACTOR'S Project Manager and any subcontractors assigned to the Work Authorization;
- f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consulting agreements; and
- g. Any modifications to the Work Authorization, if mutually agreed upon by the parties.

2.4 If the Town Manager determines that the CONTRACTOR's services in its capacity as ENGINEERING AND PROJECT MANAGEMENT (CEI) CONTRACTOR for a particular project are needed on an hourly basis, in lieu of a lump sum Compensation package, the CONTRACTOR shall charge the TOWN for professional services at those hourly fees as specified in Exhibit "B." The Work Authorization shall specify that the CONTRACTOR's services shall be provided on an hourly basis with a maximum amount of Compensation that may not be exceeded without additional approval from the TOWN.

2.5 CONTRACTOR will invoice the TOWN on a monthly basis for services rendered the previous month, or less frequently as the Work Authorization provides. The invoice shall identify work completed, by whom and percentage of Work Authorization completed. Additionally, the invoice shall include a line item reflecting retainage as applicable. After receipt the Town shall notify CONTRACTOR of any discrepancies or disputed items on the invoice. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records and payment records of CONTRACTOR. The TOWN shall pay the CONTRACTOR the undisputed portion of the invoice within thirty (30) days of receipt of the invoice. The Town Manager shall make a final determination regarding the disputed portion of the invoice within forty-five (45) days of receipt of the invoice. Mediation between the TOWN and CONTRACTOR shall be held by the Town Manager during the aforesaid forty-five (45) day period.

2.6 **Retainage:** The TOWN reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONTRACTOR until the Project is completed. For projects that are divided into several phases, any retainage shall be withheld and may be released individually for each phase of the Project at TOWN's discretion. Said retainage may be withheld at the sole discretion of the TOWN Manager and as security for the successful completion of the CONTRACTOR'S duties and responsibilities under the Work Authorization.

2.7 The professional services to be rendered by the CONTRACTOR shall commence within three days of the execution of the applicable Work Authorization unless provided otherwise in the Work Authorization. Performance of work by CONTRACTOR prior to execution of a Work Authorization shall be at CONTRACTOR's sole risk. Time is of the essence with regard to this Agreement and any Work Authorization issued hereunder.

2.8 The Town Manager is authorized to negotiate and execute a Work Authorization for projects in which the CONTRACTOR'S services do not exceed \$15,000.00. Any services exceeding \$15,000.00 require Town Commission approval. Should the Town Commission formally increase the Town Manager's authority to execute Work Authorizations, this Agreement shall automatically be adjusted to reflect that higher authority level.

2.9 The Contract Documents for each Work Authorization shall incorporate this Continuing Services Agreement.

SECTION 3. TERM/TERMINATION

3.1 **Term of Agreement.** – This Continuing Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for 3 years, unless and until terminated pursuant to Section 3.2 or other applicable sections of this Agreement. This Continuing Agreement may be renewed for two one-year extensions, as agreed to by the TOWN and CONTRACTOR. Each Work Authorization shall specify the period of service agreed to by the TOWN and CONTRACTOR for services to be rendered under said Work Authorization.

3.2 **Termination For Convenience** – The TOWN shall have the right at any time to terminate this Agreement for any reason whatsoever or without reason, with thirty (30) calendar days' written notice. If any such termination notice is provided by the TOWN, the CONTRACTOR shall immediately cease work on any Work Authorizations issued under this Agreement upon receipt of the notice from the TOWN. In the event the TOWN terminates the Agreement as provided for herein through no fault of the CONTRACTOR, the TOWN shall pay to the CONTRACTOR its reasonable costs, actually incurred and paid as of the date of notice, and of demobilization costs that are reasonable and customary and can be documented as actually incurred.

3.3 **Termination of Work Authorization** – Work Authorization(s). may be terminated through the following provisions:

- a. **For Cause.** A Work Authorization may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONTRACTOR abandons a Work Authorization or causes it to be terminated by the TOWN, the CONTRACTOR shall indemnify the TOWN against any loss pertaining to the termination. In the event that the CONTRACTOR is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience as referenced in 3.3 b.
- b. **For Convenience.** A Work Authorization may be terminated by the TOWN for convenience upon fourteen (14) calendar days' written notice to the CONTRACTOR. In the event of termination, the CONTRACTOR shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subcontractor obligations. The CONTRACTOR shall be compensated for all services performed to the satisfaction of the TOWN and for reimbursable expenses incurred prior to the date of termination. The CONTRACTOR shall promptly submit its invoice for final payment and reimbursement. Under no circumstances shall the TOWN make any payment to the CONTRACTOR for services which have not been performed.
- c. **Assignment upon Termination.** Upon termination of this Work Authorization, a copy of all of the CONTRACTOR's work product shall become the property of the TOWN and the CONTRACTOR shall, within ten (10) working days of receipt of written direction from the TOWN, transfer to either the TOWN or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONTRACTOR pertaining to this Work Authorization. Further, upon the TOWN'S request, the CONTRACTOR shall assign its rights, title and interest under any subcontractor's agreements to the TOWN.
- d. **Suspension for Convenience.** The TOWN shall have the right at any time to direct the CONTRACTOR to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the TOWN, the CONTRACTOR shall immediately comply with same. In the event the TOWN directs a suspension of performance as provided for herein through no fault of the CONTRACTOR, the TOWN shall pay to the CONTRACTOR its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full Compensation for any such suspension.

3.4 **Non-Exclusive Agreement** - Notwithstanding the provisions of Subsection 3.1, the Town Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other CONTRACTOR retained by the TOWN under

continuing services agreements for the same or similar services. Nothing in this Agreement shall be construed to give the CONTRACTOR a right to perform services for a specific project.

SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

4.1 **Changes Permitted.** In the event that CONTRACTOR believes that work outside of the scope of the Work Authorization has been requested or must be undertaken, CONTRACTOR will notify the Town Project Manager in writing and may not expect Compensation for performing the work in question unless the TOWN agrees to such Compensation through a Town-approved change order to the Work Authorization. If it is agreed that additional services are warranted, CONTRACTOR shall begin work after Commission or Town Manager approval, whichever applies.

4.2 **Change Order Defined.** Change Order shall mean a written order to the CONTRACTOR executed by the TOWN, issued after execution of a Work Authorization, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

4.3 **Effect of Executed Change Order.** The execution of a Change Order by the TOWN and the CONTRACTOR shall constitute conclusive evidence of the TOWN's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The CONTRACTOR, by executing the Change Order, waives and forever releases any claim against the TOWN for additional time or Compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order.

SECTION 5. SURVIVAL OF PROVISIONS

5.1 Any terms or conditions of either this Agreement or any subsequent Work Authorization that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 6. TOWN'S RESPONSIBILITIES

6.1 Assist CONTRACTOR by placing at its disposal available information that is pertinent to the Work Authorization as may be requested in writing by the CONTRACTOR and allow reasonable access to pertinent information relating to the services to be performed by CONTRACTOR.

6.2 Arrange for access to and make all provisions for CONTRACTOR to enter upon public property as required for CONTRACTOR to perform services.

SECTION 7. ETHICS

7.1 The code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

7.2 CONTRACTOR warrants and represents that its employees shall abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes.

7.3 No officer or employee of the Town of Lauderdale-By-The-Sea, Florida, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof. Any subcontractors hired by the firm must also adhere to this policy and it must be included in their contracts as well.

SECTION 8. POLICY OF NON-DISCRIMINATION/WAGES

8.1 The CONTRACTOR shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

8.2 If the Project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, CONTRACTOR shall be required to comply with the same.

SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES

9.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the TOWN or furnished by the CONTRACTOR pursuant to any Work Authorization, shall become the property of the TOWN, whether the Work Authorization for which they are made is completed or not, and shall be delivered by CONTRACTOR to the TOWN within five (5) calendar days after receipt of written notice requesting delivery of said documents or digital files. The CONTRACTOR shall have the right to keep one record set of the documents upon completion of the Work Authorization, however, in no event shall the CONTRACTOR, without the TOWN'S prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

9.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the TOWN for each Work Authorization

shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the TOWN .

9.3 All final plans and documents prepared by the CONTRACTOR shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

9.4 All deliverables should be provided in hard copy format as well as electronic format to the TOWN. Drawings should be provided in CADD and PDF, spread sheets in Microsoft Excel, and written documentation should be provided in Microsoft Word. The date of submittal to the TOWN shall be deemed to be the later of delivery of hard copies and delivery of electronic copies as applicable.

SECTION 10. RECORDS/AUDITS

10.1 CONTRACTOR shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Work Authorization. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of three (3) years after the completion of each Work Authorization. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the CONTRACTOR of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.

10.2 The CONTRACTOR shall comply with Chapter 119, Florida Statutes, as applicable.

10.3 Refusal of the CONTRACTOR to comply with the provisions of Sections 10.1 or 10.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Work Authorization.

SECTION 11. NO CONTINGENT FEE

11.1 CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, 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 CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONTRACTOR violates this provision, the TOWN shall have the right to terminate this Agreement or any Work Authorization, without liability, and at its sole discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 12. INDEPENDENT CONTRACTOR

12.1 The CONTRACTOR is an independent contractor under this Agreement and any Work Authorizations. Personal services provided by the CONTRACTOR shall be by employees of the CONTRACTOR and subject to supervision by the CONTRACTOR, and not as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Work Authorizations shall be those of the CONTRACTOR.

SECTION 13. ASSIGNMENT; AMENDMENTS

13.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR, without the prior written consent of the TOWN.

13.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 14. INDEMNIFICATION/HOLD HARMLESS

14.1 Pursuant to Section 725.08, Florida Statutes, the CONTRACTOR shall indemnify and hold harmless the TOWN and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR or any persons employed or utilized by the CONTRACTOR in the performance of this Agreement or any Work Authorization.

SECTION 15. INSURANCE

The CONTRACTOR shall secure and maintain throughout the duration of this Agreement and any Work Authorization, insurance of such type and in such amounts necessary to protect its interest and the interest of the TOWN against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the CONTRACTOR, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONTRACTOR'S insurance and shall not contribute to the CONTRACTOR'S insurance. The insurance coverage shall include a minimum of:

15.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws.

15.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONTRACTOR against claims for injuries to members of the public and/or damages to property of others arising from the CONTRACTOR'S use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$500,000 per occurrence for Bodily Injury and Property Damage, Hired & Non Owned Auto Liability.

15.3 **Comprehensive General Liability.** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONTRACTOR against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONTRACTOR or any of its agents, employees, or subcontractors. The limit of liability shall not be less than combined single limit of \$2,000,000 per occurrence and in the general aggregate for Bodily Injury and Property Damage and general aggregate for Products/Completed Operations, Comprehensive General Liability insurance shall include endorsements for property damage; personal injury, contractual liability; completed operations; products liability and independent contractors coverage.

(a) The TOWN is to be specifically included as an Additional Insured for the liability of the CONTRACTOR resulting from operations performed by or on behalf of TOWN in performance of this or any Work Authorization. CONTRACTOR'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONTRACTOR'S insurance. CONTRACTOR'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

15.4 **Professional Liability:** \$1,000,000 per incident

15.5 **Certificate of Insurance:** Prior to the execution of this Agreement, CONTRACTOR shall provide the Town Manager with evidence of insurability from the CONTRACTOR's Insurance Carrier or a Certificate of Insurance. Prior to execution of any Work Authorization, the CONTRACTOR shall provide to the Town Manager, Certificates of Insurance evidencing the required insurance coverage's. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall specifically Name the TOWN as additionally insured. The TOWN reserves the right to require the CONTRACTOR to provide a certified copy of such policies, upon written request by the TOWN. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written

notice shall be provided to the CONTRACTOR before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town Manager.

15.6 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONTRACTOR shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONTRACTOR, as a condition of execution of a particular Work Authorization, to provide a bond or other monetary consideration to cover the CONTRACTORS' deductible for Professional Liability Insurance.

15.7 The TOWN reserves the right to change the insurance requirements depending upon the scope of work in a Work Authorization.

SECTION 16. REPRESENTATIVE OF TOWN AND CONTRACTOR

16.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager or his/her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

16.2 **CONTRACTOR Representative.** CONTRACTOR shall inform the TOWN Representative, in writing, of the representative of the CONTRACTOR to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 17. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

17.1 If either the TOWN or CONTRACTOR is required to enforce the terms of this Agreement or any Work Authorization by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

17.2 In the event of any litigation arising out of this Agreement or any Work Authorization, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED

18.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document.

Accordingly it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 19. CONTRACTOR'S RESPONSIBILITIES

19.1 The CONTRACTOR and any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONTRACTOR shall be accurate, coordinated and adequate for construction and shall comply with all applicable TOWN Codes, state and federal laws, rules and regulations.

19.2 The CONTRACTOR shall exercise the same degree of care, skill and diligence in the performance of the services for each Work Authorization as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. If at any time during the term of any Work Authorization or the construction of the Project for which the CONTRACTOR has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Work Authorization, it is determined that the CONTRACTOR'S documents are incorrect, defective or fail to conform to the Scope of Services of the particular Work Authorization, upon written notification from the TOWN , the CONTRACTOR shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save and except any costs and expenses which the TOWN would have otherwise paid absent the CONTRACTOR'S error or omission. The TOWN'S rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement or the Work Authorization, equity or otherwise.

19.3 The CONTRACTOR'S obligations under Paragraph 19.2 of this Agreement shall survive termination of this Agreement or Work Authorization.

SECTION 20. SUBCONTRACTORS

20.1 In the event the CONTRACTOR requires the services of any subcontractors or other professional associates in connection with services covered by any Work Authorization, the CONTRACTOR must secure the prior written approval of the Town Manager.

20.2 Any subcontract with a subcontractor shall afford to the TOWN rights against the subcontractor which correspond to those rights afforded to the TOWN against the CONTRACTOR herein, including but not limited to those rights of termination as set forth herein.

20.3 No reimbursement shall be made to the CONTRACTOR for any subcontractors that have not been previously approved by the TOWN for use by the CONTRACTOR.

SECTION 21. NOTICES

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR CONTRACTOR:

Flynn Engineering, P.A.
Attention: Jay M. Flynn, President
241 Commercial Boulevard
Lauderdale-By-The-Sea, FL 33308
Telephone: (954)522-1004
Facsimile: (954)522-7630

FOR TOWN:

Town of Lauderdale by-the-Sea
Attention: Constance Hoffmann, Town Manager
4501 Ocean Drive
Lauderdale by-the-Sea, Florida 33308
Telephone: (954)776-0576

With a copy to:

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.,
Town Attorneys
Attention: Susan Trevarthan, Esq., AICP
200 East Broward Blvd. Suite 119
Fort Lauderdale, Florida 33308
Telephone: (954)763-4242

SECTION 22. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONTRACTOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation of this Agreement or any Work Authorization are accurate, complete, and current at the time of contracting. Each Work Authorization's Contract Prices and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Work Authorization Contract Price was increased due to inaccurate, incomplete, or noncurrent wage

rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Work Authorization.

SECTION 23. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Work Authorization. Venue of any action to enforce this Agreement or any Work Authorization shall be in Broward County, Florida.

SECTION 24. GOVERNING LAW

This Agreement and any Work Authorization shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 25. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 26. EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

SECTION 27. SEVERABILITY

If any provision of this Agreement or any Work Authorization or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 28. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The TOWN , signing by and through its Town Manager, attested to by its Town Clerk, duly authorized to execute same and by CONTRACTOR by and through its President, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

ATTEST:

TOWN OF LAUDERDALE BY-THE-SEA

June White, CMC
Town Clerk

By: _____
Constance Hoffmann
Town Manager

Date: _____

Approved as to form and legality
for the use and reliance of the

TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, only:

Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.
Town Attorney

ATTEST:

CONTRACTOR

Kimberly L. Flynn

Secretary

By: *Jay M. Flynn* President

Kimberly L. Flynn

Name

Jay M. Flynn

Name

Date: *7-19-11*

WITNESSES:

[Signature]

Print Name: *Susan Stovell*

ATTEST:

TOWN OF LAUDERDALE BY-THE-SEA

June White, CMC
Town Clerk

By: _____
Constance Hoffmann
Town Manager

Date: _____

Approved as to form and legality
for the use and reliance of the
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, only:

Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.
Town Attorney

ATTEST:

CONTRACTOR

Secretary

By: _____

Name

Name

Date: _____

(CORPORATE SEAL)
WITNESSES:

Print Name: _____

Print Name: _____

EXHIBIT "A"

WORK AUTHORIZATION

Between

TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA

And

FLYNN ENGINEERING, P.A.

for

Work Authorization No. ____

[INSERT NAME OF PROJECT]

Exhibit A

Name of Project

Scope of Services

Exhibit B
Hourly Compensation Rates

Exhibit C
Work Authorization Schedule

SCHEDULE

The schedule for the completion of the Work Authorization is as follows:

<u>Task</u>	<u>Task Duration</u>	<u>Completion Date</u>

Exhibit D-1 Staff Time Estimate

CONTRACTOR NAME - Summary / Total

Personnel	Hourly Rate	Hours per Task									Totals	
		Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8	Task 9	Hrs	Cost
Administration											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Engineering / Landscape Arch											0	\$0
											0	\$0
											0	\$0
											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Surveying											0	\$0
											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Cost per Task (\$)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Budget \$ per Task		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Subconsultants												
Total Labor and Subconsultants		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Direct Expenses												\$0
Work Authorization Total												\$0

Exhibit D-2 Staff Time Estimate

Subcontractor Name

Summary/Total

Personnel	Hourly Rate	Hours per Task									Totals	
		Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8	Task 9	Hrs	Cost
Administration											0	\$0
											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Engineering / Landscape Arch												
Specific Discipline											0	\$0
											0	\$0
											0	\$0
											0	\$0
											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Surveying												
											0	\$0
											0	\$0
											0	\$0
Sub Total (hours)		0	0	0	0	0	0	0	0	0	0	\$0
Cost per Task (\$)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Budget \$ per Task		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Subconsultants												
Total Labor and Subconsultants		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Direct Expenses												\$0
Work Authorization Total												\$0