

RESOLUTION 2010-06

A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH POST, BUCKLEY, SHUH & JERNIGAN, INC. FOR DESIGN SERVICES IN THE AMOUNT OF \$58,300.00 FOR LANDSCAPING AND RELATED IMPROVEMENTS ON STATE ROAD A1A; DIRECTING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE AGREEMENT; PROVIDING FOR REPEAL OF ANY CONFLICTING RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Lauderdale-By-The-Sea has found it desirable to enter into a Local Agency Program Agreement (the "LAP Agreement") with the Florida Department of Transportation; and

WHEREAS, in accordance with the LAP Agreement, the Florida Department of Transportation has agreed to provide funds in the amount of \$58,300.00 for the design of improvements on State Road A1A; and

WHEREAS, the Town Commission finds it to be in the best interest of the community to engage Post, Buckley, Shuh and Jernigan, Inc. in accord with the attached Agreement to perform design services pursuant to the LAP Agreement and the competitive selection process previously utilized by the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:

Section 1. Each "WHEREAS" clause set forth is true and correct and herein incorporated by this reference.

Section 2. The Town Manager is hereby authorized to prepare and execute, on behalf of the Town, the Professional Services Agreement (the "Agreement") with Post, Buckley, Schuh

& Jernigan, Inc. in the form attached hereto as Exhibit "A" with such non-material changes as may be approved by the Town Manager and Town Attorney, and such other documents necessary to implement the terms of the Agreement.

Section 3. The Town Manager and/or her designee and the Town Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 4. The dollar amount of the funds being sought is \$58,300.00, which amount is reimbursable to the Town pursuant to a Local Agency Program Agreement between the Town and the Florida Department of Transportation.

Section 5. All resolutions or parts of resolution in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. If any clause, section or other part of this resolution shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and in no way affecting the validity of the other provisions of this resolution.

Section 7. This resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this _____ day of _____, 2010.

Mayor Roseann Minnet

Attest:

Town Clerk, June White
(CORPORATE SEAL)

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

EXHIBIT "A"

PROFESSIONAL SERVICES AGREEMENT Between

THE TOWN OF LAUDERDALE-BY-THE-SEA

And

POST BUCKLEY, SCHUH & JERNIGAN, INC.

For

DESIGN SERVICES FOR LANDSCAPING ON STATE ROAD AIA FROM PINE AVENUE TO TERRA MAR DRIVE

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made effective as of _____, __ 2010 (the "Effective Date"), by and between the Town of Lauderdale-by-the-Sea, a Florida municipal corporation (hereinafter referred to as the "TOWN"), and Post, Buckley, Schuh & Jernigan, Inc., a corporation authorized to do business in the State of Florida (hereinafter referred to as the "CONSULTANT"), whose principal place of business is _____.

WHEREAS, pursuant to Section 287.055, Florida Statutes, the TOWN requested qualifications from qualified engineers and selected the CONSULTANT to provide engineering services; and

WHEREAS, the CONSULTANT is willing and able to perform such services for the Project (defined below) on the basic terms and conditions set forth in this Agreement; and

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

SECTION 1. SERVICES

The CONSULTANT shall provide to the TOWN, engineering services which shall include, but not be limited to, all civil, structural, mechanical, electrical engineering, landscape design, architectural, plumbing, and fire protection systems, materials and any other engineering services necessary to produce a complete and accurate set of plans and specifications for the permitting (including, by example and not limitation, certification and right-of-way certification if applicable, by the Florida Department of Transportation) and construction of landscaping on State Road AIA from Pine Avenue to Terra Mar Drive, hereinafter referred to as the "Project" as specified in Exhibit "A" attached hereto and made a part hereof. The services to be performed pursuant to the Project (the "Services" or the "Work") include, but are not limited to, those set forth herein and more fully set forth in Section II of Exhibit "A" attached hereto and made a part hereof.

SECTION 2. DELIVERABLES

The CONSULTANT shall provide to the TOWN the “Deliverables” specified in Section II of Exhibit “A” attached hereto and made a part hereof.

SECTION 3. BILLING AND PAYMENTS TO THE CONSULTANT

3.1 **Invoices.** CONSULTANT shall submit invoices which are identified by the Project name on a monthly basis in a timely manner. These invoices shall identify the nature of the Work performed, the phase of Work, and the estimated percent of Work accomplished in accordance with the Payment Schedule set forth in Section IV of Exhibit “A” attached hereto and made a part hereof (the “Payment Schedule”). Invoices for each phase shall not exceed amounts allocated to each phase of the Project including reimbursable expenses accrued during each phase. The invoice or statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the TOWN. The TOWN shall pay CONSULTANT within thirty (30) calendar days of approval by the Town Manager of any invoices submitted by CONSULTANT to the TOWN.

3.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the TOWN for payment to the CONSULTANT is disputed, or additional backup documentation is required, the TOWN shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the TOWN with additional backup documentation within five (5) working days of the date of the TOWN’S notice. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The TOWN, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

3.3 **Suspension of Payment.** In the event that the TOWN becomes credibly informed that any representations of the CONSULTANT, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Agreement, the TOWN may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of this Agreement, and the cause thereof, is corrected to the TOWN’S reasonable satisfaction.

3.4 **Final Payment.** Submission of the CONSULTANT’S invoice for final payment and reimbursement shall constitute the CONSULTANT’S representation to the TOWN that, upon receipt from the TOWN of the amount invoiced, all obligations of the CONSULTANT to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the TOWN all documents requested by the TOWN evidencing payments to any and all contractors, and all final specifications, plans, or any other document as dictated by the Services or the Deliverables. Acceptance of final payment shall constitute a waiver of any and all claims against the TOWN by the CONSULTANT.

SECTION 4. TERM/TIME OF PERFORMANCE/DAMAGE

4.1 **Term.** This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of nine (9) months, unless otherwise terminated pursuant to this Agreement (the "Term"). The TOWN, in its sole discretion, may extend the term of this Agreement through written notification to the CONSULTANT from the Town Manager. Such extension shall not exceed thirty (30) days. No further extensions of this Agreement shall be effective unless authorized by the Town Commission.

4.2 **Commencement.** The CONSULTANT'S services under this Agreement and the time frames applicable to this Agreement shall commence upon the Effective Date. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of a notification of commencement (the "Notification of Commencement") for the Project, and the CONSULTANT must receive the Notification of Commencement from the Town Manager prior to beginning the performance of the Services.

4.3 **Contract Time.** From and after the receipt of the Notification of Commencement, the CONSULTANT shall continuously perform the Services to the TOWN, without interruption, for the duration of the Term (the "Contract Time"). The CONSULTANT agrees the construction contract documents shall be fifty percent (50%) complete on or before June 1, 2010 and fully complete and approved by the Florida Department of Transportation on or before December 31, 2010. CONSULTANT shall comply with all time and schedule requirements set forth herein and in the LAP Agreement (defined below). All limitations of time set forth in this Agreement are of the essence.

SECTION 5. TERMINATION OF AGREEMENT

5.1 **Termination.** The TOWN has the right to terminate this Agreement for any reason or no reason, upon seven (7) days' written notice to CONSULTANT. Upon termination of this Agreement, all charts, sketches, studies, drawings, and other documents related to the Services performed under this Agreement, whether finished or not, shall be turned over to the TOWN within ten (10) days.

5.2 **Payment after Termination.** Provided that CONSULTANT has performed in accordance with the terms of this Agreement, including, within the time frames set forth herein, CONSULTANT shall receive all payments due to CONSULTANT for Services rendered up to the date of termination in accordance with the terms hereof.

SECTION 6. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

6.1 **Changes Permitted.** Changes in the Services or the Project consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by Change Order (as defined below) without invalidating the terms of this Agreement.

6.2 **Change Order Defined.** “Change Order” shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of this Agreement, authorizing and directing a change in the Services, the Project, the Payment Schedule or the Contract Time, or any combination thereof. The Payment Schedule and/or the Contract Time may be changed only by Change Order.

6.3 **Effect of Executed Change Order.** The execution of a Change Order by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT's agreement to the ordered changes in the Services or the Project, or an adjustment in the Payment Schedule or the Contract Time, or any combination thereof. The CONSULTANT, 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.

6.4 **Authority to Execute Changes or Requests for Additional Services.** Change Orders in excess of the Town Manager's pre-approved authority shall be approved by the TOWN Commission and are subject to such approval until Commission action thereon.

SECTION 7. SURVIVAL OF PROVISIONS

Any terms or conditions of this Agreement that require acts beyond the date of the Term, shall survive termination of this Agreement, and 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 8. TOWN'S RESPONSIBILITIES

8.1 The TOWN will assist CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT relating to the Project and allow reasonable access to all pertinent information relating to the Services to be performed by CONSULTANT.

8.2 The TOWN shall furnish to CONSULTANT, at the CONSULTANT'S written request, all available maps, plans, existing studies, reports and other data, pertinent to the Services to be provided by CONSULTANT, that are in possession of the TOWN.

8.3 The TOWN shall arrange for access to and make all provisions for CONSULTANT to enter upon property owned by the TOWN as required for CONSULTANT to perform the Services.

SECTION 9. ADDITIONAL CONTRACT DOCUMENTS

The CONSULTANT'S proposal attached hereto as Exhibit “A” is incorporated herein for all purposes by reference. CONSULTANT acknowledges and agrees it has been provided an executed copy of the Local Agency Program Agreement (the “LAP Agreement”) between the TOWN and the

Florida Department of Transportation dated June 19, 2009. CONSULTANT has reviewed the LAP Agreement and agrees to perform in accordance with the terms thereof, as applicable to a supplier, contractor, subcontractor or consultant of Town, as applicable. The LAP Agreement is incorporated herein for these purposes. Additionally, the AIA Code of Ethics is incorporated in this Agreement by this reference.

SECTION 10. COMPLIANCE WITH LAWS

10.1 The CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work.

10.2 The CONSULTANT shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement. The CONSULTANT shall carry out applicable requirements of 49 C.F.R. Part 20 in the award and administration of Department of Transportation-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

10.3 The CONSULTANT shall comply with the wage provisions of Section 287.055, Florida Statutes. This Project is subject to federal and/or state grant funding which requires specific wage and non-discrimination provisions. CONSULTANT is required to comply with the same.

10.4 CONSULTANT acknowledges a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Failure by the CONSULTANT to perform in accord with these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

10.5 The CONSULTANT further acknowledges that this agreement will be furnished to the State of Florida Department of Transportation and acknowledges this Agreement involves Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

10.6 The CONSULTANT hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this Agreement;

2. agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out this Agreement; or

3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the CONSULTANT) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement.

SECTION 11. OWNERSHIP OF DOCUMENTS/DELIVERABLES

11.1 Any and all drawings and specifications, as instruments of the Services to be performed (the "Drawings and Specifications"), are and shall become the property of the TOWN whether the Project for which they are made is implemented or not. The CONSULTANT shall be permitted to retain copies, including reproducible copies, of the Drawings and Specifications for information and reference in connection with the TOWN'S use and occupancy of the Project.

11.2 All final plans and documents prepared by the CONSULTANT 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.

SECTION 12. RECORDS/AUDITS

12.1 The CONSULTANT shall maintain and require any subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Project. 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 the Project. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the TOWN 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.

12.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable.

12.3 Refusal of the CONSULTANT to comply with the provisions of Sections 12.1 or 12.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement.

SECTION 13. NO CONTINGENT FEE

The CONSULTANT warrants that he or she has not employed or retained any company or person, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, any fee, commission, percentage, gift, or other

consideration contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term “fee” shall also include brokerage fee, however, for the breach or violation of this provision, the TOWN shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

SECTION 14. INDEPENDENT CONTRACTOR

The CONSULTANT is an independent contractor under this Agreement. Services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, 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 shall be those of the CONSULTANT.

SECTION 15. ASSIGNMENT; AMENDMENTS

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

15.2 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 by both parties and approved by the TOWN Commission if applicable.

SECTION 16. INDEMNIFICATION/HOLD HARMLESS

16.1 Pursuant to Section 725.08, Florida Statutes, the CONSULTANT 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 caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any subconsultants or other persons employed or utilized by the CONSULTANT in the performance of this Agreement. The CONSULTANT'S obligation under this paragraph shall not be limited in any way by the agreed upon Payment Schedule, or the CONSULTANT'S limit of, or lack of, sufficient insurance protection.

16.2 The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT or any subconsultants or other persons employed or utilized by the CONSULTANT in the performance of this Agreement, under worker's compensation acts, disability benefit acts, or other employee benefit acts.

16.3 To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as it may be subsequently amended, this Section 16 and all aspects of this Agreement shall hereby be interpreted as the parties' intention

for the indemnification clauses and this Agreement to comply with Chapter 725, Florida Statutes, as may be amended.

16.4 The CONSULTANT shall not specify or allow any subconsultant or other persons employed or utilized by the CONSULTANT in the performance of this Agreement to specify a particular design, process or product that infringes upon any patent. The CONSULTANT shall indemnify, defend and hold TOWN and its officers and employees harmless from any loss, cost or expense, including reasonable attorney's fees and costs incurred, on account thereof if the CONSULTANT violates the requirements of this Section 16.

SECTION 17. INSURANCE

The CONSULTANT shall secure and maintain throughout the duration of this Agreement, 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 and in accordance with the requirements of TOWN's solicitation of CONSULTANT'S proposal incorporated herein as Exhibit "A". 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 TOWN, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The insurance coverage shall be approved by TOWN in advance of CONSULTANT'S performance hereunder.

17.1 **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. The policy(ies) must include Employer's Liability with minimum limits of \$100,000.00 each accident.

17.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the TOWN against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of non-owned and hired 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 \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

17.3 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the TOWN 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 CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

(b) The TOWN is to be specifically included as an "Additional Insured" for the liability of the TOWN resulting from operations performed by or on behalf of CONSULTANT in performance of this Agreement. CONSULTANT'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 CONSULTANT'S insurance. CONSULTANT'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.

17.4 **Professional Liability:** The CONSULTANT shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.00 with a deductible of no more than \$25,000.00 per claim. The CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of this Agreement. Upon request of the TOWN, the CONSULTANT shall make available for inspection copies of any claims filed or made against the policy during the policy term. The CONSULTANT shall additionally notify the TOWN, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$100,000.00 during the policy term.

17.5 **Certificate of Insurance:** Upon execution of this Agreement the CONSULTANT shall provide to the Town Manager, the Certificate of Insurance evidencing the required insurance coverage. The TOWN reserves the right to require the CONSULTANT 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, a renewal Certificate of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. Acceptance of the Certificate of Insurance is subject to approval of the Town Manager.

17.6 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT 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 CONSULTANT, as a condition of execution of this Agreement, to provide a bond or other monetary consideration to cover the CONSULTANT'S deductible for professional liability insurance.

SECTION 18. REPRESENTATIVE OF TOWN AND CONSULTANT

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

18.2 **Consultant Representative.** CONSULTANT shall inform the Town Manager, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 19. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

19.1 If either the TOWN or CONSULTANT is required to enforce the terms of this Agreement 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.

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

SECTION 20. ALL PRIOR AGREEMENTS SUPERSEDED

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 21. CONSULTANT'S RESPONSIBILITIES

21.1 The CONSULTANT warrants that the Services to be performed hereunder shall be performed by the CONSULTANT'S own staff, unless otherwise approved in writing by the TOWN. Said approval shall not be construed as constituting an agreement between the TOWN and said other person or firm. The CONSULTANT'S services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality and under the same or similar circumstances and conditions.

21.2 The CONSULTANT represents that it possesses the requisite skills and shall follow the professional standards of the American Institute of Architects and the standard of conduct for engineers in performing all services under this Agreement. The CONSULTANT agrees to use its skill and judgment in furthering the TOWN'S interests hereunder and CONSULTANT shall perform its services in accordance with the practice of the pertinent industry and as expeditiously as is

consistent with reasonable skill and care. If at any time during the term of this Agreement or the construction or implementation of the Project for which the CONSULTANT has provided engineering, architectural, surveying or mapping services under this Agreement, it is determined that the CONSULTANT'S documents are incorrect, defective or fail to conform to the terms of this Agreement, upon written notification from the TOWN, the CONSULTANT 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. The TOWN'S and or any governmental agency's approval, acceptance, use of or payment for all or any part of the CONSULTANT'S services shall in no way alter the CONSULTANT'S obligations or TOWN'S rights hereunder.

21.3 CONSULTANT agrees, within fourteen (14) calendar days of receipt of a written request from the TOWN, to promptly remove and replace any personnel employed or retained by the CONSULTANT, any subconsultants or subcontractors or other persons employed or utilized by the CONSULTANT in the performance of this Agreement or any personnel of any such subconsultant or subcontractors or other persons employed or utilized by the CONSULTANT to provide and perform services or work pursuant to the requirements of this Agreement, whom the TOWN shall request in writing to be removed, which request may be made by the TOWN.

21.4 If the CONSULTANT allows any work to be performed knowing, or when with the exercise of due care the CONSULTANT should have known, it to be contrary to any such applicable, known and published laws, ordinances, rules, regulations or restrictions and fails to give TOWN written notice thereof prior to performance thereof, the CONSULTANT shall bear all costs, liabilities, and expenses arising therefrom, which costs, liabilities and expenses shall not be considered a part of the CONSULTANT'S fees or any other amounts due hereunder.

21.5 The CONSULTANT'S obligations under this Section 21 shall survive termination of this Agreement.

SECTION 22. SUBCONSULTANTS

22.1 In the event the CONSULTANT requires the services of any subconsultants or other professional associates in connection with the Services covered by this Agreement, the CONSULTANT must secure the prior written approval of the Town Manager.

22.2 All services provided by subconsultants or subcontractors shall be pursuant to appropriate agreements between the CONSULTANT and the subconsultants or subcontractors which shall contain provisions that preserve and protect the rights of the TOWN and the CONSULTANT under this Agreement and the LAP Agreement. Each subconsultant or subcontractor agreement shall incorporate the terms of this Agreement, and shall include termination provisions that state that the respective agreements may be terminated by the TOWN independent of action of the CONSULTANT. The TOWN shall not be responsible for termination expenses of any third parties.

22.3 Any agreement with a subconsultant or subcontractor shall afford to the CONSULTANT rights against the subconsultant or subcontractor which correspond to those rights afforded to the TOWN against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.

22.4 No reimbursement shall be made to the CONSULTANT for any subconsultants or subcontractors that have not been previously approved by the TOWN for use by the CONSULTANT.

SECTION 23. 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. The parties designate the following as the respective places for giving of notice:

FOR CONSULTANT:

Post Buckley, Schuh & Jernigan, Inc.

Phone:

Facsimile:

FOR TOWN:

Town of Lauderdale-by-the-Sea
Attention: John Olinzock, Assistant Town Manager
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308
Phone: (954) 776-3611
Facsimile: (954) 776-1857

With a copy to:

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.,
TOWN Attorneys
Attention: Susan Trevarthen, Esq.
200 East Broward Boulevard, Suite 1900
Ft. Lauderdale, FL 33301
Phone: (954) 763-4242
Facsimile: (954) 764-7770

SECTION 24. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement by CONSULTANT 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 are accurate, complete, and current at the time of contracting. The Payment Schedule and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Payment Schedule 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 this Agreement.

SECTION 25. 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. Venue of any action to enforce this Agreement shall be proper exclusively in Broward County, Florida.

SECTION 26. GOVERNING LAW

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

SECTION 27. HEADINGS

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

SECTION 28. 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 hereby incorporated by reference.

SECTION 29. SEVERABILITY

If any provision of this Agreement 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 30. COUNTERPARTS

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

IN WITNESS WHEREOF, the parties hereby execute this Agreement on the date first stated above.

ATTEST:

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN Clerk

By: _____
Roseann Minnet, Town Mayor

Date: _____

**APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
TOWN OF LAUDERDALE-BY-THE-SEA, ONLY:**

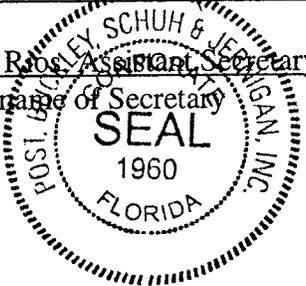
Town Attorney

ATTEST:

POST, BUCKLEY, SCHUH & JERNIGAN, INC.

Rene de los Rios

Secretary
Rene de los Rios, Assistant Secretary
Please type name of Secretary



By: *Richard M. Grubel*

Richard M. Grubel
Title: Senior Vice President

Date: March 16, 2010

EXHIBIT "A"

Scope of Consulting Services

A1A Scenic Highway Enhancements; Local Agency Program (LAP) Project #418022-1

Presented to: John Ollrock
Assistant Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308

From: PBS&J
3230 W. Commercial Blvd., Suite 100
Ft. Lauderdale, FL 33309

Date: February 10, 2010

I. PROJECT LIMITS:

The project is limited to the right of way of State Road A1A from Pine Avenue to Terra Mar Drive.

II. SCOPE OF SERVICES:

PBS&J will perform the following services:

1. Project Base information: PBS&J will obtain base information for the project through the use of 2007 aerial photography at a resolution of 1"=100'. All drawings for construction documents will be provided from what can be obtained from these aeriels. Right of way limits will be acquired from Florida Department of Transportation (FDOT) right of way maps.
2. Utility Coordination: PBS&J will obtain utility locations from the utilities located within the project area. These will be used for coordination with proposed construction.
3. Develop project program elements: PBS&J will identify and develop the project program elements in conjunction with Town staff. This will be accomplished by holding two meetings. The first meeting will identify the Town's desired specific design direction for the project and all elements to be constructed. Once these elements are identified, PBS&J will verify the restrictions and constructability of these elements in light of FDOT requirements as well as constructability within site conditions. Once this has been accomplished, PBS&J will again meet with the Town to provide any necessary modifications to the design direction.

4. Provide conceptual drawings: PBS&J will provide the Town with a conceptual set of drawings for review and comment. These drawings will consist of the agreed upon design elements applied to the base plans for a conceptual plan view of the proposed construction. These plans will also have been reviewed by the FDOT for acceptability.
5. Cost estimates: PBS&J will prepare a statement of probable costs to verify the project's design will meet construction budgets.
6. Public Meetings: PBS&J will provide one full illustrative plan and up to a maximum of sections of the proposed construction for use at one public meeting. PBS&J will provide staff at this meeting to present the project and answer questions about the project posed by the public.
7. Plan set production: The conceptual plans will be further developed into construction contract documents. This set of drawings will include the following components:
 - a. Roadway Plans: Typical sections, plans and details as necessary for median modifications.
 - b. Special Paving Plans: Special paving is all decorative treatments to roadway driving surfaces and pedestrian walking surfaces. Plans will describe special pavement lay-out, and all necessary construction details and notes.
 - c. Landscape Plans: Landscape plans will show the layout and designation plant species to be installed for the project. Plans will illustrate planting locations plus all required installation notes and details.
 - d. Irrigation Plans: Irrigation plans will show the distribution of irrigation to all proposed landscaping. Irrigation plans will describe layout of irrigation elements for a fully operational system as well as all necessary construction details and notes.
 - e. Pavement Striping and Signage Plans: Plans as required for crosswalk and/or median modifications as well as any existing sign impacts or proposed sign requirements.
 - f. Maintenance of Traffic Plans: Staging notes and details to construct proposed improvements.

All of these plans will be submitted for both preliminary and final review and comment.

8. State review comment response submittals: PBS&J will provide all correspondence for official FDOT reviews and submit responses in required FDOT format and systems.
9. Specifications: A specifications package including technical special provisions as required will be provided.

III. ITEMS TO BE FURNISHED BY CLIENT

1. All work necessary to obtain maintenance agreements between the Town and the State.
2. The client will provide all required permit fees.

IV. SCHEDULE OF COMPENSATION

1. Compensation for our services will be as follows:

Item No. 1	Lump Sum fee of	\$ 1,800.00
Item No. 2	Lump Sum fee of	\$ 1,800.00
Item No. 3	Lump Sum fee of	\$ 8,000.00
Item No. 4	Lump Sum fee of	\$ 12,800.00
Item No. 5	Lump Sum fee of	\$ 1,600.00
Item No. 6	Lump Sum fee of	\$ 5,200.00
Item No. 7 thru 9	Lump Sum fee of	<u>\$ 27,100.00</u>

\$ 58,300.00 Total fee

2. The fees for two additional coordination meetings beyond those described above with Town or FDOT staffs have been included. The fees for the attendance of additional meetings (Town, utility, or State agencies) will be invoiced on a time charge basis. Time for additional meetings will be invoiced at a rate of \$ 150.00 per person per hour.
3. Direct charges such as delivery services, travel, printing costs and other job related incidental expenses are reimbursable at actual cost.
4. A survey or higher resolution aerial photography may be necessary to meet to the requirements of the FDOT, to establish a baseline, or to accurately communicate construction obligations to the contractor. Any supplemental survey or aerial information will have to be provided at an additional fee to be negotiated as additional services.

CORPORATE RESOLUTION
OF
POST, BUCKLEY, SCHUH & JERNIGAN, INC.

RESOLVED, that the below named officers are authorized to execute documents on behalf of Post, Buckley, Schuh & Jernigan, Inc., d/b/a PBS&J:

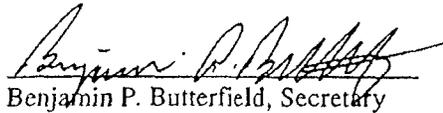
Max D. Crumit	Co-President
L. Dean Fox	Co-President
Randy L. Larson	Co-President
Wayne Overman	Executive Vice President
Donald J. Vrana	Executive Vice President/Chief Financial Officer/Treasurer
Cecilia R. Green	Executive Vice President
Thomas F. Barry, Jr.	Senior Vice President
Larry A. Boatman	Senior Vice President
John R. Brandvik	Senior Vice President
Benjamin P. Butterfield	Senior Vice President/General Counsel/Secretary
David J. Carter	Senior Vice President
Richard M. Grubel	Senior Vice President/Assistant Secretary
Avinash Gupta	Senior Vice President
Lawrence H. Hentz, Jr.	Senior Vice President
Mark A. Isaak	Senior Vice President
Robert S. Lawson	Senior Vice President
Michael W. McFall	Senior Vice President
Barry J. Schulz	Senior Vice President
Benton L. Rudolph	Vice President

FURTHER RESOLVED, that the following named officers are authorized to attest to the signatures of officers executing documents on behalf of Post, Buckley, Schuh & Jernigan, Inc., d/b/a PBS&J:

Benjamin P. Butterfield	Senior Vice President/General Counsel/Secretary
Richard M. Grubel	Senior Vice President/Assistant Secretary
Rene De los Rios	Assistant Secretary
C. Ernest Edgar IV	Vice President/Assistant Secretary
James Robert Steele	Vice President/Assistant Secretary

This resolution is adopted as of February 18, 2010 and remains in effect until a succeeding resolution is adopted.




Benjamin P. Butterfield, Secretary

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John Olinzock

From: Harlene S. Kennedy [REDACTED] **Sent:** Mon 15-Mar-10 1:15 PM
To: John Olinzock
Cc: Susan L. Trevarthen
Subject:
Attachments:  [PBS and J Design Contract.doc\(266KB\)](#)

Hello John: Here is a proposed design contract to use with PBS and J for the LAP project design work. Please call me after you have reviewed. Also feel free to have the consultant at PBS and J call me with any questions. Thanks.

Harlene

Harlene S. Kennedy, Esq.
Of Counsel

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
www.wsh-law.com
Tel: (305) 854-0800
Fax: (305) 854-2323

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