



**Ford & Associates, Inc.** ("Municipal Advisor") appreciates the opportunity to serve as municipal advisor to the **City of Pembroke Pines, Florida** (the "City"). Upon your acceptance, this engagement letter (the "Agreement") will serve as our mutual agreement with respect to the terms and conditions of our engagement as municipal advisor, effective on the date this Agreement is executed by the City (the "Effective Date").

#### WITNESSETH

**WHEREAS**, the City is in need of Municipal Advisory Services and desires to engage Municipal Advisor to provide such services; and,

**WHEREAS**, Municipal Advisory Services are specialized and intricate areas of expertise requiring peculiar skill, ability, experience or expertise, which are in their nature unique; and,

**WHEREAS**, the Municipal Advisor maintains all required licenses necessary to perform the services herein required and Municipal Advisor possesses the specific knowledge, skills, abilities, experiences, and expertise in the required areas that would particularly benefit City; and,

**WHEREAS**, the Municipal Advisor has experience providing the required services for City and to date the Parties have been satisfied with performance of the Agreement for Financial Advisors entered into pursuant to Request for Proposals No. FN-13-01, dated August 6, 2013 which expires on May 14, 2022; and,

**WHEREAS**, on December 15, 2021, the City Commission directed the City Manager to work with Municipal Advisor to negotiate and bring back a term contract with fees before the City Commission; and,

**WHEREAS**, pursuant to City Code of Ordinances §35.18(C)(2), entitled "Professional Services," the City is authorized to enter into contracts for professional services involving peculiar skill, ability, experience or expertise, which are in their nature unique, without formal bidding procedures; however, state laws, such as the Consultants' Competitive Negotiation Act ("CCNA") of Florida Statutes, as may be amended from time to time to the extent applicable, shall be followed. The services to be performed pursuant to this agreement are not "professional services" as defined by § 287.055, Florida Statutes, and therefore the CCNA does not apply; and,

**WHEREAS**, the City desires to engage Municipal Advisor to perform the services herein required; and,

**WHEREAS**, negotiations pertaining to the services to be performed by the Municipal Advisor were undertaken and this Agreement incorporates the results of such negotiation; and,

**WHEREAS**, on \_\_\_\_\_, 2022, the City authorized the proper City officials to enter this Agreement with Municipal Advisor to govern the services more particularly described herein below.

**NOWTHEREFORE**, for and in consideration of the sum of the mutual covenants and other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree to as follows:

**1. Scope of Services.**

The Scope of Services to be provided under this Agreement shall consist of the activities described below with respect to the City's new and outstanding issues of bonds issued or outstanding during the term of this Agreement (the "Issue(s)"). The Scope of Services shall also include activities described below with respect to municipal financial products (as specified below) entered into by the City or in effect during the term of this Agreement (the "Product(s)"). In addition, Municipal Advisor is designated as the City's Independent Registered Municipal Advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption") with respect to the aspects of the Issue(s) or Product(s) described in this Agreement.

**Activities**

Municipal Advisor shall or may undertake some or all of the following activities for or on behalf of the City with respect to the Issue(s) and/or Product(s) in carrying out this engagement, as directed by the City:

- A. **New Issues.** As requested by the City, provide some or all of the following services with respect to the City's new Issue(s):
1. Evaluate options or alternatives with respect to proposed new Issues
  2. Review recommendations made by other parties to the City with respect to the new Issues
  3. Review financial and other information regarding the City, the proposed Issue and any source of repayment of or security for the Issues
  4. Consult with and/or advise the City on actual or potential changes in market practices, market conditions, regulatory requirements, or other matters that may have an impact on the City and its financing plans
  5. Assist the City in establishing a plan of financing
  6. Assist the City in establishing the structure, timing, terms and other similar matters concerning Issues
  7. Prepare financing schedules
  8. Consult and meet with representatives of the City and its agents or consultants with respect to the Issue
  9. Attend meetings of the City's governing body, as requested
  10. Advise the City on the manner of sale of Issues, including public market issues at competitive bid or negotiated sale and with direct bank loans, and assist with the preparation, distribution, and evaluation of Requests for Proposals for such services.
  11. Advise and assist the City in identifying potential lenders and obtaining and executing bank loans, if applicable



12. Assist in the preparation and/or review of financial, statistical, and debt related information included in the preliminary and final official statement
  13. Make arrangements for printing, advertising, and other vendor services necessary or appropriate in connection with the Issue
  14. Advise the City with regard to any disclosure undertaking required to be entered into in connection with the Issue, including advising on the selection of a dissemination agent
  15. In a negotiated sale, assist the City in the selection of underwriters
  16. At the time of sale, provide the City with relevant data on comparable issues recently or currently being sold nationally
  17. Coordinate pre-pricing discussions, supervise the sale process, advise the City on matters relating to retail or other order periods and syndicate priorities, review the order book, advise on the acceptability of the underwriter's pricing and offer to purchase
  18. Advise the City with respect to recommendations made by the underwriters and other interactions between the City and the underwriters
  19. Review required underwriter disclosures to the City
  20. Assist the City in selecting consultants and vendors (including, but not limited to, trustee, paying agent, escrow agent, verification agent, feasibility consultant, etc.) to work on the Issue
  21. Assist the City in responding to questions from bidders, underwriters, or potential investors. All communication with actual or potential investors will occur directly between the City and the investor(s).
  22. Arrange and facilitate meetings with, prepare materials for, and make recommendations to the City in connection with credit ratings agencies, insurers and other credit or liquidity providers
  23. Work with bond counsel and other transaction participants to prepare and/or review necessary financial terms and conditions of authorizing documentation of the City and other documents necessary to finalize and close the Issue
  24. Coordinate working group sessions, closing, delivery of the new Issue and transfer of funds
  25. Prepare a closing memorandum or transaction summary, together with general guidance for the City with respect to post-closing requirements relating to the use and investment of bond proceeds and the payment of debt service
  26. Provide such other usual and customary financial advisory services as may be requested by the City
- B. ***Outstanding or Potential Issues.*** As requested by the City, provide some or all of the following services with respect to the City's outstanding Issue(s) as required by the City:
1. Advise the City on potential exercise of optional or other call rights, or potential tender offers, for outstanding Issue(s)
  2. Advise the City on potential refunding or other refinancing opportunities of its outstanding Issue(s)
  3. Review recommendations made by other parties to the City with respect to outstanding Issue(s)
  4. Evaluate options or alternatives for the City with respect to, and assist in identifying, financing opportunities, including recommendations by other parties to the City for potential financings
  5. Consult with and/or advise the City on actual or potential changes in market practices, market conditions, regulatory requirements or other matters that may have an impact on the City's outstanding Issue(s)
  6. As requested, advise the City on post-issuance disclosure compliance matters, including specific issues that may arise from time to time and the preparation, review and revision of applicable policies and procedures, relating to outstanding Issue(s)

7. Advise the City on matters relating to compliance with, including testing and/or reporting on compliance with, bond or other covenants relating to outstanding Issue(s)
  8. Review documentation of outstanding Issue(s) with the City personnel and with the City's bond counsel and other consultants
  9. Assist the City in responding to inquiries from investors or other market participants in connection with the City's outstanding Issue(s). All communication with actual or potential investors will occur directly between the City and the investor(s).
  10. Provide advisory services as requested by the City for the purpose of refinancing or modifying existing issues.
  11. Provide such other usual and customary financial advisory services as may be requested by the City
- C. **Products.** As requested by the City, provide some or all of the following services with respect to the City's Product(s) relating to its Issues:
1. Advise the City on and assist with the investment of proceeds of the City's Issues or on municipal escrow investments relating to such Issue(s), including but not limited to advice on or brokerage of municipal investment products, including, but not limited to, guaranteed investment contracts, repurchase agreements, forward delivery/purchase agreements for the investment of proceeds of the Issue or for municipal escrow investments, or the recommendation and brokerage of municipal escrow investments, and/or serving as bidding agent in connection with the Issues
  2. Serve as a Qualified Independent Representative in advising the City on municipal derivatives
- D. **Other Services.** As requested by the City provide services related to:
1. Serve as an Independent Registered Municipal Advisor ("IRMA") to the City
  2. Project Planning and Analysis, long-term capital planning and the development of financial strategies, as requested, including models of outstanding debt of the City which identifies aggregate annual debt service by fiscal year and by revenue sources either pledged or used to pay debt service thereon, refunding opportunities and "strike" prices for refunding, projected growth of revenue sources used in bond transactions, and other appropriate economic or financial indicators as requested by the City. These strategies may address existing debt structure, debt ratings, revenues and legal constraints and identify sensitivity factors, which would impact a multi-year funding program for the City's on-going capital plan.
  3. Rating surveillance and assistance with the preparation of, and participation in, annual rating updates accomplished via teleconference.
  4. Prepare and present workshops on financial matters, including formation of financial options and alternatives analysis on financial matters.
  5. Assistance with financial planning and/or other services related voter referendums
  6. Assistance with the preparation of written policies for debt, derivatives, and other finance related areas as requested by the City and staff
  7. Specific finance related tasks requested by City staff
  8. Other specific consulting projects as requested by the City or City staff



## **2. Use of Sub-Contractors, Outside Associates and Consultants.**

The City agrees and understands that in the execution of its duties as financial advisor, Ford & Associates, Inc. may rely on FAI Capital Management or other sub-contractors approved in writing by the City in the provision of the services including those as Qualified Independent Representative related to derivative products, and with services related to the investment of bond proceeds. In so doing, the City shall incur no additional costs for such services beyond those owed to Ford & Associates, Inc. for the provision of such services. Other than those described above, any subcontractors and/or outside associates or consultants required by the Ford & Associates, Inc. in connection with the services covered by the contract will be limited to such individuals or firms as are specifically identified for each project performed under this contract. Any substitution of such subcontractors, associates, or consultants will be subject to the prior written approval of the City Manager or designee.

The Municipal Advisor shall require all subcontractors, outside associates and consultants employed in connection with the performance of this contract to comply fully with the terms and conditions of this contract between the City and the Municipal Advisor.

## **3. Limitations on Scope of Services.**

- A. The Scope of Services is subject to the following limitations:
- B. The Scope of Services is limited solely to the services described therein and is subject to any limitations set forth within the description of the Scope of Services.
- C. Ford & Associates, Inc. does not and will not serve in the capacity of an underwriter or broker dealer at any time, or as a placement agent except as permitted by the SEC and/or the MSRB. Ford & Associates, Inc. services are limited to those of an advisor and consultant to the City for matters within the Scope of Services described herein.
- D. Unless otherwise provided in the Scope of Services described herein, Municipal Advisor is not responsible for validating data or financial information provided by the City, or for preparing any preliminary or final official statement, or for certifying as to the accuracy or completeness of any preliminary or final official statement, other than with respect to any information about Municipal Advisor provided by Municipal Advisor for inclusion in such documents.
- E. The Scope of Services does not include tax, legal, accounting, or engineering advice with respect to any Issue or Product or in connection with any opinion or certificate rendered by counsel or any other person at closing and does not include review or advice on any feasibility study.
- F. The relationship between City and Municipal Advisor created hereunder and the services to be provided by Municipal Advisor pursuant to this Agreement are non-exclusive. City shall be free to pursue and engage similar relationships with other consultants to perform similar services performed by Municipal Advisor hereunder, so long as no other consultant shall be engaged to perform the specific project(s) assigned to Municipal Advisor while Municipal Advisor is so engaged without first terminating such assignment.
- G. **Correction of Services.** If, in the judgment of City, services provided by Municipal Advisor do not conform to the requirements of this Agreement, City reserves the right to require that Municipal

Advisor correct all deficiencies in the services to bring the services into conformance without additional cost to City, and/or replace any personnel who fail to perform in accordance with the requirements of this Agreement. City shall be the sole judge of non-conformance.

**4. Designation of Independent Registered Municipal Advisor.**

The City has designated Ford & Associates, Inc. as its independent registered municipal advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption") with respect to the activities and aspects described in the Scope of Services, subject to any limitations with respect to such activities and services as may be described herein. Municipal Advisor is not responsible for verifying to another party wishing to rely on the exemption from the definition of municipal advisor afforded under the IRMA exemption that it is independent (within the meaning of the IRMA exemption as interpreted by the SEC) from such party. The City agrees not to represent, publicly or to any specific person, that Municipal Advisor is the City's IRMA with respect to any aspect of municipal financial products or the issuance of municipal securities, that is outside the Scope of Services without Municipal Advisor's prior written consent.

**5. Amendment to Scope of Services.**

The Scope of Services may be changed only by written amendment or supplement to the Scope of Services described herein and executed by the City and Municipal Advisor. The parties agree to amend or supplement the Scope of Services described herein promptly to reflect any material changes or additions to the Scope of Services. In no event will Municipal Advisor be compensated for any services which have not been described either herein or in a separate written agreement executed by the parties hereto.

**6. Compensation.**

**A. Transactional Fees and Expenses.** The fees due to Municipal Advisor for services or activities performed by the Municipal Advisor hereunder shall be, and expenses incurred by Municipal Advisor in connection with any services provided hereunder shall be reimbursed as follows:

- i. The following fees shall be paid to the Municipal Advisor for professional activities performed in accordance with this agreement, involving the structuring and sale of traditional long-term, fixed-rate debt offered at competitive sale, negotiated sale, through bank loans, or through direct placement:

\$ 0.85/\$1,000	for par amount up to	\$50,000,000
\$ 0.75/\$1,000	for par amount over	\$50,000,000
\$0.50/\$1,000	for par amount over	\$100,000,000

Such fees are due and payable only upon the completion of a transaction. These fees are subject to a minimum fee of \$25,000 per issue and a maximum fee of \$95,000 per issue and apply to any transaction-related services or activities performed by Municipal Advisor within 120 days of closing of the related transaction. Any services or activities related to a transaction that is performed more than 120 days prior to closing shall be billed at the hourly rates shown in Section 6.E. herein. In the event that the City chooses not to complete a financing, the Municipal Advisor shall be compensated for the



services or activities provided by the Municipal Advisor on the basis of hourly fees in accordance with the schedule contained in 6. E. below. Separate additional fees shall apply for issues of extraordinary complexity, including, but not limited to, conduit financings, tax-credit financings, federal loan programs, variable-rate debt, derivative instruments, and public-private partnerships. Such additional fees must be specified and agreed to in writing by both the City and Municipal Advisor prior to the provision of such services.

Any hourly fees paid to Municipal Advisor for work completed with respect to a particular issuance of debt within 120 days of the sale of such issue shall be credited against the fee, in accordance with the above schedule, due Ford & Associates, Inc. for the subject debt issue.

Transactional out-of-pocket expenses incurred within 120 days of the sale of such debt shall be capped at \$3,000 per issue not including expenses for travel which shall be billed at cost. Extraordinary out-of-pocket expenses may be billed only with the approval of the City Manager or designee.

The City shall be under no obligation to undertake or complete any financing as described in Section 6.A. above during the term of the Agreement.

- B. Rating & Insurance Agency Presentations: For the preparation of, and assistance with, rating & insurance agency presentations, an initial fee of \$15,000 plus actual out-of-pocket expenses. Such fee includes multiple presentations to any rating agencies and/or bond insurance companies during a 120-day period. The fee for subsequent presentations occurring within 24 months of the initial presentation outlined above, the fee will be \$10,000 per event plus actual out-of-pocket expenses. For the purposes of this Section, the term "per event" means any presentations completed during a consecutive 120-day period using a common set of presentation materials.
- C. Fees for assisting with the investment of bond proceeds and/or refunding escrows, as outlined in 1.C.1 above, shall be as agreed upon in writing and any case shall be limited to those necessary to comply with the Safe Harbor provisions within the "Special rule for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow" under IRC 1.148-5 as a "qualified administrative cost", or such lesser fee as agreed to by the City and the Municipal Advisor.
- D. Fees for serving as Qualified Independent Representative shall be agreed to by the City and by Municipal Advisor in writing prior to the delivery of such services.
- E. Fees for transactional services provide more that 120-days prior to closing and fees for "Other Services" outlined in above shall be charged on an hourly basis, plus reasonable out of pocket expenses. Prior to incurring any such charges for "Other Services", the City and Municipal Advisor shall agree in writing to a scope of work for such other services and a not to exceed cost. The following hourly schedule shall be in effect:

i.	Senior Professional Staff	\$250/hour
ii.	Analyst Staff	\$175/hour
iii.	Administrative Staff	\$65/hour

- F. Payment for Costs and Expenses: Expenses include, but are not limited to reasonable charges for travel, lodging, meals, postage, data/technology, long distance telephone and conference call charges, photocopying charges (at \$.10/page), facsimiles (at \$.50/page), and color copying/printing

(\$1.20/page) shall be paid by the City at the scheduled closing of a debt transaction. Municipal Advisor shall provide City with a detailed invoice with respect to the payment of costs and expenses. City reserves the right to reject any costs and expenses that are not reasonably related to the services herein required. In the event that such debt transaction does not close or during the provision of non-debt related services, such expenses shall not be billed more frequently than monthly.

Expenses for independent vendors which are incurred by the Municipal Advisor on behalf of the City (including, but not limited to: rating agencies, bond insurance companies, printing/electronic posting/ mailing of Official Statements and other such documents, publication of public notices, verification agents, trustees/registrars/ paying agents, specialized computer services, internet services, and other similar services) shall be billed at cost by the Municipal Advisor and paid directly by the City to such vendors within 30 days after receipt of a statement therefore. All such expenses, with the exception of rating services, bond insurance policies, and printing/electronic posting/ mailing of Official Statements and other such documents, which shall require the prior written approval by the City Manager or designee.

- G. All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

Upon mutual agreement the parties may elect to adjust the above fees from time to time, but no sooner than three-years following the Effective Date of Agreement.

**7. Municipal Advisor's Regulatory Duties When Servicing the City.**

MSRB Rule G-42 requires that Municipal Advisor make a reasonable inquiry as to the facts that are relevant to the City's determination whether to proceed with a course of action with a course of action or that form the basis for and advice provided by Municipal Advisor to the City. The rule also requires that Municipal Advisor undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Municipal Advisor is also required under the rule to use reasonable diligence to know the essential facts about the City and the authority of each person acting on the City's behalf.

**8. Responsibilities of the City.**

The City agrees to cooperate, and to cause its agents to cooperate, with Municipal Advisor in carrying out the regulatory duties identified in 7. above, including providing to Municipal Advisor accurate and complete information and reasonable access to relevant documents, other information and personnel needed to fulfill such duties. In addition, the City agrees that, to the extent the City seeks to have Municipal Advisor provide advice with regard to any recommendation made by a third party, the City will provide to Municipal Advisor written direction to do so as well as any information it has received from such third party relating to its recommendation. In so doing, the City agrees:

- A. To make available to the Municipal Advisor from its files and records, all data on hand referring to the proposed financing.
- B. To provide the services of the city attorney and of bond counsel for the preparation of resolutions or ordinances and all documents required for the authorization, validation and issuance of Obligations,



including final legal opinion and a Standard 10(b)5 Opinion at the time of delivery of the Obligations.

- C. To institute, prosecute and carry to completion the necessary litigation for the validation of the proposed issues.
- D. To prepare, with Municipal Advisor's assistance as described herein, Official Statements, setting forth the details of the issue, including a full description of the economic and fiscal data of the City and all other pertinent details which will permit the City to comply with the Federal requirements for full disclosure. The Official Statement shall be available for distribution to all prospective purchasers.

**9. Term of this Engagement.**

The initial term of this Agreement will be for five-years from the Effective Date and may be renewed for an additional five-year period thereafter unless terminated by the either party. In the event that the term of this Agreement expires, the Municipal Advisor agree to continue providing services, at the current rates, on a month-to-month basis until the City establishes a new contract for services. However, should either of the parties to the Agreement elect to terminate the Agreement, said Agreement may be terminated at any time, for cause or for convenience, by the electing party's provision of sixty (60) days written notice.

**10. Limitation of Liability.**

In the absence of willful misconduct, bad faith, negligence or reckless disregard of obligations or duties hereunder on the part of Municipal Advisor or any of its associated persons, Municipal Advisor and its associated persons shall have no liability to the City for loss arising out of any issuance of municipal securities, any municipal financial product or any other investment, or for any financial or other damages to the extent resulting from the City's election to act or not to act, as the case may be, contrary to any advice or recommendation provided by Municipal Advisor to the City. No recourse shall be had against Municipal Advisor for loss, damage, liability, cost or expense (whether direct, indirect or consequential) of the City arising out of or in defending, prosecuting, negotiating or responding to any inquiry, questionnaire, audit, suit, action, or other proceeding brought or received from the Internal Revenue Service in connection with any Issue or Product or otherwise relating to the tax treatment of any Issue or Product, or in connection with any opinion or certificate rendered by counsel or any other party, except to the extent such loss, damage, liability, cost or expense is attributable to the breach of the Municipal Advisor of its obligations to the City pursuant to this agreement and applicable by law. Notwithstanding the foregoing, nothing contained in this paragraph or elsewhere in the Agreement shall constitute a waiver by the City of any of its legal rights under applicable U.S. federal securities laws or any other laws whose applicability is not permitted to be contractually waived, nor shall it constitute a waiver or diminution of Municipal Advisor's fiduciary duty to the City under Section 15B(c)(1) of the Securities Exchange Act of 1934, as amended, and the rules thereunder.

For consideration of receipt by Municipal Advisor from the City of \$10.00, Municipal Advisor agrees to indemnify and hold the City harmless from all claims for:

- A. **Liability.** The Municipal Advisor shall indemnify and hold the City, its officers, employees, and agents harmless from all claims that may arise from errors, omissions, or negligent acts of the Municipal

Advisor or its consultants, employees or agents during the performance of services under this contract including claims for Fiduciary liability, personal injury and property damage.

B. Personal Property. The Municipal Advisor shall save the City harmless from the claims of any person for loss, loss of use, or damage to the personal property of the City, its agents, employees, consultants, or subsidiaries that may arise from and be the proximate result of errors, omissions, or negligent acts of the Municipal Advisor or its consultants, employees, or agents during the performance of services under this contract.

## 11. Insurance.

The City of Pembroke Pines shall be listed as an additional insured and evidence of coverage shall be provided to: City of Pembroke Pines, Atten: Lisa Chong, 601 City Center Way, Pembroke Pines, Florida 33025. Municipal Advisor shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

✓ ☐ A. Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The City's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

✓ ☐ B. Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the Municipal Advisor engaged in the performance of the scope of services associated with this Agreement. In the case any work is sublet, the Municipal Advisor shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the Municipal Advisor. Coverage for the Municipal Advisor and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

- |                           |              |                                   |
|---------------------------|--------------|-----------------------------------|
| 1. Workers' Compensation: | Coverage A – | Statutory                         |
| 2. Employers Liability:   | Coverage B   | \$500,000 Each Accident           |
|                           |              | \$500,000 Disease – Policy Limit  |
|                           |              | \$500,000 Disease – Each Employee |



If Municipal Advisor claims to be exempt from this requirement, Municipal Advisor shall provide City proof of such exemption for City to exempt Municipal Advisor.

Yes No

✓ ☐ C. Professional Liability/Errors & Omissions Insurance with a limit of liability no less than \$1,000,000 per wrongful or negligent acts. This coverage shall be maintained for a period of no less than three (3) years after the delivery of goods/services final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the City.

D. Any and all insurance required of the Municipal Advisor pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the City as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the Municipal Advisor and provided proof of such coverage is provided to City. The Municipal Advisor and any subcontractors shall maintain such policies during the term of this Agreement.

E. The City reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.

F. The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the Municipal Advisor has assumed in the indemnification/hold harmless section(s) of this Agreement.

## **12. No Contingent Solicitor Fees.**

Municipal Advisor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Municipal Advisor to solicit or secure this Agreement, and that it 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. For the breach or violation of this provision, the City shall have the right to terminate this Agreement without liability, and at its discretion may deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

## **13. Required Disclosures.**

MSRB Rule G-42 requires that Municipal Advisor provide you with disclosures of material conflicts of interest and of information regarding certain legal events and disciplinary history. Such disclosures are provided in Municipal Advisor's Disclosure Statement delivered to the City together with this Agreement.

## **14. Non-Discrimination.**

Municipal Advisor shall comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, color, creed, religion, national origin, ancestry, age above the age of 21, sexual orientation, gender identity or expression, marital status, pregnancy, familial status, veterans status, political affiliation, or physical or mental disability and such person's association with members of such classes or in retaliation for or opposition to any such practices against any employee of, any City

employee working with, or applicant for employment or any other factor which cannot be lawfully used as a basis for service delivery.

**15. Scrutinized Company Certification.**

As the person authorized to sign on behalf of Municipal Advisor, by signing below on behalf of Municipal Advisor, I hereby certify that the Municipal Advisor does not participate in any boycott of Israel and is not listed on the Scrutinized Companies that Boycott Israel List. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject the Municipal Advisor to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the Municipal Advisor, is found to have submitted a false certification or has been placed on the Scrutinized Companies that Boycott Israel List. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to the Municipal Advisor, of the City's determination concerning the false certification. The Municipal Advisor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Municipal Advisor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the Contract and seek civil remedies pursuant to section 287.135 Florida Statutes.

**16. Counterpart Originals.**

The Agreement and any addendum thereto, may be executed by hand or electronically and distributed by facsimile or electronically by pdf and a copy of the Agreement executed and distributed by facsimile or electronically by pdf shall be deemed an original for all purposes. The Agreement and any addendum thereto may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument. The Parties agree that signatures by facsimile and/or .pdf are acceptable and binding.

**17. Sovereign Immunity.**

The parties hereto acknowledge that City is a political subdivision of the state of Florida and enjoys sovereign immunity. Nothing in this Addendum to Agreement shall be construed to require City to indemnify Municipal Advisor or insure Municipal Advisor for its negligence or to assume any liability for Municipal Advisor's negligence. Further, nothing in the Agreement shall alter City's sovereign immunity or extend City's liability beyond the limits established in section 768.28, Florida Statutes, as amended.

**18. Public Records.** The City of is public agency subject to Chapter 119, Florida Statutes. The Municipal Advisor shall comply with Florida's Public Records Law. Specifically, the Municipal Advisor shall:

- A. Keep and maintain public records required by the City to perform the service;
- B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla. Stat., or as otherwise



provided by law;

- C. Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, Municipal Advisor shall destroy all copies of such confidential and exempt records remaining in its possession after the Municipal Advisor transfers the records in its possession to the City; and,
- D. Upon completion of the agreement, Municipal Advisor shall transfer to the City, at no cost to the City, all public records in Municipal Advisor's possession. All records stored electronically by Municipal Advisor must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- E. The failure of Municipal Advisor to comply with the provisions set forth in this agreement/contract shall constitute a Default and Breach of this Agreement, for which, the City may terminate the Agreement.

**IF FORD & ASSOCIATES, INC. HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FORD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT  
CITY CLERK  
MARLENE GRAHAM, CITY CLERK  
CITY OF PEMBROKE PINES  
601 CITY CENTER WAY  
PEMBROKE PINES, FL 33025**

**19. Waiver of Jury Trial.**

EACH PARTY AGREES TO WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE RELATIONSHIP BETWEEN THE PARTIES.

**20. Governing Laws and Venue.**

This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws. Venue for any action arising in regard to this Agreement shall be in Broward County, Florida.

**21. Binding Effect; Assignment.**

This Agreement shall be binding upon and inure to the benefit of the City and Municipal Advisor, their respective successors and permitted assigns; provided however, neither party may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party.

**22. Entire Agreement.**

This instrument, including all appendices hereto, contains the entire agreement between the parties relating to the rights herein granted and obligations herein assumed. This Agreement may not be amended, supplemented, or modified except by means of a written instrument executed by both parties.

**23. Severability.**

If any provision of this Agreement is, or is held or deemed to be, invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions because it conflicts with any provisions of any constitution, statute, rule or public policy, or for any other reason, such circumstances shall not make the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or make any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

**24. No Third-Party Beneficiary.**

This Agreement is made solely for the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**25. Authority.**

The undersigned represents and warrants that he has full legal authority to execute this Agreement on behalf of the City. The following individuals have the authority to direct Ford & Associates, Inc.'s performance of its activities under this Agreement.

**26. Counterparts.**

This Agreement may be executed in counterparts, each of which shall be an original, but which taken together, shall constitute one and the same instrument.

**27. E-Verify.**

Municipal Advisor certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

**27.1 Definitions for this Section.**

**27.1.1** "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

**27.1.2** "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.



**27.1.3** "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

## **27.2 Registration Requirement; Termination.**

Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

**27.2.1** All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

**27.2.2** All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Lake Wales. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Lake Wales; and

**27.2.3** The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

**28. Independent Contractor.** This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Municipal Advisor are an independent contractor under this Agreement and not the City's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The Municipal Advisor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Municipal Advisor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Municipal Advisor, which policies of Municipal Advisor shall not conflict with City, State, Federal, or United States policies, rules or regulations relating to the use of Municipal Advisor funds provided for herein. The Municipal Advisor agree that they are a separate and independent enterprise from the City, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Municipal Advisor

and the City and the City will not be liable for any obligation incurred by Municipal Advisor, including but not limited to unpaid minimum wages and/or overtime premiums.

29. **Record and Audit.** Municipal Advisor shall keep records, working papers, invoices and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which Municipal Advisor expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by City and shall be kept for a period of five (5) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by City of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, Florida Statutes.

30. **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, Municipal Advisor and City designate the following as the respective places for giving of notice:

City:	Charles F. Dodge, City Manager City of Pembroke Pines 601 City Center Way, 4 <sup>th</sup> Floor Pembroke Pines, Florida 33025 Telephone No. (954) 450-1040
Copy To:	Samuel S. Goren, City Attorney Goren, Cherof, Doody & Ezrol, P.A. 3099 East Commercial Boulevard, Suite 200 Fort Lauderdale, Florida 33308 Telephone No. (954) 771-4500 Facsimile No. (954) 771-4923
Municipal Advisor:	<b>Jerry W. Ford, President</b> <b>Ford &amp; Associates, Inc.</b> <b>109 South MacDill Avenue</b> <b>Tampa, FL 33609-3128</b> E-mail: <a href="mailto:jwford@fordassocinc.com">jwford@fordassocinc.com</a> Telephone No: (813) 874-6621 Facsimile No: (813) 874-6624

31. **Compliance with Statutes.** It shall be the Municipal Advisor's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, City, state, and federal agencies as applicable.

**SIGNATURE PAGE FOLLOWS**



**IN WITNESS OF THE FOREGOING**, the Parties have set their hands and seals the day and year first written above.

**ACCEPTED AND AGREED:**

**City of Pembroke Pines, Florida**

By: Charles F. Dodge

Title: City Manager

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

By: Frank C. Ortis

Title: Mayor

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Ford & Associates, Inc.**

By: Jerry W. Ford

Title: President

Signature:  \_\_\_\_\_

Date: 5/17/2022

Approved as to legal form by the City Attorney:

\_\_\_\_\_

Name: \_\_\_\_\_