



PARKS AND RECREATION MASTER PLAN AGREEMENT

THIS AGREEMENT ("Agreement"), dated the _____ day of _____, **2021** is entered into by and between:

THE CITY OF PEMBROKE PINES, a municipal corporation of the State of Florida with a business address of **601 City Center Way, Pembroke Pines, Florida 33025** (hereinafter referred to as the "CITY")

and

BERMELLO, AJAMIL AND PARTNERS, INC., a For Profit Corporation as listed with the Florida Division of Corporations, with a business address of **2601 South Bayshore Drive, Suite #1000, Miami, FL 33133** (hereinafter referred to as the "CONSULTANT"). CITY and CONSULTANT may hereinafter be referred to collectively as the "Parties."

W I T N E S S E T H:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONSULTANT agree as follows:

ARTICLE 1 **PREAMBLE**

In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the respective parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 On **June 22, 2021**, the CITY advertised its notice to bidders of the CITY's desire to hire a firm to develop a comprehensive ten (10) year Parks and Recreation System Master Plan (PRSMP) for the City of Pembroke Pines, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, for the said competitive negotiation entitled:

Request for Proposals ("RFP") # RE-21-01 **"Parks and Recreation Master Plan"**

1.2 On **August 3, 2021**, the proposals were opened at the offices of the City Clerk.



1.3 On _____ 2021, the CITY awarded the bid to CONSULTANT and authorized the proper CITY officials to negotiate and enter into this Agreement to engage CONSULTANT to render the services more particularly described herein below.

1.4 Negotiations pertaining to the services to be performed by the CONSULTANT were undertaken and this Agreement incorporates the results of such negotiation.

ARTICLE 2

SERVICES AND RESPONSIBILITIES

2.1 CONSULTANT hereby agrees to develop a comprehensive ten (10) year Parks and Recreation System Master Plan (PRSMP) for the City of Pembroke Pines, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a specific part hereof and CONSULTANT's response thereto, attached hereto as **Exhibit "B"** and made a specific part hereof by this reference. CONSULTANT agrees to do everything required by this Agreement, the Sealed Bid Package, Addenda to this Agreement, and Commission award complete with proposal form. The Parties agree and acknowledge that in the event of any conflict or ambiguity by and between **Exhibit "A"** and **Exhibit "B"**, that **Exhibit "A"** shall govern and take precedence.

2.2 CONSULTANT shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.3 CONSULTANT hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONSULTANT, that CONSULTANT has the professional expertise, experience and manpower to perform the services to be provided by CONSULTANT pursuant to the terms of this Agreement.

2.4 CONSULTANT assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional and ethical guidelines established by their profession. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the CITY promptly advises CONSULTANT thereof in writing, CONSULTANT agrees to re-perform such deficient services without charge to the CITY.

2.4 CONSULTANT shall schedule regular meetings with the CITY's representatives at least once a month to discuss the progress of the work and to develop a comprehensive ten (10) year Parks and Recreation System Master Plan (PRSMP), as more specifically described in **Exhibit "A"**.

2.5 The relationship between CITY and CONSULTANT created hereunder and the services to be provided by CONSULTANT pursuant to this Agreement are non-exclusive. CITY shall be free to pursue and engage similar relationships with other contractors to perform the same or similar services performed by CONSULTANT hereunder, so long as no other consultant shall be engaged to perform the specific project(s) assigned to CONSULTANT while CONSULTANT is so



engaged without first terminating such assignment. CONSULTANT shall be free to pursue relationships with other parties to perform the same or similar services, whether or not such relationships are for services to be performed within the City of Pembroke Pines, so long as no such relationship shall result in a conflict of interest, ethical or otherwise, with the CITY's interests in the services provided by CONSULTANT hereunder.

2.6 CONSULTANT shall not utilize the services of any sub-consultant without the prior written approval of CITY.

ARTICLE 3 **TERM AND TERMINATION**

3.1 CONSULTANT shall perform the services identified in Article 2 within one (1) year from issuance of CITY's Notice to Proceed. Minor adjustments to the timetable for completion approved by City Manager in advance, in writing, will not constitute non-performance by CONSULTANT pursuant to this Agreement.

3.2 **Termination for Convenience.** This Agreement may be terminated by CITY for convenience, upon thirty (30) days of written notice by the terminating party to the other party for such termination in which event CONSULTANT shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that CONSULTANT abandons this Agreement or causes it to be terminated, CONSULTANT shall indemnify CITY against loss pertaining to this termination.

3.3 **Default by CONSULTANT.** In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should CONSULTANT neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by CONSULTANT of written notice of such neglect or failure.

3.4 In the event of termination for cause or convenience, all finished or unfinished documents, data, studies, plans, surveys, and reports prepared by CONSULTANT shall become the property of CITY and shall be delivered by CONSULTANT to CITY immediately. Additionally, in the event of termination by the CITY for cause, the CONSULTANT shall be paid for all services performed up to the date of termination in accordance with the requirements set forth in Article 2 above.

3.5 **Default by CITY.** If CITY fails to make payments to the CONSULTANT in accordance with Section 4.2 set forth below, such failure shall be considered substantial non-performance and cause for termination or, at the CONSULTANT's option, cause for suspension of services, in such event, CONSULTANT shall provide the CITY with thirty (30) calendar days prior written notice before termination or suspending services. In the event CONSULTANT elects to suspend services as a result of failure to make payment, the CONSULTANT shall have no liability to the CITY for delay or damage caused the CITY because of such suspension of services. Before resuming services, the CITY shall pay the CONSULTANT all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTANT's services. The



CONSULTANT's fees for the remaining services and the time schedules shall be equitably adjusted.

ARTICLE 4

COMPENSATION AND METHOD OF PAYMENT

4.1 CONSULTANT shall be entitled to invoice CITY monthly, for services performed and properly invoiced. The invoice submitted to the CITY shall include information such as, but not limited to, the date(s) of service, the amount of time spent, a description of the service(s), and any other information reasonably required by CITY. The total amount of compensation to be paid to CONSULTANT pursuant to this Agreement shall not exceed **TWO HUNDRED SEVENTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS AND ZERO CENTS (\$277,500.00)**.

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

4.3 **Method of Billing and Payment.** The CITY shall within thirty (30) days, from the date the City's Recreation and Cultural Arts Director approves the Application for Payment, pay the CONSULTANT the amount approved by the CITY's Recreation and Cultural Arts Director or his or her assignees. Payment will be made to CONSULTANT at:

Bermello, Ajamil and Partners, Inc.
2601 South Bayshore Drive, Suite #1000
Miami, FL 33133

ARTICLE 5

CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK

5.1 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described herein. These changes may affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

5.2 In no event will the CONSULTANT be compensated for any work which has not been described either herein or in a separate written agreement executed by the Parties hereto.

ARTICLE 6

INDEMNIFICATION

6.1 The CONSULTANT shall indemnify and hold harmless the CITY, its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to and/or resulting from the performance of this Agreement by the



CONSULTANT, its employees, agents, partners, principals or subcontractors. The CONSULTANT shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon.

6.2 Parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the Party's responsibility to indemnify.

6.3 Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or §768.28, Florida Statutes, as may be amended from time to time.

ARTICLE 7 **INSURANCE**

7.1 The CONSULTANT expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONSULTANT shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

7.2 CONSULTANT shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONSULTANT allow any subcontractor to commence work on his subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

7.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

7.4 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the CONSULTANT or their Insurance Broker must agree to provide notice.

7.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONSULTANT shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension



thereunder is in effect. The CONSULTANT shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONSULTANT shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

7.6 REQUIRED INSURANCE

CONSULTANT shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

- ✓ ☐ 7.6.1 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. Personal & Advertising Injury Limit - \$1,000,000
3. General Aggregate Limit - \$2,000,000
4. 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

- ✓ ☐ 7.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONSULTANT engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONSULTANT 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 CONSULTANT. Coverage for the CONSULTANT 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 CONSULTANT claims to be exempt from this requirement, CONSULTANT shall provide CITY proof of such exemption for CITY to exempt CONSULTANT.

Yes No

- ✓ ☐ 7.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired



vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

Yes No

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7.6.3.1 If CONSULTANT requests reduced limits under a Personal Auto Liability Policy and it is agreed to by the CITY, coverage shall include Bodily Injury limits of \$100,000 per person/\$300,000 per occurrence and Property Damage limits of \$300,000 per occurrence

Yes No

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7.6.4 Umbrella/Excess Liability Insurance in the amount of \$2,000,000.00 as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this 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

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7.6.5 Professional Liability/Errors & Omissions Insurance with a limit of liability no less than \$1,000,000 per wrongful or negligent act. 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.

Yes No

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7.6.6 Environmental/Pollution Liability insurance shall be required with a limit of no less than \$1,000,000 per wrongful act. Coverage shall include: CONSULTANT's completed operations, sudden, accidental and gradual pollution conditions. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. **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

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7.6.7 Cyber Liability including Network Security and Privacy Liability with a limit of



liability no less than \$1,000,000 per loss. Coverage shall include liability arising from: theft, dissemination and/or use of confidential information stored or transmitted in electronic form, unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, and the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer-related property and the data, software and programs thereon. If vendor is collecting credit card information, it shall cover all PCI breach expenses. Coverage is to include the various state monitoring and state required remediation as well as meet the various state notification requirements. This coverage shall be maintained for a period of no less than the later of three (3) years after delivery of goods/services or final payment of the Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. **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

- ☐ * 7.6.8 Crime Coverage shall include employee dishonesty, forgery or alteration, and computer fraud in an amount of no less than \$1,000,000 per loss. If CONSULTANT is physically located on CITY's premises, a third-party fidelity coverage extension shall apply.

Yes No

- ☐ * 7.6.9 Garage Liability & Garage-keepers Legal Liability for those that manage parking lots for the CITY or service CITY vehicles. Coverage must be written on an occurrence basis, with limits of liability no less than \$1,000,000 per Occurrence, including products & completed operations. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this 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

- ☐ * 7.6.10 Liquor Liability for those in the business of selling, serving or furnishing of any alcoholic beverages, whether licensed or not, shall carry a limit of liability of no less than \$1,000,000 per occurrence. 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

- ☐ * 7.6.11 Sexual Abuse & Molestation for any agreement involving a vulnerable population. Limits shall be no less than \$500,000 per occurrence. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. **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

- ☐ ✕ 7.6.12 Builder's Risk Insurance shall be "All Risk" for one hundred percent (100%) of the completed value of the project that is the subject of this Agreement with a deductible of not more than five percent (5%) for Named Windstorm and \$20,000 per claim for all other perils. The Builder's Risk Insurance shall include interests of the CITY, the CONSULTANT and subcontractors of the project. The CONSULTANT shall include a separate line item for all costs associated with the Builder's Risk Insurance Coverage for the project. The CITY reserves the right at its sole discretion to utilize the CONSULTANT's Builder's Risk Insurance or for the CITY to purchase its own Builder's Risk Insurance for the Project. Prior to the CONSULTANT purchasing the Builder's Risk insurance for the project, the CONSULTANT shall allow the CITY the opportunity to analyze the CONSULTANT's coverage and determine who shall purchase the coverage. Should the CITY utilize the CONSULTANT's Builder's Risk Insurance, the CONSULTANT shall be responsible for all deductibles. If the CITY chooses to purchase the Builder's Risk Coverage on the project, the CONSULTANT shall provide the CITY with a change order deduct for all premiums and costs associated with the Builder's Risk insurance in their schedule. Should the CITY choose to utilize the CITY's Builder's Risk Program, the CITY shall be responsible for the Named Windstorm Deductible and the CONSULTANT shall be responsible for the All Other Perils Deductible.

If and when 100% is not available or reasonable, the CITY Risk Manager is to make the determination as to what limits are appropriate for the given project.

Yes No

- ☐ ✕ 7.6.13 Other Insurance

7.7 REQUIRED ENDORSEMENTS

- 7.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 7.7.2 Waiver of all Rights of Subrogation against the CITY.
- 7.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 7.7.4 CONSULTANT's policies shall be Primary & Non-Contributory.
- 7.7.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.
- 7.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

7.8 Any and all insurance required of the CONSULTANT 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 CONSULTANT and provided proof of such coverage is provided to CITY. The CONSULTANT and any subcontractors shall maintain such policies during the term of this Agreement.



7.9 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.

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

ARTICLE 8

NON-DISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT

During the performance of the Agreement, neither the CONSULTANT nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONSULTANT will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONSULTANT further agrees that it will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

ARTICLE 9

INDEPENDENT CONTRACTOR

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the parties that the CONSULTANT is 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 CONSULTANT shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONSULTANT's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT, which policies of CONSULTANT shall not conflict with CITY, State, or United States policies, rules or regulations relating to the use of CONSULTANT's funds provided for herein. The CONSULTANT agrees that it is 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 CONSULTANT and the CITY and the CITY will not be liable for any obligation incurred by CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.



ARTICLE 10

AGREEMENT SUBJECT TO FUNDING

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

ARTICLE 11

UNCONTROLLABLE FORCES

11.1 Neither CITY nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing Party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a Party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming Party. It includes, but is not limited to: fire, flood, earthquakes, storms, lightning, epidemic, pandemic, acts of God, war, riot, civil disturbance, sabotage, and governmental actions.

11.2 Neither Party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming Party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming Party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other Party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 12

GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all claims or actions arising out of or related to this Agreement shall be in Broward County, Florida.

ARTICLE 13

SIGNATORY AUTHORITY

CONSULTANT shall provide CITY with copies of requisite documentation evidencing that the signatory for CONSULTANT has the authority to enter into this Agreement.

ARTICLE 14

DEFAULT OF CONTRACT & REMEDIES

14.1 **Damages.** CITY reserves the right to recover any ascertainable actual damages incurred as a result of the failure of CONSULTANT to perform in accordance with the requirements of this



Agreement, or for losses sustained by CITY resultant from CONSULTANT's failure to perform in accordance with the requirements of this Agreement.

14.2 **Correction of Work.** If, in the judgment of CITY, the services provided by CONSULTANT do not conform to the requirements of this Agreement, or if the services exhibit poor workmanship, CITY reserves the right to require that CONSULTANT 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 and the quality of services.

14.3 **Default of Contract.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by CONSULTANT for which CITY may terminate for cause:

14.3.1 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the Recreation and Cultural Arts Director relative thereto.

14.3.2 The failure by CONSULTANT to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by CONSULTANT, where such failure shall continue for a period of seven (7) days after written notice thereof by CITY to CONSULTANT; provided, however, that if the nature of CONSULTANT 's default is such that more than seven (7) days are reasonably required for its cure, then CONSULTANT shall not be deemed to be in default if CONSULTANT commences such cure within said seven (7) day period and thereafter diligently prosecutes such cure to completion.

14.3.3 The assignment and/or transfer of this Agreement or execution or attachment thereon by CONSULTANT or any other Party in a manner not expressly permitted hereunder.

14.3.4 The making by CONSULTANT of any general assignment or general arrangement for the benefit of creditors, or the filing by or against CONSULTANT of a petition to have CONSULTANT adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CONSULTANT, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of CONSULTANT's assets, or for CONSULTANT's interest in this Agreement, where possession is not restored to CONSULTANT within thirty (30) days; for attachment, execution or other judicial seizure of substantially all of CONSULTANT's assets, or for CONSULTANT's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

14.4 **Remedies in Default.** In case of default by CONSULTANT, CITY shall notify CONSULTANT, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct CONSULTANT to comply with all provisions of the Agreement. If the abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) days of when notice was sent by



CITY, CITY may declare a default of the Agreement and notify CONSULTANT of such declaration of default and terminate the Agreement.

14.4.1 Upon such declaration of default, all payments remaining due CONSULTANT at the time of default for services performed shall be due and payable to CONSULTANT.

14.4.2 Notwithstanding the other provisions in this Article, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by CONSULTANT fails to meet reasonable standards of the trade after CITY gives written notice to the CONSULTANT of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by CONSULTANT of such notice from CITY.

ARTICLE 15

BANKRUPTCY

It is agreed that if CONSULTANT is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

ARTICLE 16

DISPUTE RESOLUTION

In the event that a dispute, if any, arises between CITY and CONSULTANT relating to this Agreement, performance or compensation hereunder, CONSULTANT shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute. CONSULTANT expressly agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

ARTICLE 17

PUBLIC RECORDS

17.1 The City of Pembroke Pines is public agency subject to Chapter 119, Florida Statutes. The CONSULTANT shall comply with Florida's Public Records Law. Specifically, the CONSULTANT shall:

17.1.1 Keep and maintain public records required by the CITY to perform the service;

17.1.2 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, Florida Statutes, or as otherwise provided by law;



17.1.3 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 Agreement term and, following completion of the Agreement, CONSULTANT shall destroy all copies of such confidential and exempt records remaining in its possession after the CONSULTANT transfers the records in its possession to the CITY; and

17.1.4 Upon completion of the Agreement, CONSULTANT shall transfer to the CITY, at no cost to the CITY, all public records in CONSULTANT's possession. All records stored electronically by the CONSULTANT 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.

17.2 The failure of CONSULTANT to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which, the CITY may terminate the Agreement in accordance with the terms herein.

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
601 CITY CENTER WAY, 4th FLOOR
PEMBROKE PINES, FL 33025
(954) 450-1050
mgraham@ppines.com**

**ARTICLE 18
SCRUTINIZED COMPANIES**

18.1 CONSULTANT, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

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



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

18.1.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

18.1.2.2 Is engaged in business operations in Syria.

ARTICLE 19

EMPLOYMENT ELIGIBILITY

19.1 **E-Verify.** CONSULTANT 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.

19.1.1 Definitions for this Section.

19.1.1.1 “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.

19.1.1.2 “Contractor” includes, but is not limited to, a vendor or consultant.

19.1.1.3 “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.

19.1.1.4 “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.

19.2 **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:

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

19.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. 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 Pembroke Pines; and



19.2.3 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.

ARTICLE 20

MISCELLANEOUS

20.1 **Ownership of Documents.** Reports, surveys, plans, studies and other data provided in connection with this Agreement are and shall remain the property of CITY whether or not the project for which they are made is completed. CITY hereby agrees to use CONSULTANT's work product for its intended purposes.

20.2 **Legal Representation.** It is acknowledged that each Party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the Party preparing same shall not apply herein due to the joint contributions of both Parties.

20.3 **Records.** CONSULTANT shall keep such records 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 CONSULTANT 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 ten (10) 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.

20.4 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONSULTANT shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.



20.5 **No Contingent Fees.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT 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, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

20.6 **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, CONSULTANT 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, 4th 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

CONSULTANT **Alfredo Sanchez, Partner**
Bermello, Ajamil and Partners, Inc.
2601 South Bayshore Drive, Suite #1000
Miami, FL 33133
E-mail: asanchez@bermelloajamil.com
Telephone No: (305) 860-3711

20.7 **Binding Authority.** Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all provisions contained in this Agreement.

20.8 **Headings.** Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.



20.9 **Exhibits.** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

20.10 **Severability.** If any provision of this Agreement or 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.

20.11 **Extent of Agreement; Conflicts.** This Agreement represents the entire and integrated agreement between the CITY and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of any conflict or ambiguity by and between this Agreement, **Exhibit "A"**, and **Exhibit "B"**, this Agreement shall govern and prevail followed by **Exhibit "A"**, and **Exhibit "B"**.

20.12 **Attorneys' Fees.** In the event that either Party brings suit for enforcement of this Agreement, each Party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

20.13 **Counterparts and Execution.** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other Party through facsimile transmission, email, or other electronic delivery.

20.14 **No Third Party Beneficiaries.** The services to be performed by the CONSULTANT are intended solely for the benefit of the CITY. No person or entity not a signatory to this Agreement shall be entitled to rely on the CONSULTANT's performance of its services hereunder, and no right to assert a claim against the CONSULTANT by assignment of indemnity rights or otherwise shall accrue to a third Party as a result of this Agreement or the performance of the CONSULTANT's services hereunder.

20.14 **A DESIGN PROFESSIONAL WHO IS AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE OCURING WITHIN THE COURSE AND SCOPE OF THIS AGREEMENT, PURSUANT TO §558.0035, FLORIDA STATUTES, AS MAY BE AMENDED FROM TIME TO TIME.**

20.15 **Domestic Partnership.** CONSULTANT certifies that it is aware of the requirements of Section 35.39 of the CITY's Code of Ordinances and certifies that CONSULTANT currently complies with the requirements of Section 35.39 of the CITY's Code of Ordinances.



20.15.1 Except where federal or state law mandates to the contrary, a contractor awarded a contract pursuant to a competitive solicitation shall provide benefits to Domestic Partners and spouses of its employees, irrespective of gender, on the same basis as it provides benefits to employees' spouses in traditional marriages.

20.15.2 CONSULTANT shall provide the City Manager and his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this Article, and upon request shall provide evidence that the CONSULTANT is in compliance with the provisions of this Article upon the renewal of this AGREEMENT or when the City Manager or his/her designee receives a complaint or has reason to believe CONSULTANT may not be in compliance with the provisions of this Article. Records shall include but not be limited to providing the City Manager and his/her designee with certified copies of CONSULTANT's records pertaining to its benefits policies and its employment policies and practices.

20.15.3 CONSULTANT must conspicuously make available to all employees and applicants for employment the following statement:

"During the performance of a contract with the City of Pembroke Pines, Florida, the CONSULTANT will provide Equal Benefits to its employees with spouses, as defined by Section 35.39 of the City of Pembroke Pines Code of Ordinances, and its employees with Domestic Partners and all Married Couples".

If has questions regarding the application of Section 35.39 of the City of Pembroke Pines Code of Ordinances to CONSULTANT's duties pursuant to this Agreement, contact Human Resources at (954) 954-392-292 or drotstein@ppines.com.

20.15.4 By executing this Agreement, CONSULTANT certifies that it agrees to comply with the above and Section 35.39 of the City of Pembroke Pines Code of Ordinances, as may be amended from time to time.



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

CITY:

CITY OF PEMBROKE PINES, FLORIDA

ATTEST:

By: _____

MARLENE D. GRAHAM, CITY CLERK

MAYOR FRANK C. ORTIS

By: _____

CHARLES F. DODGE, CITY MANAGER

APPROVED AS TO FORM:

Name: _____

OFFICE OF THE CITY ATTORNEY

CONSULTANT:

BERMELLO, AJAMIL AND PARTNERS, INC.

Signed By: _____

Name: _____ Randy Hollingworth

Title: _____ Partner, Vice President