

## **CITY OF NORTH MIAMI CONSULTING AGREEMENT**

**THIS CONSULTING AGREEMENT** (“Agreement”) is entered into this 3rd day of June, 2019, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125<sup>th</sup> Street, North Miami, Florida (the “City”), and **E.L. Waters and Company, LLC** (the “Consultant”. The City and Consultant shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”).

### **RECITALS**

**WHEREAS**, E.L. Waters and Company, LLC, will provide a multi-disciplinary team of professionals to address the needs and issued of the City; and

**WHEREAS**, the City desires to engage the Consultant to provide a market analyses which will assess the current competitive strengths and weaknesses of the City relative to its corporate decision to promote meaningful development of the subject property; and

**WHEREAS**, The Consultant has developed a standard model for implementing consulting engagements, to include; strength and weakness assessments, scope and method of market assessment of feasibility, assessment of specific land-use/development policy and change affecting site marketing and feasibility, provide comparative local entertainment/service/retail analyses (mixed-use) recommendations, and site development concepts; and

**WHEREAS**, the Consultant will provide best use market-based assessment and development strategy for a 9-acre City-owned property in North Miami, and under-utilized site.

**NOW, THEREFORE**, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

### **ARTICLE 1 - RECITALS**

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

### **ARTICLE 2 – CONSULTING SERVICES**

2.1 Subject to the terms and conditions of this Agreement, the City hereby retains Consultant as a consultant and technical advisor to perform the consulting services specifically set out in Exhibit “A” attached to this Agreement and made a part hereof (hereafter referred to as the “Services”), as said Exhibit may be amended in writing from time to time, and Consultant agrees, subject to the terms and conditions of this Agreement, render such Services during the term of this Agreement.

### **ARTICLE 3 – TIME FOR PERFORMANCE**

3.1 Subject to authorized adjustments, the time for Performance shall not exceed a period of six (6) months from the effective date of this Agreement. Consultant agrees that the performance

of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed Time for Performance. Failure to achieve timely final completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. This Agreement shall remain in full force and effect until the completion of Services by the Consultant, and the acceptance of Services by the City Manager.

3.2 Minor adjustments to the Time for Performance which are approved in writing by the City Manager in advance, shall not constitute non-performance by Consultant. Any impact on the time for performance shall be determined and the time schedule for completion of Services will be modified accordingly.

3.3 When, in the opinion of the City Manager, reasonable grounds for uncertainty exist with respect to the Consultant's ability to perform Services or any portion thereof, the City Manager may request that the Consultant, within a reasonable time frame set forth in the City Manager's request, provide adequate assurances to the City in writing, of Consultant's ability to perform in accordance with terms of this Agreement. In the event that the Consultant fails to provide the City Manager the requested assurances within the prescribed time frame, the City Manager may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

3.4 Notwithstanding the provisions of this Article 3, this Agreement may be terminated by the City Manager at any time, with or without cause.

**ARTICLE 4 - COMPENSATION**

4.1 Consultant shall be paid the amount not to exceed Nineteen Thousand Five Hundred Dollars (\$19,500.00) as full compensation for Services.

4.2 Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Consultant.

4.3 Payments shall be made to the Consultant as follows:

- a. Payment 1- 25%; Mobilization; Task M1 -Strength and Weakness Assessment
- b. Payment 2- 25%; Task 2- Scope and Method of Market Assessment of Feasibility
- c. Payment 3- 25%; Task 3- Assess Specific Land-Use/Development Policy and Change Affecting Site Marketing
- d. Final Payment- Task 4- Comparative Local Entertainment/Service/Retail Analysis (Mixed-Use); Recommendations; Site Development Concept and Final Report.

**ARTICLE 5 - SCOPE OF SERVICES**

5.1 Consultant agrees to perform Services for the benefit of the City under the special terms, schedules, and conditions set forth in the Agreement. Consultant shall perform Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

5.2 Consultant agrees that Services shall include all of the necessary labor, supervision, materials, supplies, furnishings, facilities, and equipment including those things reasonably inferable from the Agreement needed to successfully complete and deliver the requested Services.

5.3 One or more changes to the Services within the general scope of this Agreement may be ordered by Change Order. A Change Order shall mean a written order to the Consultant executed by the Parties after execution of this Agreement. The Consultant shall proceed with any such changes, and they shall be accomplished in strict accordance with the terms and conditions described in this Agreement.

5.4 Consultant represents and warrants to the City that: (i) Consultant possesses all qualifications, licenses and expertise required in the provision of Services, with personnel fully licensed by the State of Florida; (ii) Consultant is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner as described in the Agreement for the budgeted amounts, rates and schedules; and (v) the person executing this Agreement on behalf of Consultant is duly authorized to execute same and fully bind Consultant as a Party to this Agreement.

**ARTICLE 6 - CITY'S TERMINATION RIGHTS**

6.1 The City Manager shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Consultant. In such event, the City shall pay Consultant compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Consultant for any additional compensation, or for any consequential or incidental damages.

**ARTICLE 7 - INDEPENDENT CONTRACTOR**

7.1 Consultant, its employees and agents shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded to classified or unclassified employees. The Consultant shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the City.

**ARTICLE 8 - DEFAULT**

8.1 In the event the Consultant fails to comply with any provision of this Agreement, the City Manager may declare the Consultant in default by written notification. The City Manager shall have the right to terminate this Agreement if the Consultant fails to cure the default within ten (10) days after receiving notice of default from the City Manager. If the Consultant fails to cure the default, the Consultant will only be compensated for completed Services. In the event partial payment has been made for such Services not completed, the Consultant shall return such sums due to the City within ten (10) days after notice that such sums are due. The Consultant understands and agrees that termination of this Agreement under this section shall not release Consultant from any obligations accruing prior to the effective date of termination.

**ARTICLE 9 - CONSULTANT'S ERRORS AND OMISSIONS**

9.1 Consultant shall be responsible for technically deficient designs, reports, or studies due to Consultant's errors and omissions, and shall promptly correct or replace all such deficient work without cost to City. The Consultant shall also be responsible for all damages resulting from such errors and omissions. Payment in full by the City for Services performed does not constitute a waiver of this representation.

**ARTICLE 10 - INDEMNIFICATION**

10.1 Consultant agrees to indemnify, defend, save and hold harmless the City its officers, agents and employees, from and against any and all claims, liabilities, suits, losses, claims, fines, and/or causes of action that may be brought against the City, its officers, agents and employees, on account of any negligent act or omission of Consultant, its agents, servants, or employees in the performance of Services under this Agreement and resulting in personal injury, loss of life or damage to property sustained by any person or entity, to the extent caused by Consultant's negligence within the scope of this Agreement, including all costs, reasonable attorney's fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment, or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the City, its officer, agents, employees or Consultants, which claims are lodged by any person, firm, or corporation.

10.2 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes (2016). Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

**ARTICLE 11 - INSURANCE**

Consultant shall maintain at its sole expense liability insurance covering the performance of the Services by Consultant. Such insurance coverage shall have limits and terms reasonably satisfactory to City, and City may require Consultant to provide a certificate of insurance evidencing such coverage.

**ARTICLE 12 - OWNERSHIP OF DOCUMENTS**

12.1 All documents developed by Consultant under this Agreement shall be delivered to the City Manager by the Consultant upon completion of the Services and shall become property of the City, without restriction or limitation of its use. The Consultant agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes (2016).

**ARTICLE 13 - PUBLIC RECORDS**

13.1 Consultant understands that the City is a public agency under Florida Law and that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions, limitations and exemptions of Chapter 119, Florida Statutes, and agrees to allow access as applicable by the City and the public to all documents subject to disclosure under applicable law. Consultant's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement, and any

extensions hereof, by the City Manager. As required by Section 119.0701(2)(a), Florida Statutes (2016), for this Agreement as a contract for Services:

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-893-6511, EXTENSION 12244, [FMEDRANDA@NORTHMIAMIFL.GOV](mailto:FMEDRANDA@NORTHMIAMIFL.GOV), CITY OF NORTH MIAMI, OFFICE OF THE CITY MANAGER, 776 NE 125TH STREET, NORTH MIAMI, FLORIDA 33161.**

13.2 Additionally, pursuant to Section 119.0701(2)(b), Florida Statutes (2016), Consultant under this Agreement, and any extension hereof, must comply with Florida public record laws, and as a Consultant with the City as a public agency, must:

13.2.1 Keep and maintain public records required by the public agency to perform the Service.

13.2.2 Upon request from the public agency's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.

13.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the public agency.

13.2.4 Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of the Consultant or keep and maintain public records required by the public agency to perform the service. If the Consultant transfers all public records to the public agency upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

13.3 Consultant and City understand that Section 119.0701(3), Florida Statutes (2016), further requires that:

13.3.1 A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess

the requested records, the public agency shall immediately notify the Consultant of the request, and the Consultant must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

13.3.2 If a Consultant does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

13.3.3 A Consultant who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

13.4 Consultant and City understand that Section 119.0701(4), Florida Statutes (2016), provides that:

13.4.1 If a civil action is filed against a Consultant to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Consultant the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the Consultant unlawfully refused to comply with the public records request within a reasonable time; and

2. At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Consultant has not complied with the request, to the public agency and to the Consultant.

13.4.2 A notice complies with subparagraph 2 above if it is sent to the public agency's custodian of public records and to the Consultant at the Consultant's address listed on its contract with the public agency or to the Consultant's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

13.4.3 A Consultant who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

13.5 It is further understood by and between the Parties that any information, writings, tapes, reports or any other matter whatsoever which is given by the City to the Consultant pursuant to this Agreement shall at all times remain the property of the City and shall not be used by the Consultant for any other purposes whatsoever without the written consent of the City Manager.

13.6 In the event the Agreement is terminated, Consultant agrees to provide the City Manager all such documents within ten (10) days from the date the Agreement is terminated.

#### **ARTICLE 14 - NOTICES**

14.1 All notices, demands, correspondence and other communications between the Parties shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or

certified mail, postage prepaid, return receipt requested, addressed as follows or as the same may be changed from time to time:

For Consultant: Elbert L. Waters, J.D., President  
8264 N.W. 195<sup>th</sup> Terrace  
Miami, FL 33015

For the City: City of North Miami  
Attn: City Manager  
776 N.E.125<sup>th</sup> Street  
North Miami, Florida 33161

With copy to: City of North Miami  
Attn: City Attorney  
776 N.E.125<sup>th</sup> Street  
North Miami, Florida 33161

14.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

14.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice

**ARTICLE 15 - CONFLICT OF INTEREST**

15.1 Consultant represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

15.2 Consultant covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with Consultants or vendors providing professional services on projects assigned to the Consultant, except as fully disclosed and approved by the City Manager. Consultant further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

**ARTICLE 16 - MISCELLANEOUS PROVISIONS**

16.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

16.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

16.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

16.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

16.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

16.6 The City Manager reserves the right to audit the records of the Consultant covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

16.7 The Consultant agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

16.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City Manager.

16.9 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

16.10 The professional Services to be provided by Consultant pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

16.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

16.12 The Consultant agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

16.13 All other terms, conditions and requirements contained in the Agreement, which have not been modified by this Agreement, shall remain in full force and effect.

16.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees,

costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

16.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:  
Corporate Secretary or Witness:

Elbert L. Waters, J.D., President  
"Consultant":

By: 

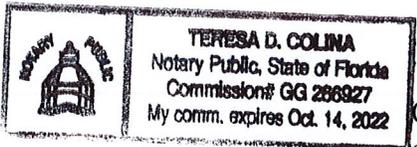
By: 

Print Name: Yazmin Rodriguez

Print Name: ELBERT L. WATERS

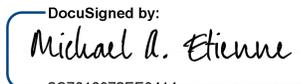
Date: 05/22/19

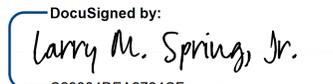
Date: 05-22-2019



ATTEST:

City of North Miami, a Florida municipal corporation,  
"City":

By:   
2C7010672EE8414...  
Michael A. Etienne, Esq.  
City Clerk  
5/24/2019

By:   
C23984DEA2724CF...  
Larry M. Spring, Jr., CPA  
City Manager

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By:   
8AF8443B714D491...  
Jeff P. H. Cazeau, Esq.  
City Attorney