

TERM AGREEMENT FOR GENERAL PLANNING CONSULTING SERVICES

THIS IS AN AGREEMENT ("Agreement"), dated the 13th day of December, 2022, between:

THE CITY OF WILTON MANORS, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "CITY,"

and

CALVIN, GIORDANO & ASSOCIATES, INC. a Florida Corporation, hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, on May 11, 2022, the CITY issued a Request for Proposals ("RFP") 2022-05 for General Planning Consulting Services ("Services"); and

WHEREAS, on June 2, 2022, the CITY issued Addendum No. 1 to the RFP (the RFP and Addendum No. 1 are collectively referred to hereinafter as the "RFP"); and

WHEREAS, CONSULTANT, in compliance with the bidding requirements announced by the CITY, submitted a response to the RFP on June 16, 2022 ("Response"); and

WHEREAS, on October 24, 2022, in accordance with the bidding requirements announced in the RFP, the CITY's Evaluation Committee ranked CONSULTANT as having submitted one of the three (3) bids that were the lowest, most responsive, and responsible bids and in the best interests of the CITY, and thereafter negotiated to obtain the best and final offer, and recommended that the CITY enter into this Agreement with CONSULTANT; and

WHEREAS, on December 13, 2022, the CITY Commission designated CONTRACTOR as having submitted the bid that was one of the lowest, most responsive and responsible to the CITY and authorized the execution of this Agreement; and,

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

ARTICLE 1 **SERVICES AND RESPONSIBILITIES**

1.1 CONSULTANT hereby agrees to perform the Services for the CITY and comply with the requirements as more specifically set forth in the RFP and the CONSULTANT'S Response. The RFP and Response are incorporated herein by this reference. To the extent of any conflict, the provisions of this Agreement shall control over the RFP and the Response and the RFP shall control over the Response. Notwithstanding anything contained herein or in the RFP to the contrary, the Services shall not include landscape architecture and surveying and mapping.

1.2 CONSULTANT shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, and all work performed under this Agreement shall be done in a professional manner.

1.3 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 resources to perform the Services to be provided by CONSULTANT pursuant to the terms of this Agreement.

1.4 CONSULTANT assumes professional and technical responsibility for performance of the Services to be provided hereunder in accordance with recognized professional standards. If within one year following completion of the 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.

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

1.6 Subject to the terms and conditions of this Agreement, each Service shall be described in a separate written Task Order executed by the CITY and CONSULTANT that references this Agreement. Each Task Order shall, at a minimum, include a description of the Services, a timeline for the delivery of the Services and a not to exceed amount of compensation to be paid for the Services. Unless specifically provided otherwise in a Task Order, each Task Order, including any additional obligations of CITY and CONSULTANT set forth in the Task Order, shall be deemed to be incorporated fully into this Agreement and shall be performed subject to the terms of this Agreement and any additional provisions set forth in that Task Order. In the event of any conflict between a Task Order and the terms of this Agreement, the terms of this Agreement shall control.

ARTICLE 2 TIME FOR PERFORMANCE

CONSULTANT shall perform the Services in a timely manner in accordance with the RFP, Response and Task Order.

ARTICLE 3 COMPENSATION AND METHOD OF PAYMENT

3.1 CITY agrees to compensate CONSULTANT for performing the Services, as amended or extended, in accordance with the hourly rates set forth on Exhibit A which is attached hereto and incorporated herein. Notwithstanding the foregoing, each Task Order shall set forth a not to exceed amount of compensation to be paid for the Services.

3.2 Method of Billing and Payment.

3.2.1 CONSULTANT shall invoice CITY monthly. The invoice shall include, but not be limited to, the time period covered, a description of the services performed, the total amount due, and any other information reasonably required by CITY. All invoices for services rendered by

CONSULTANT during any calendar month shall be delivered to the CITY no later than the twentieth day of the succeeding.

3.2.2 CITY will make its best efforts to pay CONSULTANT within thirty (30) days of receipt of a proper and timely invoice.

3.2.3 Payment will be made to CONSULTANT at:

CALVIN, GIORDANO & ASSOCIATES, INC.
1800 Eller Drive
Suite 600
Fort Lauderdale, FL 33316

ARTICLE 4 CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK

CITY may request changes that would increase, decrease or otherwise modify the Scope of Services set forth in the RFP and to be provided under this Agreement. 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 and with equality and dignity prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work. In no event will the CONSULTANT be compensated for any work which has not been described in a separate written agreement executed by the parties hereto.

ARTICLE 5 MISCELLANEOUS

5.1 Ownership of Documents. All finished or unfinished documents, data, reports, surveys, plans, studies and other data provided in connection with this Agreement are and shall remain the property of CITY.

5.2 Term and Termination.

5.2.1 This Agreement shall take effect as of the date of execution as shown herein below and continue for two (2) years ("Term"). The City will have the option to renew the Term for up to three (3) one (1) year renewal terms, for a maximum Term of five (5) years.

5.2.2 This Agreement may be terminated by either party for convenience, upon thirty (30) days written notice in which event the CONSULTANT shall be paid its compensation for services performed to the termination date. In the event that the CONSULTANT abandons this Agreement or causes it to be terminated due to a breach of this Agreement, it shall indemnify the CITY against any loss pertaining to the termination. In the event CITY terminates this Agreement due to CONSULTANT'S default, or in the event CONSULTANT abandons this Agreement, CONSULTANT shall be liable to CITY for all damages. In the event CITY terminates this Agreement due to CONSULTANT'S default, or in the event that CONSULTANT abandons this Agreement, CITY shall have no further obligation to pay any compensation to CONSULTANT. 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.

5.3 Records. CONSULTANT shall keep books and records and require any and all subcontractors to keep books and records as may be necessary in order to record complete and correct entries for 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 three (3) 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 expenses based upon such entries.

5.4 Indemnification.

5.4.1 CONSULTANT shall indemnify and save harmless and defend the CITY, its trustees, elected and appointed officials, agents, servants and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature sustained by the CITY or any third party arising out of, or by reason of, or resulting from acts, error, omission, or negligent act of CONSULTANT, its agents, servants or employees in the performance under this Agreement, and for all costs, losses and expenses, including but not limited to, damages to persons or third party property, judgments and attorneys' fees arising out of or in connection with the performance by CONSULTANT pursuant to this Agreement.

5.4.2 CONSULTANT shall indemnify and save harmless and defend the CITY for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right due to services furnished pursuant to this Agreement. CONSULTANT will defend and/or settle at its own expense any action brought against the CITY to the extent that it is based on a claim that products or services furnished to CITY by CONSULTANT pursuant to this Agreement, or if any portion of the services or goods furnished in the performance of the service becomes unusable as a result of any such infringement or claim.

5.5 Insurance.

5.5.1 The CONSULTANT shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and as set forth in Section 5.11 of the RFP (except as modified by this Agreement) and such insurance has been approved by the City Manager of the CITY nor shall the CONSULTANT allow any subcontractor or sub-consultant to commence work on its sub-contract without prior written consent of the CITY and until all similar such insurance required of the subcontractor or sub-consultant has been obtained and approved.

5.5.2 Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the City Clerk prior to the commencement of the Services. These Certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty days (30) prior written notice has been given to the CITY, or such other notice as is required in the insurance policy. Policies shall be issued by companies authorized to do business under the laws of the State of Florida.

5.5.3 Policyholders and Financial Ratings must be no less than "B+," in accordance with the latest edition of A.M. Best's Insurance Guide.

5.5.4 Insurance shall be in force until all work required to be performed under the terms of this Agreement is 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, then in that event, the CONSULTANT shall furnish, at least thirty (30) 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 this Agreement and extension thereunder is in effect. The CONSULTANT shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.

5.5.5 REQUIRED INSURANCE. See section 5.11 of the RFP.

The CONSULTANT shall hold the CITY, their agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of the operations to complete this Agreement and name the CITY as an additional insured under their policy.

The CITY reserves the right to require any other insurance coverage it deems necessary depending upon the exposures.

5.6 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, H.U.D., or United States policies, rules or regulations relating to the use of CONSULTANT's Funds provided for herein. The CONSULTANT agree that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has make 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.

5.7 Assignments; Amendments.

5.7.1 This Agreement, or any interest 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 in favor of the CITY and its successors and assigns.

5.7.2 It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

5.8 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 the 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, the CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

5.9 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, the CONSULTANT and the CITY designate the following as the respective places for giving of notice:

CITY: City Manager
City of Wilton Manors
2020 Wilton Drive
Wilton Manors, Florida 33305

COPY TO: City Attorney
Kerry L. Ezrol, Esquire
Goren, Chero, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308

CONSULTANT: Calvin, Giordano & Associates, Inc.
1800 Eller Drive
Suite 600
Fort Lauderdale, Florida 33316

5.10 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.

5.11 Legal Representation. It is acknowledged that each party was represented by counsel in the preparation of and contributed equally to the terms and conditions 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.

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

5.13 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.

5.14 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.

5.15 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

5.16 Extent of Agreement. 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.

5.17 Execution. The Agreement may be executed 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 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.

IN WITNESS OF THE FOREGOING, the parties have hereunto set their hands and seals on the dates written below.

ATTEST:

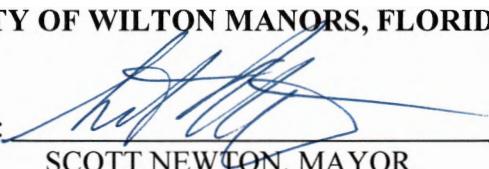

FAITH LOMBARDO, CITY CLERK

APPROVED AS TO FORM

/s/ *Kerry L. Ezrol*
KERRY L. EZROL
CITY ATTORNEY

CITY OF WILTON MANORS, FLORIDA

BY:


SCOTT NEWTON, MAYOR

DATE

12/13/22

WITNESSED BY:



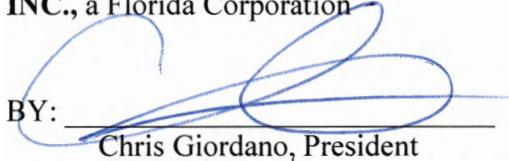
Jessica V. Koehler
Print Name



James P. Hickey
Print Name

CONSULTANT:

**CALVIN, GIORDANO & ASSOCIATES,
INC., a Florida Corporation**



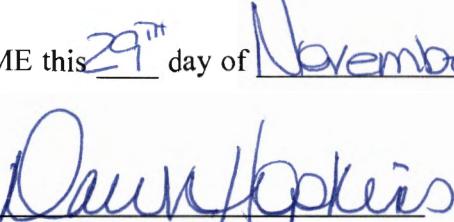
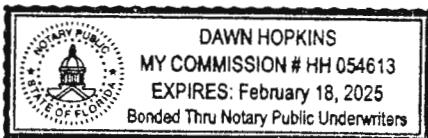
BY: Chris Giordano, President

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 29th day of November, 2022 by CHRIS GIORDANO, as President of CALVIN, GIORDANO & ASSOCIATES, INC., a Florida Corporation, on behalf of the corporation, who is personally known to me or has produced _____ as identification.

SWORN TO AND SUBSCRIBED BEFORE ME this 29th day of November

2022.



Dawn Hopkins
NOTARY PUBLIC

02/18/25
My Commission Expires:

EXHIBIT "A"

Position	Best & Final Fees	
	Calvin, Giordano and Associates Inc.*	
Principal Contract Admin	\$	198.00
Principal Landscape Architect	\$	172.00
Senior Project Manager	\$	215.00
Project Manager	\$	150.00
Senior Engineer	\$	198.00
Project Engineer	\$	135.00
Associate Engineer	\$	104.00
Traffic Engineer	\$	198.00
Traffic Analyst	\$	125.00
Project Landscape Architect	\$	125.00
Planner	\$	109.00
Senior Designer	\$	125.00
Designer	\$	115.00
Senior Technician	\$	104.00
GIS Technician	\$	104.00
Senior Construction Specialist	\$	172.00
CADD Technician	\$	99.00
Clerical/Intern	\$	78.00
Engineering Intern	\$	104.00
Zoning Plans Reviewer	\$	109.00
Principal Surveyor	\$	172.00
Surveying	\$	140.00
Principal Planner	\$	182.00
Urban Designer	\$	125.00

*multiple subcontractors with different pricing for position