CONTINUING CONTRACT FOR

PROFESSIONAL SERVICES

THIS AGREEMENT for PROFESSIONAL SERVICES (hereinafter referred to as "Agreement" or "Contract") is made and entered into this 16 day of September, 2024 by and between the City of Fort Pierce, Florida, a political subdivision of the State of Florida (hereinafter referred to as the "City") and **Cape Design Engineering, Inc.**, whose principal address is **2725 Center Place, Melbourne, FL 32940** (hereinafter referred to as "Consultant").

WHEREAS, pursuant to RFQ No. 2024-005 and Section 287.055, Florida Statutes, the City solicited proposals for non-exclusive continuing contracts to perform professional services; and

WHEREAS, the Consultant is qualified pursuant to Section 287.055, Florida Statutes, to provide services within the scope of practice of **professional engineering services** [insert one of the following: professional architecture, engineering, landscape architecture, or registered surveyor and mapper services] under a continuing contract; and

WHEREAS, at the regularly scheduled meeting on February 20, 2024, the City Commission of the City of Fort Pierce approved the negotiations of a continuing contract and authorized the execution of an agreement for Continuing Professional Services between the City and Consultant; and

WHEREAS, the Consultant is willing and able to render professional services for various projects on an as-needed basis and for the compensation and on the terms hereinafter set forth.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, agreements, terms, and condition contained herein, do agree as follows:

1. SERVICES

The Consultant's responsibility under this Agreement is to provide professional services within the scope of practice of **professional engineering services** [insert one of the following: professional architecture, engineering, landscape architecture, or registered surveyor and mapper services] (hereinafter "professional services").

Consultant represents to the CITY that the professional services to be performed under this Agreement shall be in accordance with the highest standards accepted and established practices and procedures recognized as such in Consultant's trade in general and that Consultant shall conform to this Agreement.

Consultant shall be responsible for the technical accuracy of its professional services and documents resulting therefrom, and City shall not be responsible for discovering deficiencies therein. Consultant shall correct any such deficiencies without

additional compensation or cost to City, except to the extent any such deficiency is directly attributable to deficiencies in City-furnished information.

Consultant shall be responsible for the completeness and accuracy of the work prepared or compiled under Consultant's obligation for each project and shall correct, at Consultant's expense, all errors or omissions therein which may be disclosed. The cost necessary to correct those errors attributable to Consultant and any damage incurred by City as a result of additional costs to City caused by such errors shall be chargeable to Consultant and shall not be considered a cost of the Work. The fact that City has reviewed or approved Consultant's work shall in no way relieve Consultant of any of its responsibilities.

2. TERM

The term of this Agreement shall be for a period of one (1) year beginning on the date first written above, with three (3) one (1) year renewal options available.

3. TECHNICAL AND PROFESSIONAL SERVICES

It shall be the responsibility of the Consultant to work with the City to provide professional services related projects for City. Each project will require a separate Specific Authorization using a form agreed to by both parties. The Specific Authorization shall set out the scope of work, time of performance, compensation schedule for each project, and any other necessary terms.

4. PERIOD OF SERVICE; SPECIFIC AUTHORIZATIONS

A. The Consultant will be available to begin work promptly after receipt of a fully executed copy of this Agreement. It is agreed that this Agreement shall be considered as a continuing contract and work will be initiated on an assignment-by-assignment basis through the execution of a Specific Authorization. The City reserves the right to select the respective Consultant who the City believes is in its best interest to perform the specified work.

B. If the Consultant's professional services called for under this Agreement are delayed for reasons beyond the Consultant's control, the time of performance shall be adjusted appropriately through a Change Order, and only upon agreement by the City to the adjustment and that the reasons were beyond the Consultant's control, as outlined in Paragraph 17, below.

C. Specific work assignments shall be set forth in individual Specific Authorizations, which will be issued to the Consultant. All Specific Authorizations shall be executed on behalf of the City in accordance with the City Purchasing Policy. The Work Assignments shall describe the scope of the work to be performed, cost to perform the work and shall set forth the schedule for completion of the work.

D. The City shall provide all criteria and full information as to City's requirements for the assignment and designate in writing a person with authority to act on City's behalf on all matters concerning this assignment.

5. TIME OF PERFORMANCE

Each project performed pursuant to this Agreement shall be performed in a timely manner without unreasonable delay within the time period identified in the Specific Authorization.

If the work is not fully completed according to the terms of the Agreement and within the time limits stipulated in the individual Specific Authorization, it is hereby acknowledged that the City will suffer damages which are not capable of ascertainment or calculation, and therefore the Consultant shall pay the City liquidated damages, a sum of which will be outlined in each individual Specific Authorization, per day for each day following the required completion date, until the date upon which actual completion occurs.

6. COMPENSATION

The Consultant shall be compensated for all services satisfactorily completed in accordance with the terms and conditions of this Agreement and each work order. All invoices presented to the City for payment shall be on a Request for Payment form approved by the City. Payment for services performed will be processed within forty-five (45) days of receipt and approval of a proper invoice and in accordance with the applicable terms of the Local Government Prompt Payment Act, Sections 218.70-80, Florida Statutes.

7. GENERAL CONDITIONS

A. It is understood and agreed that the Consultant's services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, a supplemental agreement may be negotiated between the City and the Consultant describing the services desired and providing a basis for compensation to the Consultant.

B. Upon the Consultant's written request, the City will furnish or cause to be furnished such reports, studies, instruments, documents, and other information as the Consultant and City mutually deem necessary; and the Consultant may rely upon same in performing the services required under this Agreement.

8. TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement by Consultant shall act as the execution of as truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete and current at the time of execution of the Agreement. The original Agreement rates and any additions thereto shall be adjusted to exclude any significant sums by which City determines the Agreement rate(s) was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such rate adjustments shall be made within one year following the end of this Agreement.

9. DEFAULT/TERMINATION

A. FOR CAUSE

If either party fails to fulfill its obligations under this Agreement in a timely and proper manner, the other party shall have the right to terminate this Agreement by giving written notice of any deficiency and by allowing the party in default seven (7) calendar days to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the seven (7) calendar day time period.

With regard to the Consultant, the following items shall be considered a default under this Agreement:

1) If the Consultant should be adjudged bankrupt, or if he, or it, should make a general assignment for the benefit of his, or its, creditors, or if a receiver should be appointed on account of his, or its, insolvency.

2) If the Consultant should persistently or repeatedly refuse or fail, except in cases for which an extension of time is provided, to provide the services contemplated by this Agreement.

3) If the Consultant disregards laws, ordinances, or the instructions of the Project Manager or otherwise is guilty of a substantial violation of the provisions of this Agreement.

In the event of termination, the Consultant shall only be entitled to receive payment for work satisfactorily completed prior to the termination date.

B. WITHOUT CAUSE

Either party may terminate the Agreement without cause at any time upon thirty (30) calendar days prior written notice to the other party. In the event of termination, the

City shall compensate the Consultant for all authorized work satisfactorily performed through the termination date.

10. SUBCONSULTANTS AND SUBCONTRACTORS

In the event the Consultant requires the services of any subconsultant, subcontractor or professional associate in connection with the services to be provided under this Agreement, Consultant shall secure the written approval of City Project Manager before engaging such subconsultant, subcontractor, or professional associate.

If a subconsultant fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subconsultant to complete the work in a timely fashion, the Consultant shall promptly do so, subject to acceptance of the new subconsultant by the City. The substitution of a subcontractor shall not be adequate cause to excuse a delay in the performance any portion of this Agreement as set forth in the Scope of Work.

The Consultant, its subconsultants, agents, servants, or employees agree to be bound by the Terms and Conditions of this Agreement and in the Consultant's agreement with the subconsultant for work to be performed for the City, the Consultant must incorporate the terms of this Agreement.

11. FEDERAL AND STATE TAX

The City is exempt from payment of Florida State Sales and Use Taxes.

The City will sign an exemption certificate submitted by the Consultant. The Consultant shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Consultant authorized to use the City's Tax Exemption Number in securing such materials.

The Consultant shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

12. INSURANCE

CONSULTANT shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to the City, the types and amounts of insurance conforming to the minimum requirements set forth herein.

A. EVIDENCE OF INSURANCE

Consultant shall not commence work until the required insurance is in force and evidence of insurance acceptable to the City has been provided to, and approved by, the City. The City at all times reserves the right to request such additional

documentation and evidence of insurance as in its sole discretion it may require and the CONSULTANT hereby agrees to provide same.

With respect to the Workers' Compensation/Employer's Liability Insurance, Professional Liability and Business Auto Liability Insurance, an appropriate Certificate of Insurance (which identifies the project), and a copy of the actual notice of cancellation endorsement(s) as issued on the policy(ies), signed by an authorized representative of the insurer(s) shall be satisfactory evidence of insurance. With respect to the Commercial General Liability, an appropriate Certificate of Insurance (which identifies the project) signed by an authorized representative of the insurer, and copies of the actual additional insured and notice of cancellation endorsements as issued on the policy(ies), shall be satisfactory evidence of such insurance.

If the insurance policies expire or terminate during the term of this Agreement Consultant shall provide City with renewal or replacement evidence of the insurance, including endorsements, no less than fifteen (15) days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.

Notwithstanding the prior submission of a Certificate of Insurance, copies of endorsements, or other evidence initially acceptable to City, if requested by City, Consultant shall, within thirty (30) days after receipt of a written request from City, provide City with a certified copy or certified copies of the policy or policies providing the coverage required. Consultant may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to the insurance required.

B. DESCRIPTION OF REQUIRED INSURANCE

Consultant shall be responsible for all damage to person and/or property resulting from its negligent acts, reckless or intentional misconduct, errors or omissions or those of its subcontractors, agents or employees in connection with such services and shall be responsible for all parts of its work, both temporary and permanent.

1) Workers' Compensation/Employer's Liability Insurance

Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than any endorsements required by NCCI or the State of Florida. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law.

The policy must be endorsed to waive the insurer's right to subrogate against City, and its officials, officers and employees in the manner which would result from the

attachment of the NCCI Waiver of Our Right to Recover from Others Endorsement (Advisory Form WC 00 03 13) with City, and its officials, officers and employees scheduled thereon.

The policy must be endorsed to provide City with 30 days prior written notice of cancellation.

The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	$1,000,000	Each Accident
	$1,000,000	Disease – Policy Limit
	$1,000,000	Disease - Each Employee

2) Commercial General Liability Insurance

Such insurance shall be no more restrictive than that provided by the latest edition of the standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), without any restrictive endorsements other than any endorsements specifically required by ISO or the State of Florida.

The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

Mold, fungus, or bacteria
Terrorism
Silica, asbestos or lead
Sexual molestation

City and its officials, officers and employees shall be included as an "Additional Insured" on a form no more restrictive than ISO form CG 20 10 (Additional Insured - Owners, Lessees, or Consultant).

The policy must be endorsed to provide City with 30 days prior written notice of cancellation.

The minimum limits (inclusive of amounts provided by an umbrella or excess policy):

General Aggregate	$2,000,000
Products/Completed Operations Aggregate	$2,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000

3) Automobile Liability Insurance

Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the Work.

The policy must be endorsed to provide City with 30 days prior written notice of cancellation.

Such insurance shall not be subject to any aggregate limit and the minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Occurrence Bodily Injury and Property Damage Liability Combined	$1,000,000

4) Professional Liability

Such insurance shall be on a form acceptable to City and shall cover errors and omissions arising out of the provision of the services required by this RFQ. Coverage must be provided on an Occurrence Form or, if on a Claims Made Form, the retroactive date must be no later than the first date of this Agreement and such claims-made coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. The insurance provided by Consultant shall be endorsed to provide City with 30 days prior written notice of cancellation. A maximum deductible or self-insured retention of $10,000 per claim/occurrence shall be permitted for this coverage.

The minimum amount of coverage (inclusive of any amounts provided by an umbrella or excess policy) shall be no less than:

$3,000,000 Each Claim/Annual Aggregate

5) Miscellaneous Provisions

The insurance provided by Consultant shall apply on a primary basis to any insurance or self-insurance maintained by City. Any insurance, or self-insurance, maintained by City shall be excess of, and shall not contribute with, the insurance provided by Consultant.

Except as otherwise specifically authorized in this Agreement, or for which prior written approval has been obtained hereunder, the insurance maintained by Consultant shall apply on a first dollar basis without application of a deductible or self-insured retention. Under limited circumstances, City may permit the application of a deductible

or permit Consultant to self-insure, in whole or in part, one or more of the insurance coverages required by this Agreement. In such instances, Consultant shall pay on behalf of CITY or CITY's officials, officers and employees any deductible or self-insured retention applicable to a claim against CITY or CITY's officials, officers and employees.

Compliance with these insurance requirements shall not limit the liability of Consultant. Any remedy provided to City by the insurance provided by Consultant shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of Consultant) available to City under this Agreement or otherwise.

Neither approval nor failure to disapprove insurance furnished by Consultant shall relieve Consultant from responsibility to provide insurance as required by this Agreement.

Certificates of Insurance must be completed as follows:

Certificate Holder

City of Fort Pierce
Attn: Purchasing Department
P.O. Box 1480
Fort Pierce FL 34954-1480

Additional Insured on the Commercial General Liability:

City of Fort Pierce and its officials, officers, and employees.

13. INDEMNIFICATION

Except for expenses or liabilities arising from the negligence of the City, the Consultant hereby expressly agrees to indemnify and hold the City harmless against any and all expenses and liabilities arising out of the performance or default of this Agreement as follows:

Consultant shall indemnify and hold harmless, to the maximum extent permitted by law, the City and their officials, officers, agents, and employees from and against any and all liability, claims, demands, penalties, court costs, judgments, damages, losses, (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), and costs (including reasonable attorney fees, litigation, arbitration, mediation, appeal expenses) to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Consultant and persons employed by or utilized by the Consultant in Consultant's performance of this Agreement.

Consultant's obligation to indemnify and hold harmless shall remain in effect and shall be binding upon Consultant whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

Consultant's failure to comply with this section's provisions shall constitute a material breach upon which the City may immediately terminate or suspend this Agreement.

The Consultant hereby acknowledges that the payments made under this Agreement include specific consideration for the indemnification herein provided. It is the specific intent of the parties hereto that the foregoing indemnification complies with Sections 725.06 and 725.08, Florida Statutes (Chapter 725).

14. ASSIGNMENT

The City and Consultant each binds itself and its successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives, and permitted assigns of such other party, in respect to all covenants of this Agreement; and, neither the City nor the Consultant will assign or transfer its rights and obligations in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

The Consultant agrees that the persons named in the scope of work shall provide services as described therein. The services of the person(s) so named are a substantial inducement and material consideration for this Agreement. In the event such persons can no longer provide the services required by this Agreement, the Consultant shall immediately notify the City in writing and the City may elect to terminate this Agreement without any liability to the Consultant for unfinished work product. The City may elect to compensate the Consultant for unfinished work product, provided it is in a form that is sufficiently documented and organized to provide for subsequent utilization in completion of the work product.

15. PUBLIC RECORDS

A. City strictly adheres to all statutes, court decisions, and the opinions of the Florida Attorney General with respect to disclosure of public information under Chapter 119, Florida Statutes. In accordance with Chapter 119, Florida Statutes, Consultant shall comply with all public records laws and specifically:

1. Keep and maintain public records required by City to perform the service.

2. Upon request from City's custodian of public records, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time as provided by law.

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 Agreement term and following completion of the Agreement if Consultant does not transfer the records to City.

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

B. 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 THROUGH THE CITY CLERK AT 772-467-3065, lcox@cityoffortpierce.com, 100 North U.S. 1, Fort Pierce, FL 34950.

16. CONFLICT OF INTEREST

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Florida Statutes, to include, but not limited to, Sections 112.311 and 112.313, Florida Statutes. The Consultant further represents that no person having any interest shall be employed for said performance.

The Consultant shall promptly notify the City in writing by certified mail of all potential conflicts of interest prohibited by existing state law for any prospective business association, interest or other circumstance, which may influence or appear to influence the Consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Consultant may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Consultant. The City agrees

to notify the Consultant of its opinion by certified mail within thirty (30) days of receipt of notification by the Consultant. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Consultant, the City shall so state in the notification and the Consultant shall, at his/her option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Consultant under the terms of this Agreement. If, in the opinion of the City, the prospective business association, interest or circumstance does constitute a conflict of interest by the Consultant, the City shall so state in the notification and the Consultant shall either not enter into said association or terminate this Agreement with the City prior to entering into said association.

17. EXCUSABLE DELAYS (FORCE MAJEURE)

Neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its reasonable control (financial difficulty shall not be considered a cause beyond a party's control) all of which causes herein are called "Force Majeure", including, but without being limited to, strikes, lockouts, or other industrial disturbances; fires; unusual climatic conditions; acts of God; acts of a public enemy; or inability to obtain transportation or necessary materials in the open market. Provided, however, that market conditions, labor conditions, construction industry price trends and similar matters which normally affect the bidding process shall not be considered a Force Majeure. The party unable to perform as a result of force majeure promptly shall notify the other of the beginning and ending of each such period, and City shall compensate Consultant at the rates set forth herein, for the services performed by Consultant hereunder, up to the date of the beginning of such period.

18. PLEDGE OF CREDIT, ARREARS

The Consultant shall not pledge the City's credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

19. OWNERSHIP OF DOCUMENTS

All original sketches, tracings, drawings, computations, details, design calculations, and other documents and plans that result from the Consultant's services under this Agreement are and remain the property of the City as instruments of service. The Consultant shall furnish copies to the City upon completion of such documents.

The City shall, at no additional expense, be furnished one (1) set of reproducible copies of any maps and/or drawings prepared for it by the Consultant. Consultant shall likewise submit copies of all field notes, calculation sheets and computer discs to the City.

20. INDEPENDENT CONSULTANT RELATIONSHIP

The relationship of the Consultant to the City will be solely that of a consultant. The Consultant is an independent consultant and is not an employee or agent of the City. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent consultant, between the City and the Consultant, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. The Consultant will provide the professional and technical services required for the successful completion of this Agreement in accordance with practices generally acceptable within the industry and good ethical standards.

21. ATTORNEYS' FEES AND COSTS

In the event of any dispute concerning the terms and conditions of this Agreement or in the event of any action by any party to this Agreement to judicially interpret or enforce this Agreement or any provision hereof, or in any dispute arising in any manner from this Agreement, the prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including but not limited to, witness fees, expert fees, consultant fees, attorney, paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses, whether suit be brought or not, and whether any settlement shall be entered in any declaratory action, at trial or on appeal.

22. VERIFICATION OF EMPLOYMENT STATUS

The Consultant agrees that it shall bear the responsibility for verifying the employment status, under the Immigration Reform and Control act of 1986, of all persons it employs in the performance of this Agreement.

23. PROHIBITION AGAINST CONTINGENT FEES

The 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 he has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of making this Agreement.

24. AUDIT

The Consultant agrees that the City or any of its duly authorized representatives shall, until the expiration of at least three years, or as otherwise applicable under law, after expenditure of funds under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Consultant involving transactions related to this Agreement. The Consultant agrees that payment(s) made under this Agreement shall be subject to reduction for amounts charged thereto which

are found based on audit examination not to constitute allowable costs under this Agreement. The Consultant shall refund by check payable to the City the amount of such reduction of payments. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of the project and issuance of the final certificate, or as otherwise applicable under law.

25. NON DISCRIMINATION

The Consultant covenants and agrees that the Consultant shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicaps (except where based on a bona fide occupational qualification); or because of marital status, race, color, religion, national origin or ancestry.

26. AUTHORITY TO PRACTICE

The City represents that it is a political subdivision of the State of Florida with the authority to engage the professional and to accept the obligation for payment for the services.

The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the City's representative on an annual basis.

27. SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

28. FLORIDA CONTRACTS

WHERE APPLICABLE AND PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

29. COMPLETE AGREEMENT

This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The Consultant recognizes that any representations, statements or negotiations made by the City staff do not suffice to legally bind the City in a contractual relationship unless they have been reduced to writing, authorized, and signed by an authorized City representative. This Agreement shall bind the parties, their assigns, and successors in interest.

30. AMENDMENT

This Agreement may be amended only with the written approval and agreement of the parties.

31. MODIFICATIONS OF WORK

The City reserves the right to make changes in Scope of Work, including alterations, reductions therein, or additions thereto. Upon receipt by the Consultant of the City's notification of a contemplated change, the Consultant shall, in writing:

A. Provide a detailed estimate for the increase or decrease in cost due to the contemplated change,

B. Notify the City of any estimated change in the completion date, and

C. Advise the City if the contemplated change shall affect the Consultant's ability to meet the completion dates or schedules of this Agreement.

If the City so instructs in writing, the Consultant shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the City's decision to proceed with the change.

If the City elects to make the change, the City shall initiate an Agreement Amendment or Change Orderand the Consultant shall not commence work on any such change until the authorized representative for the City signs such written Amendment.

32. NOTICE

All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service or mailed certified mail (postage prepaid) return receipt requested, addressed to:

City:
CITY OF FORT PIERCE
Attn: Purchasing Department
100 N. US Highway 1
Fort Pierce, FL 34950

Consultant:
CAPE DESIGN ENGINEERING INC.
2725 Center Place
Melbourne, FL 32940

With a Copy to:
City Attorney
City Attorney's Office
100 N. US Highway 1
Fort Pierce, FL 34950

As to the Consultant or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

Should City or Consultant have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box.

33. CAPTIONS AND HEADINGS

Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

34. WAIVER

No waiver by the City of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by of the same, or any other provision or the enforcement thereof. City's consent to or approval of any act by Consultant requiring consent or approval shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Consultant requiring consent or approval, whether or not similar to the act so consented or approved.

35. COMPLIANCE WITH LAWS

The Consultant, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement. The City undertakes no duty to ensure such compliance, but will attempt to advise Consultant, upon request, as to any such laws of which it has present knowledge.

36. INTERPRETATION; CONTROLLING LAW; VENUE

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior verbal or written agreements between the parties with respect thereto. This Agreement may only be amended by written document, properly authorized, executed and delivered by both parties hereto. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. The laws of the State of Florida shall govern this Agreement and all interpretations thereof. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in St. Lucie County, to include the Nineteenth Judicial Circuit of Florida for claims under state law and the Southern District of Florida for any claims which are justiciable in federal court.

37. DISPUTE RESOLUTION

Any disputes relating to interpretation of the terms of this Agreement or a question of fact or arising under this Agreement shall be resolved through good faith efforts upon the part of the Consultant and the City or its Project Manager. At all times, the Consultant shall carry on the work and maintain its progress schedule in accordance with the requirements of the Agreement and the determination of the City or its representatives, pending resolution of the dispute. The City Manager who shall reduce the decision to writing shall decide any dispute, which is not resolved by mutual agreement. The decision of the City shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence.

38. ANTITRUST ASSIGNMENT

The Consultant, the City, and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida and local governments. Therefore, the Consultant assigns to the State of Florida and the City any and all claims for such overcharges as to goods, materials or services purchased in connection with the Agreement.

39. CONFIDENTIALITY

Consultant shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, or other information pertaining to the projects assigned to Consultant by City or other information to which Consultant has had access during the term of this Agreement without the prior written approval of the City during the term of this Agreement and for a period of two (2) years after the termination of this Agreement.

Consultant shall consider all information provided by City and all drawings, reports, studies, design calculations, specifications, and other documents resulting from the

Consultant's performance of the services to be proprietary unless such information is available from public sources. Consultant shall not publish or disclose proprietary information for any purpose other than the performance of the services without the prior written authorization of the City, in response to legal process, or in accordance with applicable law.

40. E-VERIFY

All requirements of Section 448.095, Florida Statutes, shall be complied with by Consultant. In accordance with, Section 448.095, Florida Statutes, Consultant shall register with and utilize the E-Verify System operated by the United States Department of Homeland Security to verify the employment eligibility of all new employees hired during the term of the Agreement and shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the E-Verify System to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement. If Consultant enters into a contract with a subcontractor performing work or providing services on its behalf, Consultant shall also require the subcontractor to provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Information on registration for and use of the E-Verify System can be obtained via the internet at the Department of Homeland Security Web site: http://www.dhs.gov/E-Verify. Consultant shall, upon request, provide evidence of compliance with this provision to the City. A contract terminated pursuant to Section 448.095 is not a breach of contract and may not be considered as such. If the City terminates this contract with a contractor, the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated. Consultant is liable for any additional costs incurred by the City as a result of the termination of this contract under Section 448.095, Florida Statutes.

41. SOVEREIGN IMMUNITY

Nothing contained in this Agreement shall be deemed or otherwise interpreted as waiving the City's sovereign immunity protections existing under the laws of the State of Florida or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

CONTINUING CONTRACT FOR

PROFESSIONAL SERVICES

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement in counterparts each of which shall be treated as an original upon the terms and conditions above stated.

ATTEST:

Linda W. Cox

Linda Cox, City Clerk

CITY OF FORT PIERCE:

Linda Hudson

Linda Hudson, Mayor

10/15/24

Date

APPROVED AS TO FORM CORRECTNESS:

By: _____

Sara Hedges, City Attorney

CONSULTANT:

By: Inga I Young

Print: Inga I Young

Title: President of Cape Design Engineering

Today's Date: 9/26/2024

CITY OF FORT PIERCE
AFFIDAVIT REGARDING THE USE COERCION FOR LABOR OR SERVICES

Vendor name: Cape Design Engineering

Authorized Representative's Name and Title: Rebecca Weitz/Project Coordinator

Address: 2725 Center Place

City: Melbourne State: FL Zip Code: 32940

Phone Number: 321-799-2970 Email Address: frontdesk@cdeco.com

Section 787.06(13), Florida Statutes, requires all nongovernmental entities executing, renewing, or extending a contract with a governmental entity to provide an affidavit signed by an officer or representative of the nongovernmental entity under penalty of perjury that the nongovernmental entity does not use coercion for labor or services as defined in that statute. As the person authorized to sign on behalf of Vendor, I certify that the company identified does not:

1. Use or threaten to use physical force against any person;
2. Restrain, isolate, or confine or threaten to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Use lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroy, conceal, remove, confiscate, withhold, or possess any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Cause or threaten to cause financial harm to any person;
6. Entice or lure any person by fraud or deceit; or
7. Provide a controlled substance as outlined in Schedule I or Schedule II of section 893.03, Florida Statutes, to any person for the purpose of exploitation of that person.

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

By: Inga I Young Inga I Young, President 8/26/2024

Authorized Signature Printed Name and Title Date

STATE OF FLORIDA
COUNTY OF Brevard

Sworn (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization

this 26 day of September, 2024 by Inga I Young, who is

☑ personally known or
☐ produced identification (ID produced: _____).

Notary Public Signature: _____ (Seal)

Print Name: Rebecca Weitz My Commission Expires: 3/16/2025

REBECCA WEITZ
MY COMMISSION # HH 080345
EXPIRES: March 16, 2025