

CONSULTANT AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2022, by and between the **CITY OF COCONUT CREEK**, a Florida municipal corporation, located at 4800 W. Copans Road, Coconut Creek, FL 33063, (hereinafter referred to as "**City**"), and **Steve M. Lewis, Inc., D/B/A SML, Inc.** located at 580 42nd Court, Vero Beach, FL 32969, (hereinafter referred to as "**Consultant**").

WHEREAS, the parties desire to enter into an agreement to provide consulting services to the **City**; and

WHEREAS, the **City** and **Consultant** desire to clarify and define their responsibilities with regard to providing said services.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises set forth herein, the parties to this Agreement do hereby agree as follows:

1. The **City** hereby retains the services of **Consultant** for the purpose of providing expert consulting services to the **City** consisting of records management implementation services including:

- a) Retention and disposition of records in accordance with all local, state and federal requirements;
- b) Management access to both active and inactive records in an accurate and timely fashion (to include a filing system and consideration of imaging potential);
- c) Retention of all records under secure conditions, preventing unauthorized access by both employees and third parties;
- d) Protection of all records from physical calamity and decay;

- e) Provision for the timely destruction of records at the end of their retention period in a secure manner;
- f) Conversion of long term retention records to an appropriate preservation device;
- g) Provision for disaster recovery, vital records protection;
- h) Assistance monitoring changing legislation, Attorney General and Court Opinions to keep the Record Plan, Policies and Procedures current;
- i) Assistance monitoring changing Florida Administrative Code and Retention Schedules to keep the Agency-wide Disposition List current;
- j) Assistance designing filing systems;
- k) Professional training for staff record coordinators;
- l) Assistance compiling Florida Department of State Compliance Statements;
- m) Assistance compiling data to finalize each year's Disposition List;
- n) Assistance with the integration of technology and changing standards in the Florida Administrative Codes; specifically Rule Chapter 1B-26;
- o) Assistance selecting service providers together with compliance monitoring;
- p) Assistance designing and implementing file arrangements to ensure disposition efficiency and data retrieval; and
- q) Assistance drafting record Policy and Procedure as issues arise, especially as it relates to record requests.

2. As an independent consultant, **Consultant** is neither an officer, nor an employee of the **City**. **Consultant** must provide a Federal Tax I.D. number if applicable, otherwise, **Consultant** must provide a social security number. **Consultant** must submit a completed W-9 form at the time of the submission of the first invoice for all services rendered.

3. **Term:** The term of this Agreement shall commence on the date written above and terminate within two (2) years of the date of execution. This Agreement may be renewed for three (3) additional one (1) year periods as mutually agreed upon by the parties. However, the Agreement may be terminated by either party without cause by giving thirty (30) days written notice to the other with or without cause. If the Agreement is terminated by the **City**, the **City** shall only be responsible to compensate **Consultant** for fees incurred up to the date of termination and which are billed within thirty (30) days of termination.

4. **Fees:** The **Consultant's** fee shall be the sum of Two Thousand Dollars and Zero Cents (\$2,000.00) per eight (8) hour day, which sum includes all related travel expenses with a maximum not to exceed the amount of Sixty Thousand Dollars (\$60,000.00) for the initial two (2) year term.

5. **Independent Contractor:** This Agreement does not create an employer/employee relationship between the parties. **Consultant** is not entitled to any benefits paid to **City** employees. It is the intent of the parties that under this Agreement, an independent contractor is not an employee of the **City** 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 Worker's Compensation Act, and the State Unemployment Insurance Law.

6. **Taxes:** **Consultant** shall be responsible for all taxes of any kind. An IRS W-2 form will not be provided. The **City** will provide an IRS Form 1099 required by law. **Consultant** recognizes that no Federal Income Tax or Social Security will be withheld. However, if **Consultant** requests in writing that Federal Income tax be withheld, the **City** will deduct the Federal Income tax withheld and remit to the IRS.

7. **Indemnification:** The parties agree that one percent (1%) of the total compensation paid to **Consultant** for the work of the Agreement shall constitute specific consideration to **Consultant** for the indemnification to be provided under the contract. The **Consultant** shall indemnify and hold harmless the City Commission, the City of Coconut Creek, and its agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work provided that any such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom; and (2) is caused in whole or in part by any negligent act or omission of the **Consultant**, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the City, or any of their agents or employees by any employee of the **Consultant**, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification

obligation under this Paragraph shall not be limited in any way by any limitation on this amount or type of damages compensation or benefits payable by or for the Vendor or any subcontractor under Workers' Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts. Nothing in this section shall affect the immunities or limitations of the City pursuant to Section 768.28 Fla. Stat., nor shall anything included herein be construed as consent to be sued by any third parties in any matter arising out of this contract. Such release and indemnification outlined herein shall extend beyond the termination of this Agreement.

8. **Insurance:** **Consultant** shall provide the **City** with proof of insurance. Prior to executing the Agreement, **Consultant** agrees to provide the **City** with a Certificate of Insurance. The Certificate of Insurance must be in a form acceptable to the **City**, naming the City of Coconut Creek as an "Additional Insured". The Certificate shall include General Liability. The General Liability coverage will be written in an "occurrence" basis format, with a minimum limit of \$1,000,000 for each occurrence. Workers' Compensation Statutory Limits of coverage to apply for all employees in compliance with all applicable State of Florida and federal laws. The policy must include Automobile Liability with a limit of \$500,000.00 each accident. Note: If **Consultant** is exempt from Florida's Workers' Compensation law, **Consultant** must provide proof of such exemption issued by the Florida Department of Financial Services, Bureau of Workers' Compensation.

9. **Sole Control of Work:** While Consultant shall conform to standards and policies of the **City of Coconut Creek**, the **Consultant** shall have sole control of the work and the manner in which it is performed.

10. **Non-Assignment:** This Agreement is a professional service contract and an assignment of this Agreement by **Consultant** without the written consent of the **City** is void. **Consultant's** employees and/or subcontractors that will perform work pursuant to this Agreement shall be limited to Matthew Daugherty and Steve Lewis. Both parties agree that any assignment of this Agreement to persons other than those listed herein shall require advanced written consent from both parties.

11. **Non-Exclusivity:** **Consultant** shall be free to contract for similar services to be performed for other entities or persons while under contract with the **City**. The provision of services provided for herein is non-exclusive. The **City** may retain additional entities or persons to perform the same or similar work, if in its sole discretion the **City** desires to do so.

12. **Anti-Discrimination:** **Consultant** shall not for itself, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees, as a part of the consideration hereof, does hereby covenant and agree that:

- a) No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, gender identity or expression, or veteran or service member status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the performance of this contract.
- b) No employee or applicant for employment (to be employed for purposes of performing this Agreement) shall be discriminated against with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter

directly or indirectly related to employment, because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, gender identity or expression, or veteran or service member status.

13. **Public Records Requirements:** City is a public agency subject to Chapter 119, Florida Statutes. To the extent **Consultant** is acting on behalf of the City pursuant to Section 119.0701, Florida Statutes, **Consultant** shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required to be kept and maintained by City were City performing the services under this Agreement;
- b) Provide the public with access to such public records on the same terms and conditions that City would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c) Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- d) Meet all requirements for retaining public records and transfer to City, at no cost, all public records in possession of **Consultant** upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to City in a format that is compatible with the information technology systems of City.

e) The failure of **Consultant** to comply with the provisions set forth in this Section shall constitute a default and breach of this Agreement.

f) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, PublicRecords@coconutcreek.net, 4800 West Copans Road, Coconut Creek, FL 33063.**

14. **Notice:** All notices shall be effective when mailed to the following addresses:

Consultant address:

Steve M. Lewis, Inc.
Matthew Daugherty
Post Office Box 484
Vero Beach, Florida 32961
Phone: (813) 528-2705
Email: mattdaugherty@msn.com

City address:

Karen M. Brooks, City Manager
City of Coconut Creek
4800 W. Copans Road
Coconut Creek, FL 33063
Phone: (954) 973-6720
Email: citymanager@coconutcreek.net

15. **Funding Availability:** 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 Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

16. **Venue:** This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Agreement is situated exclusively in the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida.

17. **Signatory Authority:** The **Consultant** shall provide the City with copies of requisite documentation evidencing that the signatory for **Consultant** has the authority to enter into this Agreement.

18. **Severability:** Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

19. **Entire Agreement:** This Agreement constitutes the entire Agreement between the **Consultant** and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the **Consultant** and the City.

20. **Professional Qualifications:** Notwithstanding Paragraph 2, **Consultant** understands that **Consultant** must comply with all applicable laws, rules and regulations, and maintain all required qualifications to provide the services provided for under this

Agreement and failure to do so, shall cause this Agreement to be immediately deemed null and void and notice of termination, as set forth in Section 3 is not required.

21. **E-Verify:** Effective January 1, 2021, public and private employers, contractors and subcontractors and vendors must require registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Vendor/Consultant/Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- a) All persons employed by Vendor/Consultant/Contractor to perform employment duties within Florida during the term of the contract; and
- b) All persons (including subvendors/subconsultants/subcontractors) assigned by Vendor/Consultant/Contractor to perform work pursuant to the contract with the Department. The Vendor/Consultant/Contractor acknowledges and agrees that 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 Coconut Creek.

By entering into this Agreement, the Vendor becomes obligated to 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, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subvendors to provide an affidavit to Vendor attesting that the subvendor does not employ, contract with, or subcontract with, an unauthorized alien. Vendor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result

in the termination of this Agreement as provided in Section 448.095, Fla. Stat. as amended.

22. **Scrutinized Companies:** Vendor hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If City determines that Vendor has falsely certified facts under this paragraph or if Vendor is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Agreement, City shall have all rights and remedies to terminate this Agreement consistent with Section 287.135, Fla. Stat., as amended. The City reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, Fla. Stat., as amended.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

ATTEST:

CITY OF COCONUT CREEK, FLORIDA

Marianne Bowers, Interim City Clerk

By: _____
Karen M. Brooks, City Manager

Approved as to Form:

Terrill C. Pyburn, City Attorney

WITNESSES:

Print Name: _____

Print Name: _____

CONSULTANT: Steve M. Lewis, Inc.

By: _____

Print Name: Steve M. Lewis

Social Security No.: _____

or

Federal Tax .No.: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2022, by _____ (name of person acknowledging), who is personally known to me or who has produced _____ (type of identification) as identification.

Signature of Notary Public - State
of Florida