

PROFESSIONAL SERVICES AGREEMENT

THIS CONTRACT (CONTRACT) is entered into by and between the CITY OF PARKLAND (CITY), a municipal corporation and TSE CONSULTING, INC. (CONSULTANT), a Florida Corporation, as follows

WITNESSETH:

WHEREAS, the CITY has need of legislative consulting and representation services (the Services); and

WHEREAS, the CONSULTANT is uniquely qualified in the field of legislative consulting and advocacy and in the judgment of the CITY, it is necessary and desirable to employ the services of CONSULTANT; and

WHEREAS, the CONSULTANT, especially through Candice Ericks and Robby Holroyd, will have the primary responsibility to assist in furtherance of the CITY's goals and objectives; and

WHEREAS, based upon the above considerations, the CITY finds that it is in the best interests of the CITY to waive the competitive procurement requirements of the Procurement Code as permitted by Section 2-143.9.(j) for Professional Services, and that the waiver of competitive bid requirements will not inure to the financial disadvantage of the CITY and is in the public interest;

NOW THEREFORE, be it agreed by and between the parties as follows:

ARTICLE I

INTRODUCTION AND SCOPE OF SERVICES

- 1.1 The above referenced Whereas clauses are true and correct and made a part hereof.
- 1.2 The CONSULTANT is hereby retained as an independent contractor to assist the CITY with its legislative consulting and representation before the Florida Legislature as set forth on Exhibit A,
- 1.3 This is a non-exclusive contract. The CITY may, in its sole and absolute discretion, utilize other parties to provide any of the services as described herein, or any aspect of the Services if the CITY deems it to be in the best interest of the CITY.
- 1.4 CONSULTANT acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Contract.

ARTICLE 2

TERM AND TIME OF PERFORMANCE

- 2.1 The initial Contract term shall commence on March 1, 2019 and shall remain in force through the 2019 Legislative Session and any subsequent Special Session.
- 2.2 Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Contract.

ARTICLE 3

COMPENSATION

3.1 In consideration for this agreement, the CITY shall pay CONSULTANT an all-inclusive retainer fee of \$20,000 subject to the following stipulations:

- a) CITY shall pay CONSULTANT a fee of \$10,000 no later than April 15, 2019 and \$10,000 no later than May 15, 2019.
- b) All payments shall be made payable to TSE Consulting and mailed to P.O. Box 10131, Tallahassee, FL 32302

3.2 CONSULTANT may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except for the final invoice which must be received no later than sixty (60) days after this Contract expires. Invoices shall designate the nature of the services performed and/or the expenses incurred and may be in form as determined by the CITY.

3.3 CITY shall pay CONSULTANT within thirty (30) calendar days of receipt of CONSULTANT's proper invoice. To be deemed proper, all invoices must comply with the requirements set forth in this Contract and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator and must accurately reflect the services rendered. Payment may be withheld for failure of CONSULTANT to comply with any term, condition, or requirement of this Contract.

3.4 Notwithstanding any provision of this Contract to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Contract. The amount withheld shall not be subject to payment of interest by CITY.

ARTICLE 4

INDEMNIFICATION

CONSULTANT shall at all times hereafter indemnify, hold harmless and, at the CITY Attorney's option, defend or pay for an attorney selected by the CITY Attorney to defend CITY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of, CONSULTANT, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Contract including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against CITY by reason of any such claim, cause of action or demand, CONSULTANT shall, upon written notice from CITY, resist and defend such lawsuit or proceeding by counsel satisfactory to CITY or, at CITY's option, pay for an attorney selected by CITY Attorney to defend CITY. The provisions and obligations of this section shall survive the expiration or earlier termination of this Contract. To the extent considered necessary by the Contract Administrator and the CITY Attorney, any sums due CONSULTANT under this Contract may be retained by CITY until all of CITY's claims for indemnification pursuant to this Contract have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY. Nothing herein shall be deemed a waiver or limitation on CITY'S sovereign immunity or any limitations on CITY liability in any state statute or as otherwise provided by law.

ARTICLE 5

INSURANCE

CONSULTANT shall provide the insurance. Evidence of said insurance shall be provided within ten (10) days of execution by the CITY of this Contract or prior to the commencement of any work, whichever event occurs first.

ARTICLE 6

TERMINATION OR SUSPENSION

6.1 This Contract may be terminated for convenience by the CITY. Termination for convenience by the CITY shall be effective on the termination date stated in written notice provided by CITY, which termination date shall be not less than thirty (30) days after the date of such written notice. This Contract may also be terminated by the CITY Manager upon such notice as the CITY Manager deems appropriate under the circumstances in the event the CITY Manager determines that termination is necessary to protect the public health or safety. The parties agree that if CITY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

6.2 This Contract may be terminated for cause for reasons including, but not limited to, CONSULTANT's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Contract.

6.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Contract except that notice of termination by the CITY Manager, which the CITY Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Contract.

6.4 In the event this Contract is terminated for convenience, CONSULTANT shall be paid for any services properly performed under the Contract through the termination date specified in the written notice of termination. CONSULTANT acknowledges and agrees that it has received good, valuable and sufficient consideration from CITY, the receipt and adequacy of which are, hereby acknowledged by CONSULTANT, for CITY's right to terminate this Contract for convenience.

6.5 In the event this Contract is terminated for any reason, any amounts due CONSULTANT shall be withheld by CITY until all documents are provided to CITY pursuant to Section 8.1 of Article 8.

6.6 Should at any time during the term of this Contract, including any option terms, the CONSULTANT is in violation of any of the terms and conditions of this Contract, the CITY shall have the right to suspend the CONSULTANT until the violation is resolved to the satisfaction of the CITY. If the violation is not promptly resolved or is of such serious nature that the CITY determines that suspension is not adequate, the CITY reserves the right to terminate for cause.

6.6.1 In the event a CONSULTANT is terminated, the CITY may assign the Contract to another CONSULTANT, or seek a new CONSULTANT, until the Contract is re-let, or until the end of the Contract term then in effect, at its sole option and shall reserve all legal remedies for damages and other relief.

ARTICLE 7

EEO AND ADA COMPLIANCE

7.1 CONSULTANT shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, political affiliation or disability in the performance of this Contract, the solicitation for or purchase of goods or services relating to this Contract, or in subcontracting work in the performance of this Contract. CONSULTANT shall include the foregoing or similar language in its contracts with any subCONSULTANTS or sub consultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this

Contract, which may result in the termination of this Contract or such other remedy as CITY deems appropriate.

7.2 CONSULTANT shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Contract. CONSULTANT shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

ARTICLE 8

MISCELLANEOUS

8.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Contract are and shall remain the property of CITY; and, if a copyright is claimed, CONSULTANT grants to CITY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Contract, any reports, photographs, surveys, and other data and documents prepared by CONSULTANT, whether finished or unfinished, shall become the property of CITY and shall be delivered by CONSULTANT to the Contract Administrator within seven (7) days of termination of this Contract by either party. Any compensation due to CONSULTANT shall be withheld until all documents are received as provided herein.

8.2 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of CONSULTANT and its subCONSULTANTS that are related to this Project. CONSULTANT and its subCONSULTANTS shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONSULTANT and its subCONSULTANTS shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONSULTANT or its subCONSULTANT, as applicable, shall make same available at no cost to CITY in written form.

CONSULTANT and its subCONSULTANTS shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Contract.

If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONSULTANT's and its subCONSULTANTs' records, CONSULTANT and its subCONSULTANTs' records, CONSULTANT and its subCONSULTANTs shall comply with all requirements thereof; specifically to:

- Keep and maintain all records that ordinarily and necessarily would be required by the CITY to perform the service.
- Provide the public with access to public records on the same terms and conditioned that the CITY would provide for the records and at a cost that does not exceed the cost provided in Chapter 119, or as otherwise provided by law.
- Ensure the public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- Meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONSULTANT upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems to the public agency. .
- If CONSULTANT does not comply with this section, the CITY shall enforce the contract in accordance with the contract provisions and may unilaterally cancel this contract in accordance with state law.

No confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT or its subCONSULTANTs. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

CONSULTANT shall, by written contract, require its subCONSULTANTs to agree to the requirements and obligations of this section 8.2.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (954 757 4132, CITY CLERK Jennifer L. Johnson jljohnson@CITYofparkland.org)

8.3 **BACKGROUND CHECKS:** The CITY reserves the right to require background checks of any personnel assigned by the successful proposer to perform services under this contract.

8.4 **COMPLAINTS AND DISPUTES:**

All complaints concerning misconduct on the part of the CONSULTANT or disputes

between CITY staff and the CONSULTANT are referred to the CITY Manager or his/her designee, who shall conduct investigations and inquiries, including discussions with the CONSULTANT and involved staff. The determinations of the CITY Manager or designee shall be binding upon the parties, and failure of the CONSULTANT to follow any such determination could be considered a material breach and subject the CONSULTANT to termination for cause. The CONSULTANT agrees that any complaints received by the CITY concerning misconduct on the part of the CONSULTANT, such as excessive charges, poor business practices etc., will be referred to the Office of the CITY Manager for appropriate action. The CONSULTANT agrees to make any complaints concerning the CITY available to the Office of the CITY Manager for action as required.

8.5 PUBLIC ENTITY CRIME ACT

CONSULTANT represents that the execution of this Contract will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a CONSULTANT, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a CONSULTANT, supplier, subCONSULTANT, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Contract and recovery of all monies paid by CITY pursuant to this Contract, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

8.6 INDEPENDENT CONSULTANT

CONSULTANT is an independent CONSULTANT under this Contract. Services provided by CONSULTANT pursuant to this Contract shall be subject to the supervision of CONSULTANT. In providing such services, neither CONSULTANT nor its agents shall act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to CONSULTANT or CONSULTANT's agents any authority of any kind to bind CITY in any respect whatsoever. CONSULTANT IS BEING HIRED FOR ITS TRAINING, EDUCATION, AND EXPERIENCE AND WILL NOT BE TRAINED BY THE CITY. THE CONSULTANT SHALL PROVIDE ITS SERVICES BASED ON ITS TRAINING AND

EXPERIENCE AND SHALL DETERMINE THE APPROPRIATE AND PROFESSIONAL MANNER IN WHICH TO PROVIDE THE SERVICES PROVIDED FOR HEREIN.

In providing the services, CONSULTANT shall determine the employees and subCONSULTANTS necessary to provide the services and shall be responsible for their supervision. CONSULTANT shall be entitled to no CITY employment benefits of any kind whatsoever.

8.7 THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor CITY intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a right or claim against either of them based upon this Contract.

8.8 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR CITY:

CITY Manager
Parkland CITY Hall
6600 University Drive
Parkland, Florida 33067

FOR CONSULTANT:

Candice Ericks, Managing Partner
TSE Consulting, LLC
110 SE Sixth Street, Suite 1500
Fort Lauderdale, FL 33301

8.9 ASSIGNMENT AND PERFORMANCE

Neither this Contract nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. CITY may terminate this Contract, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by CONSULTANT of this Contract or any right or interest herein without CITY's written consent.

CONSULTANT represents that each person who will render services pursuant to this Contract is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

CONSULTANT shall perform its duties, obligations, and services under this Contract in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

8.10 CONFLICTS

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment and care related to its performance under this Contract.

CONSULTANT further agrees that none of its officers or employees shall, during the term of this Contract, serve as an expert witness against CITY in any legal or administrative proceeding in which he, she, or CONSULTANT is not a party, unless compelled by court process. Further, CONSULTANT agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude CONSULTANT or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event CONSULTANT is permitted pursuant to this Contract to utilize subCONSULTANTS to perform any services required by this Contract, CONSULTANT agrees to require such subCONSULTANTS, by written contract, to comply with the provisions of this section to the same extent as CONSULTANT.

8.11 MATERIALITY AND WAIVER OF BREACH

CITY and CONSULTANT agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Contract and that each is, therefore, a material term hereof.

CITY's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.

8.12 COMPLIANCE WITH LAWS

CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Contract.

8.13 SEVERANCE

In the event a portion of this Contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONSULTANT elects to terminate this Contract. An election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

8.14 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Contract and acknowledge that the preparation of this Contract has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party.

8.15 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Contract shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Contract, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Contract shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS CONTRACT, CONSULTANT AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS CONTRACT.**

8.16 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by the CITY and CONSULTANT or others delegated authority to or otherwise authorized to execute same on their behalf.

8.17 PRIOR CONTRACTS

This document represents the final and complete understanding of the parties and

incorporates or supersedes all prior negotiations, correspondence, conversations, Contracts, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, Contract, or understanding concerning the subject matter of this Contract that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or Contract, whether oral or written.

8.18 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. **Exhibit A** is incorporated into and made a part of this Contract.

8.19 REPRESENTATION OF AUTHORITY

Each individual executing this Contract on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Contract, duly authorized by all necessary and appropriate action to execute this Contract on behalf of such party and does so with full legal authority.

8.20 MULTIPLE ORIGINALS

Multiple copies of this Contract may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

IN WITNESS WHEREOF the parties have caused these presents to be executed.

Witnesses:

Stephanie Ival

Claudia Chabot

CITY OF PARKLAND

By: Christine Henschel
Title:

Printed Name: Christine Henschel

Date: 2-28-19

ATTEST:

Dorothy Johnson
CITY CLERK



CONSULTANT

Witnesses:

Just Clark Morris

Amanda Bone

By: Candice D. Ericks
Title:

Printed Name: CANDICE D. ERICKS

Date: 2/27/19

EXHIBIT "A"
SCOPE OF SERVICES

The lobbyist shall work closely with City staff in the monitoring and ongoing implementation of legislative priorities as directed by the Mayor and Board of Commissioners. The lobbyist shall provide, at a minimum, the following services:

- a) Develop an overall strategy to ensure issues of concern are addressed to the City's satisfaction.
- b) Advise on the development of local appropriations requests and monitor agencies for funding opportunities (i.e. grants).
- c) Develop and implement a strategy for the support, opposition, or amendment of pending legislation and appropriations requests.
- d) Educate members of the Executive Branch and administrative offices, Florida Senate and House of Representatives on issues of importance to the City.
- e) Monitor and review on a continuing basis all existing and proposed state policies and state budget process and report to the City, both orally and in writing, any legislative events that may directly or indirectly impact the City.
- f) Provide relevant legislative expertise and consulting services.
- g) Appear and testify before state agency hearings, rule-making proceedings, and other administrative agency or legislative meetings, as required, to promote, oppose, and seek passage of legislation affecting the City. Attend meetings as necessary and coordinate meetings between Legislators and City representatives as necessary.

The lobbyist shall provide, at a minimum, the following deliverables:

- a) A written report that summarizes the status of the City's legislative priorities, specific legislation and new requirements affecting the City shall be provided within a reasonable time period, not to exceed thirty days from the close of session.
- b) In-person presentation to the Mayor and Commission for a post-Session review