

Contract

This Contract, entered into this ____th day of January 2017 by and between the Community Redevelopment Agency of the City of Clearwater, a Florida redevelopment agency, hereinafter referred to as "CRA," P.O Box 4748, Clearwater, Florida 33758-4748, and Project for Public Spaces Inc., a New York 501 (c) (3) not-for-profit corporation, hereinafter referred to as "PPS," 419 Lafayette Street, 7th Floor, New York, NY 10003.

WHEREAS, the CRA seeks to create a public market in the city's Downtown Gateway; and

WHEREAS, PPS agrees to assess the feasibility for a public market in the city's Downtown Gateway;

NOW, THEREFORE, in consideration of the promises stated herein, the CRA and PPS mutually agree as follows:

1. Scope of Project

PPS agrees to provide consulting services under the terms and conditions described in attached "Exhibit A."

2. Time of Performance

This Contract shall commence on January 17, 2017 and terminate upon successful project completion, which is expected to be spring 2017.

3. Compensation

The CRA will pay PPS a sum not to exceed \$50,000 inclusive of all reasonable and necessary direct expenses. The CRA may, from time to time, require changes in the scope of the project of PPS to be performed hereunder. Such changes, including any increase or decrease in the amount of PPS' compensation and changes in the terms of this Contract which are mutually agreed upon by and between CRA and PPS shall be effective when incorporated in written amendment to this Contract.

4. Method of Payment

PPS shall submit invoices to CRA for payment, as follows:

- Invoice 1: \$5,000 (10% of Total Project Cost) upon Contract execution.
- Invoice 2: \$15,000 upon completion of site visit.
- Invoice 3: \$15,000 upon delivery of draft survey and site visit findings.
- Invoice 4: \$15,000 upon successful project completion.

The CRA agrees to pay after approval under the terms of the Florida Prompt Payment Act F.S. 218.70.

The CRA's performance and obligation to pay under this Contract is contingent upon an annual appropriation of the CRA's budget.

5. Notices and Changes of Address

Any notice required or permitted to be given by the provisions of the Contract shall be conclusively deemed to have been received by a party hereto on the date it is hand delivered to such party at the address indicated below (or at such other address as such party shall specify to the other party in writing), or if sent by registered or certified mail (postage prepaid) on the fifth (5th) business day after the day on which such notice is mailed and properly addressed.

Project for Public Spaces, Inc.

Community Redevelopment Agency

Stephen Davies
Name

Seth Taylor
Name

Executive Vice President
Title

Director, CRA
Title

419 Lafayette Street, 7th FL
New York, NY 10003
Address

P.O Box 4748, Clearwater, FL 33758
Address

(212) 620-5660
Telephone #

(727)-562-4072
Telephone #

(212) 620-3821
Fax #

(727)-562-4059
Fax #

6. Termination of Contract

The CRA at its sole discretion may terminate this Contract by giving PPS a ten (10) day written notice of its election to do so and by specifying the effective date of such termination. PPS shall be paid for its services through the effective date of such termination. Further, if PPS shall fail to fulfill any of its obligations hereunder, this Contract shall be in default, the CRA may terminate the Contract, and PPS shall be paid only for work completed.

7. Indemnification and Insurance

- a. **Commercial General Liability Insurance** coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.

- b. **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 (one million dollars) combined single limit.
- c. **Workers' Compensation Insurance** coverage in accordance with the laws of the State of New York, and **Employer's Liability Insurance** in the minimum amount of \$100,000 (one hundred thousand dollars) each employee each accident, \$100,000 (one hundred thousand dollars) each employee by disease and \$500,000 (five hundred thousand dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.
- d. **Professional Liability Insurance** coverage appropriate for the type of business engaged in by the Contractor with minimum limits of \$1,000,000 (one million dollars) per occurrence. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

Other Insurance Provisions

- a. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, the Vendor will furnish the CRA with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the CRA as an "Additional Insured" on the Commercial General Liability Insurance and the Commercial Automobile Liability Insurance. In addition when requested in writing from the CRA, Vendor will provide the CRA with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

**City of Clearwater
Attn: Purchasing Department
P.O. Box 4748
Clearwater, FL 33758-4748**

- b. Vendor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- c. Vendor's insurance as outlined above shall be primary and non-contributory coverage for Vendor's negligence.
- d. Vendor reserves the right to appoint legal counsel to provide for the Vendor's defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to Vendor's design, equipment, or service. Vendor agrees that the CRA shall not be liable to reimburse Vendor for any legal fees or costs as a result of Vendor providing its defense as contemplated herein.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the CRA, and CRA's failure to request evidence of this insurance shall not be construed as a waiver of Vendor's (or any contractors', subcontractors', representatives' or agents') obligation to provide the insurance coverage specified.

- e. Indemnification: PPS agrees to protect, defend, indemnify and hold the CRA and its officers, employees and agent free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges professional fees or other expenses or liabilities of every kind and character arising out of or due to any negligent act or omission of PPS or its employees in connection with or arising directly out of this Contract and/or performance hereof, except when due to the fault of the CRA. Without limiting its liability under this Contract, PPS shall procure and maintain during the life of this Contract liability insurance coverage as described above. This provision shall survive the termination of this Contract.

8. Proprietary Materials

Upon termination of this Contract, PPS shall transfer, assign and make available to the CRA or its representatives all property and materials in PPS' possession belonging to or paid for by the CRA. Notwithstanding the foregoing, any intellectual property previously or simultaneously created by the PPS not for the exclusive use of the CRA, shall remain the exclusive property of the PPS. The CRA hereby acknowledges that such intellectual property of PPS is extensive, is essential to the work of PPS, and PPS's selection for the Services by the CRA is in great part due to the intellectual property it owns and has created. The CRA hereby explicitly makes no claim to the ownership of such property. PPS hereby grants the CRA a limited use of the rights to such intellectual property in connection with the carrying out of the Services under this Agreement by PPS. Such intellectual property shall be clearly identified as owned and produced by PPS.

9. Interests of Parties

PPS covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance and/or provision of services required under the terms and conditions of this Contract.

PPS agrees to comply with all applicable federal, state and local laws during the life of this Contract.

10. Attorney Fees

In the event that either party seeks to enforce this Contract through attorneys at law, then the parties agree that each party shall bear its own attorney fees and costs.

11. Governing Law and Venue

The laws of the State of Florida shall govern this Contract, and any action brought by either party shall lie in Pinellas County, Florida.

12. Conditions and Assurances

- A.) Access to Records: PPS agrees that CRA or any of its duly authorized representatives shall have access to any books, documents, papers, and records of PPS for the purposes of making audit, examination, excerpt, and transcripts.
- B.) Retention of Records: PPS will be required to comply with Section 119.0701, Florida Statutes, specifically to:
 - a. Keep and maintain public records acquired by the CRA to perform the service;
 - b. Upon request from the CRA's Custodian of Records, provide the CRA with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law;
 - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract if the contractor does not transfer to the CRA; and
 - d. Upon completion of the Contract, transfer, at no cost, to the CRA all public records in possession of the contractor or keep and maintain public records required by the CRA to perform the service. If PPS transfers all public records to the CRA upon completion of the Contract, PPS shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If PPS keeps and maintains public records upon completion of the Contract, PPS shall meet all applicable requirements

for retaining public records. All records stored electronically must be provided to the CRA, upon request from the CRA's custodian of Public Records, in a format that is compatible with the information technology systems of the CRA.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, ROSEMARIE CALL AT 727-562-4090, ROSEMARIE.CALL@MYCLEARWATER.COM, AND/OR 112 S. OSCEOLA AVE., CLEARWATER, FL, 33617

In Witness Whereof, the parties hereto have executed this Contract as of the date set forth above.

Countersigned:

Community Redevelopment Agency

George N. Cretelos
Chairman

Seth Taylor
Director

Approved as to form:

Attest:

Pamela Akin
City Attorney

Rosemarie Call
City Clerk

Project for Public Spaces, Inc.

By:

Stephen Davies, Executive Vice President

Attest:

Ricardo Byrd, Secretary